1964–65

VICTORIA

REPORT

OF THE

STATE DEVELOPMENT COMMITTEE

ON

EXTRACTIVE INDUSTRIES

PRESENTED TO HIS EXCELLENCY THE GOVERNOR IN COUNCIL AND LAID BEFORE BOTH HOUSES OF PARLIAMENT PURSUANT TO THE PROVISIONS OF THE STATE DEVELOPMENT ACT 1958 (No. 6376)

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FUNCTIONS OF THE STATE DEVELOPMENT COMMITTEE

To inquire into and report to the Governor in Council upon—

(*a*) the balanced economic, industrial and rural development of the State;

(*b*) the decentralization of industrial activities and the distribution of population in the State;

(*c*) the improvement of the general economic welfare of the State;

(*d*) the amelioration of the conditions of industrial and rural life in the State;

(*e*) the organization and development of primary, secondary, and other industries in the State;

(*f*) any other relevant matters or things.

REPORT

To His Excellency Sir Rohan Delacombe, Knight Commander of Our Most Excellent Order of the British Empire, Companion of Our Most Honorable Order of the Bath, Companion of Our Distinguished Service Order, Major-General on the Retired List of Our Army, Governor of the State of Victoria and its Dependencies in the Commonwealth of Australia, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY :

Pursuant to the State Development Act, the State Development Committee has the honour to submit the following Report relating to extractive industries.

TERMS OF REFERENCE.

The matters into which it was desired the Committee should inquire were as follows :—

The proposals submitted by the Department of Mines relating to extractive industries, which proposals include :—

1. Introduction of a licensing system for those quarries not subject to leasing under the Mines Act, thereby achieving uniformity of control over all quarries.

2. Creation of an independent Appeals Board to hear objections to the granting of a lease or licence authorizing quarrying operations.

3. Creation of a fund to finance the restoration of abandoned or worked-out quarry sites to some form of beneficial use.

4. Extension and liberalization of the measure of compensation payable under the Mines Act to freeholders of " mining condition " and other private land for damage occasioned by quarrying activities on such land.

5. Stepping-up of the Geological Survey of the State's mineral resources to ensure :—

   (*a*) that materials such as sand, gravel, clay, rock, and other substances commonly the subject of quarrying operations in both rural and urban areas or likely to be needed to meet future production requirements are not unnecessarily sterilized by surface development, but are kept available for exploitation, and

   (*b*) the most effective land-use in accordance with the principles of modern town planning, having due regard to the need for siting quarries so as to avoid unjustified interference with the comfort and living conditions of people in the area concerned, or amenities generally.

6. Any other matter which appears to the Committee to be relevant to the Inquiry.

RECOMMENDATIONS.

1. That a new Act, entitled the Extractive Industries Act, designed specifically to govern the leasing, licensing, and regulation of extractive industries, and the fencing and reclamation of extractive industrial sites, be brought down.

2. That the *Mines Act* 1958 be revised and modernized by eliminating from it provisions designed to deal with extractive industries, which should be embodied in the Extractive Industries Act.

3. That the definition of " mineral " in the *Mines Act* 1958 be limited by explicitly excluding from it substances which commonly form the major part of the earth, and which comprise the raw materials of extractive industry.

4. That these substances be included under the definition of, say, " stone ", in the Extractive Industries Act, as the substances to which the provisions of that Act apply.

5. That the practice of granting Mineral Leases under the provisions of the *Mines Act* 1958 for extractive industrial undertakings on Crown land be discontinued.

6. That instead, Extractive Industrial Leases be issued by the Department of Mines under the provisions of the Extractive Industries Act for extractive industrial undertakings on Crown land, and that Extractive Industrial Licences be issued by the Department of Mines for extractive industrial undertakings on freehold land.

7. That Mineral Leases currently in force under the *Mines Act* 1958 for extractive industrial undertakings upon freehold land where the minerals extracted were erroneously considered to be the property of the Crown, be recalled and replaced by Extractive Industrial Licences in accordance with the recommendations herein.

8. That, within State forests, the leasing and licensing power for the removal of extractive substances (subject in the case of leases to approval by the Governor in Council) remain exclusively with the Forests Commission. The Department of Mines to have no power to issue Extractive Industrial Leases or Licences in State forests, but to be responsible for the supervision and control of safe-working of extractive industrial undertakings in State forests, as at present.

9. That, in respect of extractive industrial undertakings on Crown land other than State forests, Extractive Industrial Leases be issued by the Department of Mines, with the approval of the Governor in Council, subject to :—

(*a*) the prior consent of the Department of Crown Lands and Survey being obtained to the leasing of the area for extractive industrial purposes ;

(*b*) the prior approval of the Department of Crown Lands and Survey being obtained in respect of the conditions which it is proposed to include in the lease ;

(*c*) the procedures set out in respect of freehold land in Recommendation No. 16.

10. That Section 134 of the *Land Act* 1958 be amended by deleting from it the leasing power over extractive materials, but not over salt.

11. That the power under Section 138 of the *Land Act* 1958 to issue annual licences for small extractive industrial operations on Crown land, remain with the Department of Crown Lands and Survey.

12. That the practice now followed by that Department of consulting the Department of Mines for objections before issuing Crown Leases in auriferous areas, be extended to cover Crown land in the whole of Victoria.

13. That any inter-departmental differences between the Departments of Mines and Crown Lands and Survey be resolved, where necessary, at Cabinet level.

14. That no Extractive Industrial Lease or Licence be issued by the Department of Mines within the boundaries of a National Park without the prior consent of the National Parks Authority, subject to appeal to the Minister in charge of National Parks against a refusal of such consent by the Authority, as at present.

15. That the Department of Mines have power to issue Extractive Industrial Leases and Licences in proclaimed water catchment areas subject to :—

(*a*) notification of all authorities concerned, and of all adjoining landholders, that an application for a lease or licence has been received ;

(*b*) in the case of Crown land, the procedure set out in Recommendation No. 9 ;

(*c*) the exception of water catchment areas in State forests, in which the leasing and licensing power should remain with the Forests Commission, in accordance with Recommendation No. 8 ;

(*d*) appeals to the Minister for Local Government.

Any objections by the Soil Conservation Authority to the granting of such leases or licences in proclaimed water catchment areas to be dealt with by the Minister for Local Government, whose decision in this matter to be final, in accordance with the appeal procedures recommended in this Report. Amendment of the *Soil Conservation and Land Utilization Act* 1958 may be necessary to implement this recommendation.

16. That Extractive Industrial Licences be issued by the Department of Mines under the provisions of the Extractive Industries Act for extractive industrial undertakings on freehold land subject to :—

(*a*) consent of the landowner ;

(*b*) notification that applications for licences have been received being made to the Town and Country Planning Board, the responsible planning authorities, the local governmental authorities concerned, the Soil Conservation Authority, the State Rivers and Water Supply Commission, and any other Department, authority or person whose interest may be affected ;

(*c*) the appeals procedures mentioned elsewhere in this Report.

17. That, upon the coming into force of the Extractive Industries Act, the requirement that extractive industries be subject to the necessity to obtain leases or licences be made applicable, not only to new extractive industrial undertakings, but also to existing undertakings, irrespective of the dates upon which they were established.

18. That the excavation of the basic raw materials for the production of cement be subject to the leasing and licensing provisions of the Extractive Industries Act, but that cement producers be exempted from the necessity to make any financial contribution in connexion with reclamation of worked-out sites.

19. That shallow surface stripping operations by public authorities for public use be excluded from the leasing and licensing provisions of the Extractive Industries Act.

20. That shallow surface stripping operations by private operators be brought under the control of the Soil Conservation Authority for the purposes of site reclamation and prevention of erosion and that any amendments thereby necessitated be made to the *Soil Conservation and Land Utilization Act* 1958.

21. That there be provision for appeals to the Minister for Local Government against the granting of, or against refusals to grant, or against the conditions of, Extractive Industrial Leases or Licences ; that all interested parties be given the opportunity to be heard ; and that the decision of the Minister be final and binding on all parties.

22. That a decision by the Minister for Local Government that an Extractive Industrial Lease or Licence should be granted should have the same force and effect as a decision by that Minister under Section 22 of the *Town and Country Planning Act* 1961.

23. That Extractive Industrial Leases and Licences be granted for a term of up to fifteen years and that, at the end of that term, applications for renewal of leases and licences be subject to procedures similar to those obtaining for initial applications for leases and licences, including the notification of all interested parties, and provision for appeal to the Minister for Local Government.

24. That Extractive Industrial Leases and Licences be revocable for non-compliance with conditions embodied therein, with a right of appeal to the Minister for Local Government.

25. That the Department of Mines be responsible under the Extractive Industries Act for the control of the safe fencing of operating extractive industrial undertakings, and that conditions in relation thereto be embodied in Extractive Industrial Leases and Licences.

26. That local municipal councils be responsible for the control of the safe fencing of disused extractive industrial sites, and of the maintenance of such fencing, and that the *Local Government Act* 1958 be amended to empower councils to require the erection and maintenance of fences of a standard adequate to ensure the safety of the public, and particularly of children.

27. That, where reclamation of the site is practicable, the granting of Extractive Industrial Leases and Licences be conditional upon the applicant entering into a legal undertaking with the Department of Mines that, upon the cessation of extraction, he will ensure that the site is reclaimed to the satisfaction of the responsible authority.

28. That the local municipal council be constituted the responsible authority to control the reclamation of worked-out extractive industrial sites.

29. That, in the case of freehold land, the extractive industrialist be required, at the discretion of the Department of Mines, either to lodge with the Department a deposit, or to give a bond, guarantee, or other security against the carrying out of the reclamation work.

30. That, in the case of Crown land, a reclamation component be added to the royalty.

31. That, in the case of extractive industrial sites already worked out when the Extractive Industries Act comes into force, the local municipal council be empowered to serve notice upon, firstly, the extractive industrialist (if any), or secondly, upon the owner of the land, requiring him, where practicable, to have the site reclaimed. If the extractive industrialist or landowner, fails to do so, the council to have power to have the work done and the cost recovered from the extractive industrialist or landowner.

32. In the case of any extractive industrial sites already worked out when the Act comes into force, where royalty has been paid to the Crown, the responsibility and cost of reclaiming the site to rest with the Crown.

33. That the powers of the Commission of Public Health regarding the reclamation of disused excavations be in no way impaired by the operation of the new Extractive Industries Act.

34. That the Department of Mines be required to carry out surveys of fringe areas of town planning schemes where a change of land use is contemplated, and where it is believed that there are economically workable deposits of extractive substances. In addition, the Department to carry out such further surveys as may be desirable.

35. That Sections 542 and 543 of the *Local Government Act* 1958 be strengthened to facilitate the recovery by municipal councils from extractive industrialists of amounts required to recoup the municipal fund for road construction and maintenance costs occasioned by extraordinary wear and tear upon roads owing to the passage of heavy vehicles employed by extractive industries.

DISSENT.

The Honorable A. W. Knight, M.L.C., dissents in part from certain of the recommendations listed above. He wishes his views to be recorded as follows :—

The Honorable A. W. Knight, M.L.C.

While I agree in general with the Report of the Committee, I wish to record my dissent from Recommendations Nos. 15, 21, 22, 23, and 24 in so far as these recommendations refer to a right of appeal to, and decisions by, the Minister for Local Government. In my opinion, an Extractive Industries Appeals Board

constituted of a Supreme Court Judge sitting alone should be established. All appeals in the matters covered by Recommendations Nos. 15, and 21 to 24, should be directed to this Board, and the decision of the Board should be final in all cases.

DEFINITION.

For the purpose of this Inquiry, the Committee has adopted the following definition :—

> " Extractive industry " includes the extraction for commercial purposes of sand, gravel, clay, turf, soil, rock, stone or similar materials from the land and, when carried out on the land from which such materials are extracted, the treatment of such materials and the manufacture substantially from such materials of burnt bricks, baked tiles, pottery, and cement products.
>
> This definition follows substantially the definition used in the Interim Development Order of the Melbourne and Metropolitan Board of Works, and can be taken to include extraction from all commercial stone quarries, clay pits, sand pits, and gravel pits, but to exclude building excavations, excavations for dam sites, road and railway cuttings, sewerage, water reticulation, or bores, and all similar excavations where the extraction of the materials is not the prime purpose of the industrial activity, but merely an incidental accompaniment to activities conducted for other pusposes. The definition should not be taken as applying to mines, either of the open-cut or underground varieties, which are considered to lie outside the terms of reference of the Inquiry.

INTRODUCTION.

Following the Inquiry by the State Development Committee in 1957 and 1958 into extractive industries, Cabinet directed that draft legislation be prepared to give effect to the recommendations made in the Committee's report of the 10th April, 1958.

The Parliamentary Draftsman reported that the matter could not be adequately dealt with simply by preparing legislation in the form of comparatively small amendments to the existing Mines Act, as had been suggested in the Committee's report. Indeed, revision of large sections of the Mines Act would be necessary, and the Draftsman recommended a complete re-enactment of that Act so that it might be modernized, and certain anomalies removed.

Moreover, the Committee's recommendation that the Department of Mines should be the sole controlling authority over extractive industries in Victoria posed problems associated with the interests and administration of other Departments and instrumentalities, and particularly of those which for many years had undertaken or authorized extraction of sand, gravel, stone and clay on Crown lands under their control. The views of these Departments, obtained by the Government in 1960, indicated that it would be difficult to safeguard the legitimate interests of all the governmental agencies concerned, if the Department of Mines were given sole control over all extractive industrial operations in Victoria along the lines then proposed.

A Mines (Minerals) Bill, which had as its object the amendment of the *Mines Act* 1958 to provide for the retroactive vesting of all minerals (including common substances such as sand, gravel, soil, clay and stone) in the Crown, irrespective of the date of alienation of the land from the Crown, was introduced into Parliament early in 1961, but was not proceeded with.

On the 8th March, 1961, the subject of extractive industries was referred back to the State Development Committee by the Honorable H. E. Bolte, M.L.A., Premier of Victoria, with a request that the Committee examine the matter further and indicate whether it desired in any way to vary the recommendations made in its report of the 10th April, 1958.

On the 1st May, 1961, the Committee conferred with representatives of the Department of Crown Lands and Survey, Forests Commission, Soil Conservation Authority, Country Roads Board, Department of Mines, Local Government Department, Town and Country Planning Board, and the Melbourne and Metropolitan Board of Works. As a result of this conference, the Committee advised the Government that it would be desirable to re-open the Inquiry, and requested that new terms of reference be provided.

Proposals by the Department of Mines for revision of the Mines Act had in the meantime been submitted to Cabinet for consideration. The Government decided to refer them to the Committee. This was done on the 24th September, 1962, when the Premier requested the Committee to undertake the present Inquiry, the terms of reference of which incorporate the proposals of the Department of Mines.

THE INQUIRY.

Sworn evidence was taken from 86 witnesses in Melbourne and Bendigo.

Legislation governing extractive industries in the other Australian States and in overseas countries has been studied by the Committee.

Inspections of many extractive industrial undertakings and sites in the metropolitan area and in country districts have been made by the Committee.

THE PRESENT POSITION.

In 1955, growing shortages of self-bonded moulding sands, and of special types of plastic clays used in the manufacture of terra-cotta roofing tiles, agricultural drain-pipes, and cream bricks had become apparent at many existing metropolitan sand and clay pit sites. Extractive industrialists attempting to expand their operations into other suitable areas in and near the metropolis found some municipal councils unwilling to grant permits for extractive industries within their boundaries, or reluctant to permit the extension of extractive industries already established there.

Extraction of extractive substances has taken place for many years from deposits located as close to markets as possible. Continued population growth has extended urban development (particularly in Melbourne) up to and around older established workings economically preventing their extension and resulting in their ultimate abandonment. Establishment of similar workings in present outer areas could eventually become restricted by other types of development, thus further reducing availability of these resources unless protective measures are introduced. This is inevitable because information on the occurrence of extractive materials is available at present only in general terms. Usually it is not sufficiently precise to enable areas to be adequately defined for planning purposes.

Whenever housing development comes close to an established extractive industrial undertaking, strong pressure for the restriction and ultimate extinction of the undertaking is usually exerted.

The products of stone quarries, clay pits, sand pits, and gravel pits are indispensable to the economic development of the community generally. But the presence of extractive industries, more particularly in closely populated residential areas, is frequently accompanied by noise, blasting, dust, flying rock, constant road traffic, deterioration of roads caused by the heavy vehicles used by the industry, danger to children, workings too close to streets, inadequate fencing, damage to neighbouring houses, lowering of neighbouring land values, spillage of clay or rock onto roads with consequent hazard to motor traffic, interference with neighbouring drainage facilities as a result of silting-up of gutters and drains by extractive materials, inadequate drainage of disused excavations resulting in deep, dangerous, water-filled holes, and scarring of the landscape. In rural areas, sand and gravel-winning operations can introduce or aggravate soil erosion problems.

Because of the very real problems involved, extractive industries, especially in the metropolitan area, are the focus for much local dissatisfaction and are unpopular with many local municipal councils, some of which have prohibited their establishment or extension, or have imposed conditions so restrictive upon the granting of permits as to virtually amount to prohibition. In short, the products of the industry are wanted, but its presence is not.

There appears to be general agreement that some control over the location of these industries, their mode of operation, the adequate safety fencing of their sites, and the subsequent reclamation of worked-out areas, is needed. The action of some municipalities in prohibiting extractive industries within their municipal districts does not offer a satisfactory solution, as it merely removes the problem from one area to another.

The power of councils or other planning authorities to grant or refuse permission for extractive industrial operations under the *Town and Country Planning Act* 1961 is subject to appeal to the Minister for Local Government, who may confirm or overrule the council's ruling. The Minister's decision is final and binding on all parties. There is no appeal to the Minister, however, against municipal by-laws prohibiting extractive industry under the *Local Government Act* 1958, and where councils have made, and invoke, such by-laws, the machinery for appeal to the Minister under the Town and Country Planning Act becomes ineffective.

The Melbourne and Metropolitan Board of Works and metropolitan municipal councils are responsible planning authorities for the metropolitan area. Much of the metropolis is subject to the Interim Development Orders of both the Board and the local council. In such cases, permission of the Board and of the municipality concerned is required before an extractive industry can be established or extended. If the substances which it is proposed to extract are owned by the Crown, a Mineral Lease granted by the Governor in Council on the recommendation of the Minister of Mines is also required.

But many long-standing extractive industries, operating on freehold land alienated from the Crown before 1st March, 1892 (" prior " land), and established before the passing of prohibitory by-laws and the Town and Country Planning Act, can operate without the consent of the Melbourne and Metropolitan Board of Works, a municipal permit, or a Mineral Lease.

The inconsistency of this position is further complicated by the defectiveness of municipal powers for the regulation of extractive industry, the variability of the attitudes of different municipal councils towards extractive industry, the lack of uniformity from municipality to municipality in the degree and type of control applied to the siting and operation of the industry, and the degree of effectiveness with which controls are administered and enforced.

There is a considerable amount of overlapping between the powers of the Department of Mines and those of the municipal councils in certain directions, while in others the powers of both the Department and the councils are clearly defective. It has become obvious to the Committee that this has led to uncertainty and conflict over responsibility for regulating the activities of the industry, and to a generally unsatisfactory position over the application and enforcement of such control measures as are necessary.

The Department of Mines is already responsible for safe-working in all extractive industries, control of explosives and the licensing of magazines in quarries and clay pits, control of dust nuisance arising out of extractive industrial operations, and protection of the public by enforcing adequate fencing of extractive industrial sites. But the Department has restricted authority over the location of extractive industries, and has no licensing authority over extractive industries conducted on freehold land where the extractive substances are not owned by the Crown. Its power to require reclamation of worked-out extractive industrial sites is limited to sites where the substances are owned by the Crown, and depends, not upon any specific statutory authorization, but upon the general provision that the Governor in Council may include in a Mineral Lease such terms and conditions as he deems fitting.

By virtue of the operation of Section 101 of the Mines Act, which provides that " nothing contained in this Act . . . shall prevent the operation of any by-law made or to be made by a municipal corporation ", the granting of a Mineral Lease under the Mines Act for the establishment of an extractive industry at a particular location can be nullified by the refusal of the local municipal council, under its by-law making power, to permit the establishment of the industry at that location. The refusal of a municipal council, under its town planning powers, to permit the establishment of an extractive industry at a particular location can also vitiate the granting of a Mineral Lease for that purpose, but with the difference that appeal to the Minister for Local Government against the council's refusal is possible.

On ordinary Crown land, leases for the extraction of clay, sand, gravel, stone, and so forth, may be issued by either the Department of Crown Lands and Survey or the Department of Mines. In State forests similar leases may be issued by either the Forests Department or the Department of Mines. In each case formal approval of the issue of

a lease is given by the Governor in Council upon the recommendation of the Minister concerned. There is thus an overlapping and duplication of powers between the Department of Mines on the one hand, and the Forests Department and the Department of Crown Lands and Survey on the other.

The Department of Mines can issue such leases over Crown lands within the jurisdiction of the other two Departments without consulting them, or even against their express wishes to the contrary, and there is evidence of a certain amount of inter-departmental friction over this issue.

The definition of " mineral " in the Mines Act has been varied and added to many times in the history of that legislation. The view of the Department of Mines has been that the term covered all substances which could be extracted from the earth, which were, therefore, reserved to the Crown, and so subject to mineral leasing. In accordance with this view, the Department has for many years issued Mineral Leases, not only for mining purposes, but also for the purpose of extractive industry.

The departmental view has not always gained wide acceptance elsewhere. In 1949, the Mines (Amendment) Act was enacted with the object of removing any doubt over the question of the substances which were to be regarded as minerals. It was provided by this Act that, among other substances, basalt and granite were to be included in the mineral definition, and that that definition should also include any other substance which was declared a mineral within the meaning of the Act. By a proclamation in 1951, clay, sand, gravel, stone, and rocks were declared and added to the list of minerals.

By virtue of Section 340 of the Land Act and Section 291 of the Mines Act, governing the reservation of minerals to the Crown, this had the apparent effect of reserving to the Crown all extractive substances in land alienated from the Crown after 1st March, 1892.

However, the effect of a judgment given in the Victorian Supereme Court in 1955 in the case of Shire of Wannon *v.* Riordan was that " minerals ", within the meaning of the Mines Act, did not include basalt and granite in land alienated before the enactment of the *Mines (Amendment) Act* 1949, or clay, sand, gravel, stone and rock in land alienated before the declaration of these substances as minerals in 1951. But in land alienated after the coming into force of the *Mines (Amendment) Act* 1949, the substances of basalt and granite did not pass with the title to the freeholder, but were reserved to the Crown, and in the land alienated after the date of the proclamation of 1951, no extractive substances passed with the title, but were all reserved to the Crown.

This meant that, on such land, Mineral Leases for extraction of these substances could be issued without the consent of the landowner, and that royalty for the substances removed from the land was payable, not to him, but to the Crown. The landowner was entitled only to receive compensation as provided for in the Mines Act.

This position still applies now. It has had the effect, apparently not foreseen by Parliament when the *Mines (Amendment) Act* 1949 was passed, of giving rise to five main categories of land title in Victoria where, before the passing of the Act, there were only three.

The five different categories of land title are :—

(1) Those for land alienated before 1st March, 1892, in which the land was sold without any depth limit, and in which all minerals (including extractive substances) except gold, silver, uranium, thorium and petroleum, are owned by the landowner.

(2) Those for land alienated between 1st March, 1892, and the coming into force of the amending Act of 1949, in which the land was sold only to a certain depth, and subject to the reservation to the Crown of minerals (but not extractive substances) above that depth.

(3) Those for land alienated between the coming into force of the amending Act of 1949 and the proclamation of 1951, in which the land was sold only to a certain depth, and subject to the reservation to the Crown of minerals (including basalt and granite but not other extractive substances) above that depth.

(4) Those for land alienated after the proclamation of 1951, in which the land was sold only to a certain depth, and subject to the reservation to the Crown of all minerals (including all the extractive substances) above that depth.

(5) Those for land in categories 2, 3, and 4 but to which Section 81 of the *Land Act* 1958 also applies, so that no compensation of any kind is payable to the landowner for any disability suffered by him as a result of mining or extractive industrial operations on his land.

The Committee wishes to draw attention to the fact that soldier settlers who have been allotted land, pursuant to the Soldier Settlement Acts, on soldier settlement estates following World War II, all hold or will hold the type of title listed under category No. 4, because no Crown grants were issued to any such settlers until 1957. In short, they own or will own only the surface rights in the land, but none of the substances of which the land is composed. The Committee believes that this was never intended by the Government, but that it has occurred as an unforeseen consequence of the extension of the mineral definition in the Mines Act.

A similar position applies to other owners of land alienated after the date of the proclamation of 1951. Owners of land alienated before that date but after the coming into force of the *Mines (Amendment) Act* 1949 suffer a lesser degree of disability in that they own all the extractive substances in their land except basalt and granite. However, in cases where the land is substantially composed of either basalt or granite, they are in virtually the same position as owners of any land alienated after the proclamation of 1951.

The extension of the definition of " mineral " in the Mines Act by the amending Act of 1949 appears to have had other unforeseen consequences, in that it apparently also applies to references to minerals in other Acts, such as the Land Act and the Forests Act. This has given rise to certain undesirable anomalies and to some uncertainty about the legal position as between the administration of the Mines Act and, for instance, the Forests Act. The Committee believes that this was not intended by Parliament, and that the position should be remedied as recommended in this Report.

LEGISLATION.

The Committee considers that the Mines Act was originally directed to the winning of gold and other precious metals, and is an Act essentially designed to govern underground mining operations. Over the years, by progressive amendment, the Act has taken on an inconsistent and complex character.

Sections dealing with safe-working in quarries have been grafted onto the Act, and the present proposals submitted by the Department of Mines contemplate the addition of further sections relating exclusively to extractive industries. The proposal that, where extractive substances are the property of the Crown, the establishment and operation of extractive industries should be governed by the granting of Mineral Leases, fails to differentiate between substances commonly won by extractive industrial methods and those won by underground mining, and would make both forms of undertaking subject to the granting of the same type of basic lease.

Despite the similarity between extractive industrial operations and open-cut mining operations, and the fact that it is technically difficult to draw a sharp dividing line between them, the Committee agrees with the view held in the courts that there is a distinct difference between an extractive industry and a mine. The fact that certain mining operations are carried out above ground, instead of underground, does not, in the Committee's opinion, justify the assumption that, therefore, an extractive industry is a mine.

If the Department of Mines proposals were adopted in their present form, some sections of the then revised Mines Act would apply solely to mines, some solely to extractive industries, and some to both mines and extractive industries.

The Committee considers that the importance of extractive industry warrants an Act of its own, designed to deal specifically with that industry alone. The Extractive Industries Act should cover, not only safe-working and the use of explosives within quarries, clay-pits, sand-pits, &c., but also the leasing and/or licensing of extractive industries, and matters incidental thereto, the regulation of extractive industries, and the reclamation of extractive industrial sites after operations have ceased.

In addition, the *Mines Act* 1958 should be revised and modernized to take account of the passing of extractive industrial legislation, so that only those provisions expressly designed to deal with mining, as distinct from extractive industry, are retained within it. In particular, those sections of that Act now dealing with safety in quarries should be transferred to an Extractive Industries Act. Provisions governing the fencing of extractive industrial sites should be contained in the Extractive Industries Act.

The definition of " mineral " in the Mines Act should be amended by explicitly excluding from it those substances which commonly form the major part of the earth, such as sand, gravel, rock, stone, basalt, granite, clay, loam, and soil. This would remove a number of anomalies which have arisen as a result of the extension of the definition of " mineral " under the *Mines* (*Amendment*) *Act* 1949. In particular, it would reduce the five existing classes of freehold title to three, namely :—

(1) That in which the land is owned by the freeholder without any depth limitation, and in which the freeholder owns all minerals in the land covered by the title.

(2) That in which the land is owned by the freeholder to the depth stipulated by the title, but subject to the reservation of minerals (but not the " common substances "), above the depth limit to the Crown.

(3) That to which a " mining condition " under Section 81 of the *Land Act* 1958 applies.

As a further consequence, the application of Section 81 of the Land Act would then be confined, as it was originally designed to be, to precious ores, and would not apply to the common substances of the earth, as it has since the amending Act of 1949 came into force. Expropriation of the " common substances " under Section 81 renders the freehold title virtually meaningless.

Finally, revision of the definition of " mineral ", as suggested would remove any doubt about the question of control of the " common substances " in State forests, and would restore the position which existed before the passing of the *Mines* (*Amendment*) *Act* 1949.

The common substances of the earth with which extractive industrial operations are concerned, such as sand, gravel, clay, rock, &c., should be grouped together under some such definition as " stone ", as they are in the Tasmanian *Mining Act* 1929. Extractive industrial leases and licences should then be granted under the Extractive Industries Act in respect of the substances included in that definition, which should be included in that Act. The granting of Mineral Leases under the Mines Act should be confined to those substances contained in the definition of " mineral ", limited as we have suggested, and the practice of granting Mineral Leases for extractive industrial purposes should be discontinued.

LEASING AND LICENSING OF EXTRACTIVE INDUSTRIES.

In the Committee's opinion, what is needed is a clear, uniform code governing the siting and regulation of the industry, and the reclamation or, where that is impossible, the rendering safe of worked-out sites. While multiplicity of controls cannot be entirely eliminated because of the complexity of the problems involved, it should be reduced to a minimum.

It has been submitted to the Committee that the siting of extractive industry and the preservation of deposits of extractive substances merit unique consideration because the industry differs from other land-uses in that its raw materials can be worked only where they are located, that sites must be within economic distances of markets, and that supplies of these materials at locations which fulfil the latter requirement are relatively

scarce. Control of the siting of the industry and the zoning of land to protect and preserve deposits of extractive materials for future development should, therefore, not be left in the hands of town planning authorities, but should be vested in the Minister of Mines, as the Department of Mines is the only official body which fully understands the requirements and problems of the industry.

On the other hand it has been submitted that the main question to be resolved is that of who is to be the final arbiter of land-use. Under the Town and Country Planning Act, the planning authority is responsible for determination of land-use, subject to appeal to the Minister for Local Government. The result of altering this established procedure in respect of one particular land-use in favour of a final decision by a Minister whose primary responsibility is in respect of that particular land-use would be wrong in principle, and could lead to great difficulties, particularly in the rapidly expanding, highly settled metropolitan area. One of the principles governing town and country planning is that the control of land-use should take into account all requirements—not just one particular requirement. If that principle is right, one particular and important type of land-use should not be excluded from the general pattern of control because, if it were, quite serious difficulties could arise in administering the rest of the planning scheme.

The Committee considers that weight should be given to both points of view, and that neither should be permitted to prevail to the complete exclusion of the other. For this reason, it is of the opinion that the licensing and leasing power, subject to certain exceptions which are specified in the Committee's recommendations, should be centralized under the administration of the Department of Mines, subject to statutory safeguards to ensure that full consideration is given to objections by town planning, local governmental and other authorities, and other interested persons, and subject to a right of appeal to the Minister for Local Government as final arbiter of land-use.

It should not then be necessary for extractive industrialists to obtain, as additional requirements, permits from local governmental or town planning authorities to establish or extend extractive industrial undertakings. Where there are objections upon town planning grounds to the establishment of an undertaking, and the Minister for Local Government determines the matter in favour of the industry, this should either be taken to indicate that town planning permission is tacitly granted or, if this procedure is not feasible, then the issue of a town planning permit should be made mandatory. But there should be no impairment of the power of various authorities to require compliance with statutory requirements or by-laws which are not inconsistent with the principle that an extractive industrialist should be free to engage in an extractive industrial undertaking at a particular location once he has obtained a lease or licence authorizing him to do so.

The Committee is persuaded, on the weight of the evidence, that the regulation of extractive industry is desirable, and that this can best be achieved by the introduction of a system of leasing where the substances to be extracted are owned by the Crown, and licensing where they are not. The leasing and licensing authority can then embody in the leases or licences conditions setting out its requirements as to layout of the site, regulation of operations, fencing, and so forth, and failure to comply with these requirements can be dealt with by revocation of the lease or licence.

The technical nature of the industry, as well as other factors mentioned above, provide reasons why the leasing and licensing power should rest with the Department of Mines rather than the municipal councils, which lack the degree of technical expertness required to understand the requirements and problems of the industry, and whose necessarily circumscribed area of administration precludes an adequate appreciation of the State-wide need for the products of the industry.

But there should be statutory safeguards to ensure that every opportunity is given for municipal councils to have special conditions embodying their reasonable requirements written into Extractive Industrial Leases and Licences issued by the Department of Mines, and for them to object, if they so desire, to the Minister for Local Government against the establishment or extension of an extractive industry at a particular site, or against the conditions contained in leases or licences.

The Committee sees no reason why the duplication of the leasing power between the Department of Mines on the one hand and the Department of Crown Lands and Survey and Forests Department on the other hand should be perpetuated. This matter is covered in the recommendations.

The Committee considers that the provisions of the present Mines Act covering publicity and inter-departmental liaison in connexion with the granting of Mineral Leases are inadequate for the purposes of extractive industrial leasing and licensing, and that the procedures set out hereunder should be adopted.

It is not intended by the Department of Mines that small operations such as the surface stripping of small areas in country districts should be covered by the extractive industrial leasing and licensing provisions, or that these should apply to the activities of public authorities extracting materials for public use. The Committee draws attention to the fact that, while the question of soil erosion control in the case of the operations of public authorities is covered by the Acquisition of Materials Bill recently introduced into Parliament following the recommendations of the Statute Law Revision Committee on this subject, there may be need to increase the powers of the Soil Conservation Authority in regard to the control of soil erosion which may arise from surface stripping activities of private operators in the case of operations considered to be outside the ambit of extractive industrial leasing and licensing. This could be done by amending Section 17 of the *Soil Conservation and Land Utilization Act* 1958. There will be a need to define clearly the operations to be covered by any such amendment, so that there shall be no question of overlapping of functions between the Soil Conservation Authority and the Department of Mines.

CONTROL OF NUISANCE.

Extractive industries are inherently dusty, noisy, and dirty, and certain factors associated with them cannot be so completely controlled as to give absolute relief to neighbouring residents, unless these industries are located with an adequate buffer zone around them.

While remedies are available at Common Law against the commission of nuisance, there is often great reluctance to have recourse to them because of the expense involved and the uncertainty attending the result of legal proceedings of this kind.

The Committee considers that the powers of control over extractive operations now vested in the Department of Mines, plus the powers vested in the Department of Health under the Health Act, as well as the Common Law remedies referred to, should normally be sufficient for the control of nuisance arising from extractive industrial operations, provided that they are applied where they are needed. Unfortunately, it is not always easy to apply such powers without virtually closing down the operations concerned.

Disturbance of neighbouring amenities usually engenders very strong feelings against extractive industries, and complaints about nuisance arising from their operations, while usually having a hard core of fact, are quite often accompanied by much exaggeration. Cracking of house walls in the vicinity of a quarry where blasting occurs is invariably attributed by house-owners to the effects of blasting, whereas it could be due to other causes such as settlement of foundations, the use of green timber during house construction, or the normal expansion and contraction of the earth which takes place with change of the weather.

Because of this, authorities charged with the regulation of extractive industries are understandably cautious about applying rigid restrictions to extractive industry, as it is often extremely difficult to discover the real source of responsibility for many of the incidents for which the industry is blamed, and even more difficult to establish proof which would satisfy legal requirements.

The most practical way out of this problem is to keep extractive industry and residential development apart. In town planning, establishment of new extractive industries should not be permitted close to residential development, at least without provision of adequate buffer zones around the sites, and residential development should not be permitted to encroach upon areas where extractive industries are already established. Ample buffer zones should be provided at all times. There should be provision for planting of trees and shrubs within the boundaries of extractive industrial sites, to minimize any dust nuisance.

In the case of districts where extractive industries and residences are already close to each other, the administration of safety requirements and measures for the minimization of nuisance should be pursued vigorously under existing powers. In particular, the safe fencing of dangerous pits and excavations should be enforced at all times, and the word " dangerous " in this context, should always be interpreted, where there is the slightest doubt about an excavation, in favour of the public and not of the extractive industrialist.

LEASING AND LICENSING PROCEDURE.

The evidence submitted to the Committee covered quite exhaustively the procedures which witnesses felt should be employed in granting leases or licences for extractive industry. The Committee does not propose to deal with this matter in such detail, but to confine itself mainly to observations regarding the principles which it feels should be adopted.

In the first place, the widest publicity should be given to applications for leases and licences to establish or extend extractive industries. Not only should the local municipal council and any other town planning authority be informed, but notification should also be sent to all interested authorities, and to any landholders in the district whose interests or amenity are likely to be affected. The Committee does not consider that this requirement would be satisfied by posting a notice upon a public notice board at the local municipal offices and at the Department of Mines, nor by inserting a notice in a newspaper circulating in the district. Such measures should be supplemented by the posting of a large notice, conspicuously displayed, upon the site itself, and by notices sent to authorities and individuals concerned.

Secondly, there should be opportunity for the lodging of objections with the Department of Mines, and for effective consultations at that stage between that Department, any other responsible authorities, and the extractive industrialist. If conflicts of interest are not resolved by such consultations, the matter should be referred to the Minister for Local Government for determination, and *all* interested parties should be so informed, and advised of their rights of appeal.

The procedure which the Committee considers should be followed in the case of Crown land is set out in recommendation No. 9, and in the case of proclaimed water catchment areas, in Recommendation No. 15.

EXTRACTIVE INDUSTRIES APPEALS BOARD.

It was proposed by the Department of Mines that an Extractive Industries Appeals Board be established to deal with disputes arising from applications for leases or licences to operate extractive industrial undertakings. The Department of Mines proposed that the Board be constituted of a barrister and solicitor of the Supreme Court as chairman, and of two other members, one being an independent authority on mining, and the other an independent authority on town planning.

The function of this Board would be to publicly hear appeals against the granting of leases or licences, against refusals to grant leases or licences, and against the conditions which the Department proposed to incorporate in leases and licences. The Board would than make a recommendation to the Minister of Mines, who would have power to determine the application, and whose decision would be final.

Other types of appeals Board were proposed by other witnesses. One of the many suggestions received by the Committee was that the Board should be composed of a single Supreme Court Judge, sitting alone, who would have the power of final decision.

The Committee considers that appeals should lie to the Minister for Local Government, to be dealt with by him in the same manner as is now used in determining planning appeals. In taking this view, the Committee has regard to the fact that the Minister for Local Government is accustomed to determine planning appeals involving extractive industries, and to the fact that decisions as to whether establishment of extractive industries shall be permitted to operate at particular locations are essentially

decisions regarding the land-use of those particular sites. In view of the present and growing importance of town and country planning, the Committee is of the opinion that the final decision on all land-uses, including that of extractive industry, should rest with the Minister now responsible for the determination of all land-use proposals.

Where the Minister decides that a lease or licence for an extractive industrial undertaking shall be granted, and upon what conditions it shall be granted, his decision should override the decisions of other public authorities and all local governmental by-laws and town and country planning schemes to the extent that they are inconsistent with the granting of the lease or licence or with the express conditions thereto. The decision of the Minister for Local Government should be final and binding on all parties.

RECLAMATION.

One of the submissions made to the Committee by the Department of Mines was for the creation of a fund into which sums based on production would be paid by lessees and licensees, and out of which would be paid expenditure involved, among other things, in reclamation of worked-out extractive industrial sites.

The Committee has been advised by the Crown Solicitor that a levy upon the industry, based upon production, would be an excise duty, and could, therefore, not be imposed by any Act of the State Parliament. For this reason, this proposal must be rejected.

It was submitted to the Committee by counsel for the Australian Clay Products Association and the Victorian Crushed Stone Association that, in any event, it is unnecessary to require extractive industrialists to make any financial contribution towards reclamation costs, as reclamation of worked-out sites does not present any problem. Rather, it was argued, is the problem one of finding adequate areas for municipal garbage disposal. Some extractive industrialists are willing to make worked-out sites available for this purpose, and the question of reclamation, therefore, presents no problem because of the excess of demand by municipalities for worked-out sites over the available supply of such sites.

It was submitted further by the associations that each such site is a valuable asset providing ample security for the carrying out of any reclamation requirements which might be imposed by the Department and that, because of this, payments into any kind of reclamation fund would be superfluous. Futhermore, it was submitted, the practice at present adopted by some municipal councils of requiring, as a condition of granting a permit for extractive industry to operate, that the site be handed over to the council upon the completion of extraction, was unjustified, and amounted to expropriation of a valuable asset.

The Committee does not accept the broad generalization that reclamation presents no problem, and that, therefore, no financial contribution should be required of the extractive industrialist. This is true of some sites, but not of others. Much depends on the location of the site, the type of materials extracted, the methods of extraction used, and the ultimate use, if any, to which the site can be put when reclamation has been completed.

The Committee believes, however, that reclamation costs should be related to the particular site in each case, and that they should not be spread over the entire industry, as proposed by the Department of Mines. The cost of reclamation, if any, should be assessed in advance and added to the operating cost of the particular undertaking, as is done now by the Forests Commission in respect of extractive industrial operations within State forests. It does not appear that this would add significantly to the cost of products to users, in view of the relatively small amounts which appear to be involved.

The degree of reclamation practicable varies widely from site to site. In certain cases, reclamation is neither essential nor practicable, and the most that could be required would be, where necessary, the safety fencing and perhaps the beautification of the site. At the other extreme, there are sites which, by filling, can be restored to a condition

comparable to the state they were in before extraction was undertaken. Between these two extremes are a range of sites upon which varying degrees of reclamation, including partial filling, battering down of faces, and safety fencing, are possible and desirable, so that such sites may be reclaimed to some form of beneficial use.

Witnesses to the Inquiry were generally agreed upon the necessity for reclamation, where practicable, and this viewpoint is strongly supported by public opinion. Dereliction of land is economically wasteful, aesthetically offensive, and can be a source of danger, particularly to young children. The Committee is strongly of the opinion that the question of reclamation is a matter of public concern, which should not be left to the industry alone to determine.

Reclamation requirements should be assessed before an operation commences and, in the opinion of the Committee, this should be done by the Department of Mines, in consultation with the representatives of local municipal and town planning authorities, and with the extractive industrialist himself, so that all points of view may be considered, and requirements worked out which combine what is desirable with what is practicable. The Soil Conservation Authority and any other public authorities whose interests may be affected, should also be included in such consultations.

When requirements have been assessed, they should be incorporated in a legal undertaking given to the Department of Mines by the extractive industrialist. This would be preferable to including such requirements in the Extractive Industrial Lease or Licence, because the lease or licence would normally expire upon the completion of extraction, leaving the Department with no means of enforcing its requirements should the extractive industrialist default in having reclamation carried out as agreed. Revocation of the lease or licence would then not answer the case. However, where reclamation requirements, as assessed before the lease or licence was granted, involve extraction according to a pre-determined plan and using certain methods, conditions to this effect should be included in the lease or licence, with provision for revocation of the lease or licence for non-compliance.

The Committee believes that, in view of the varying amounts of reclamation needed in different cases, the Department of Mines should be given wide discretion to enable it to require anything ranging from complete restoration of the site to its former state, at the one extreme, to no reclamation at all at the other, depending upon the circumstances of each case. In many cases, the rendering safe of the site will satisfy all reasonable requirements.

The Committee considers that, at the reclamation stage, it would be preferable for control of the site to pass from the Department of Mines to the local municipal council, but that the Department should have the statutory power to invoke the terms of the undertaking given by the extractive industrialist if it should transpire that reclamation is not being effected to the reasonable satisfaction of the municipality. If the extractive industrialist fails to ensure that reclamation is carried out as required, the municipality should be authorized by the Department of Mines to have this work done.

The Committee considers that some form of collateral financial security is desirable in the case of those excavations which are susceptible to reclamation, and that this should be varied, as necessary, according to the exigencies of each site. In the Committee's opinion this would be more equitable than a flat rate licence fee, or similar device, designed to apply indiscriminately to every extractive industrialist irrespective of the actual amount of reclamation involved. The Committee does not foresee any insuperable administrative difficulty in the administration of such arrangements.

The procedures set out in Section 235 of the Western Australian Local Government Act, and the Draft Model By-laws, Extractive Industries, under that Act, provide for reclamation of worked-out sites, and for collateral security to be given by extractive industrialists in the form of deposits, bonds, guarantees, or other security, where considered necessary. In the Committee's opinion similar procedures could be adopted in Victoria under extractive industries legislation, with the difference that collateral security would be held by the Department of Mines instead of the local council, as in Western Australia.

In the case of Crown lands, a reclamation component could be added to the royalty.

In the event of the extractive industrialist failing to honour his undertaking to have the site reclaimed, the Department of Mines should have the power to apply the deposit or the amount realized on any alternative security towards the cost of reclamation work carried out by, or by direction of, the local council. In the case of Crown land, there should be power to use the reclamation component of the royalty for the same purpose. When the work has been done, any balance remaining after the cost of reclamation has been met should be repaid to the extractive industrialist. But if the funds available from the sources mentioned above are insufficient to meet the full cost of reclamation any deficiency should be recovered from the extractive industrialist. Recovery of such amounts should be ensured by making provision in the Act for any debt for reclamation costs to be a charge upon the land. In default of recovery by other legal processes, the land could then be sold or compulsorily acquired by the council as a means of recovering the amount owing. However, where powers of compulsory acquisition are used, there should be provision for payment of reasonable compensation to the landowner.

Where the extractive industrialist complies with the reclamation requirements of his undertaking, any amounts paid by him as a deposit or a reclamation component of royalty should be repaid in full to him. Any alternative security given by him should be discharged.

In the case of sites which are already disused when the Act comes into force, it will not be possible to require the payment of a reclamation component of royalty, or of a deposit, or to require the lodging of some form of security. But it is essential that provision be made for the reclamation of such sites. In the Committee's opinion this should be the responsibility of the Crown in the case of Crown lands.

In the case of freehold land, municipal councils should be given the power to serve notice upon extractive industrialists requiring them where practicable, to have sites reclaimed. Where consolidation of companies has occurred, there should be legal power to serve notice upon the successor in law of the company which would otherwise have been responsible. Where the appropriate extractive industrial company has been dissolved, or bankrupted, or the land has passed into other ownership, notice should be served upon the current landowner. Where it becomes necessary for the council to take over the reclamation of the site, owing to default upon the part of the extractive industrialist or the landowner, there should be provision for recourse to legal remedies such as those mentioned above.

The Committee does not agree that councils should be able to require, as a condition of granting permission for the establishment and operation of an extractive industry, that the site be transferred to the council upon the completion of extraction. This is a requirement which the Committee feels is open to much abuse, and the Committee agrees that, in certain circumstances it could amount to expropriation of a very valuable asset. Only after the exhaustion of all other methods of ensuring that reclamation is carried out and paid for by the extractive industrialist, should expropriation be considered, and even then it should be accompanied by payment of reasonable compensation.

The reclamation of deep holes by filling with industrial waste, building rubble, and garbage, is at present subject to the requirements of the Commission of Public Health. The Committee believes that these requirements should be preserved, and that the powers of the Commission of Public Health over the filling of excavations should not be impaired. On the contrary, there should be the fullest consultation with the Commission whenever reclamation by this method is undertaken, and the requirements of the Health Acts should be rigorously observed.

The Committee is also of the opinion that the stock-piling of overburden, with a view to its eventual utilization in reclamation should be made compulsory.

EXTENSION AND LIBERALIZATION OF COMPENSATION TO LANDHOLDERS.

The Department of Mines has submitted proposals for the extension and liberalization of compensation payable to landowners, based upon the proposition that, unlike mining, for which the compensation provisions of the Mines Act were originally intended, extractive industry virtually destroys the surface of the land itself, rendering it useless

over long periods for any other activity. In the case of land to which a " mining condition " under Section 81 of the *Land Act* 1958 applies, no compensation whatsoever is payable to the owner of such land for damage caused by mining or extractive industrial operations.

The Department has submitted that compensation to landholders on a scale higher than that considered adequate for ordinary underground mining operations should be provided, and that there should be provision for compensation to be paid for surface damage arising from extractive industrial operations on land covered by Section 81 of the *Land Act* 1958.

At present, royalty is payable by extractive industrialists to landholders who own the extractive materials contained in the land. It is only in those cases where the extractive substances, as " minerals " under the provisions of the *Mines Act* 1958, are vested in the Crown that the question of compensation to the landholder becomes relevant. In the case of land subject to the application of Section 81 of the Land Act it becomes all-important.

The Committee is of the opinion that the compensation provisions of the Mines Act, and the provisions of Section 81 of the Land Act were never intended to apply to extractive industrial operations, but only to underground mining. The extension of the definition of " mineral " in the Mines Act brought about by the amending Act of 1949 is responsible for the anomalies which have arisen.

If the definition of " mineral " in the Mines Act is limited by excluding from it the common substances of the earth, as recommended in this Report, these anomalies should disappear. Ownership of " common substances " in land alienated after 1949 will be vested in the freeholder of the land, who will be entitled to claim royalty for their extraction by any other party. Furthermore, under the proposals of the Department of Mines, extraction would then be carried out on such land only with the consent of the landholder. Section 81 of the Land Act would not apply to the extraction of " common substances ", but only to those minerals which are obtainable by mining operations. The Committee is of the opinion that this was the original intention of the legislature, and recommends strongly that the position which obtained before the passing of the amending Act of 1949 should be restored.

If this is done, and if the procedures advocated by the Committee in the case of extractive industrial leasing of Crown land are followed, the Committee can see no reason why there should be any need for extension and liberalization of compensation payable to landholders in the future. However, there may be a few cases where extractive industrial operations have been authorized by Mineral Leases issued by the Department of Mines, either over land held for other purposes by Crown lessees, or over freehold land alienated after 1949. In such cases compensation paid may have been inadequate, and provision for liberalization of compensation may be desirable on equitable grounds.

In this connexion the Committee feels it should draw attention to the case of Mr. P. Drever, of Enfield. Mr. Drever is the freehold owner of 250 acres of land, to all of which Section 81 of the Land Act applies. By virtue of this he is not entitled to compensation for the removal of " minerals " within the present meaning of the Mines Act. The land was alienated from the Crown in 1963, and so the clay of which his land is mostly composed is, under the present Mines Act, a mineral owned by the Crown. Mineral Leases over almost all his land have been issued by the Mines Department to several brick manufacturers, who are required to pay royalty to the Crown, but neither royalty nor compensation to Mr. Drever. The brick manufacturers did not require Mr. Drever's consent before commencing extraction upon his land.

In the Committee's opinion, this is a case deserving special attention, and one which highlights the inequitable position which can arise under the operation of the Mines Act as it now stands. If the definition of " mineral " is amended as recommended, Section 81 of the Land Act would cease to apply to the clay of which Mr. Drever's land is composed, the ownership of the clay would become his, and extraction of the clay from his land could continue only with his consent, and upon payment of royalty to him.

In the Committee's opinion this case should be carefully examined with a view to remedying the present position, and to recompensing Mr. Drever for the loss which he may have already suffered through the granting of a Mineral Lease over his land.

Unless the definition of " mineral " is amended as recommended in this Report, other properties, including some Soldier Settlement holdings, could be similarly affected.

STEPPING-UP OF THE GEOLOGICAL SURVEY OF THE STATE.

It was submitted by the Department of Mines that a special section should be established in that Department to accelerate and maintain programmes of exploration and drilling of extractive materials for the use and benefit of extractive industry. This proposal was coupled with a proposal that this section be at least partially financed by a levy, based on production, upon the industry.

Witnesses representing town planning authorities, local governmental bodies, and the extractive industrialists' associations supported the proposal to set up this section, on the grounds that a methodical survey of the State's extractive industrial deposits was needed to facilitate the discovery, protection, and ultimate exploitation of such deposits, and to assist town planners to make adequate provision for extractive industry in their planning schemes.

The Committee agrees in principle with the submissions made on this matter, and considers that the Department of Mines should carry out mineral resources surveys of fringe areas of town planning schemes where a change of land-use from rural or agricultural use to some more intensive form of development is contemplated, and where there is geological evidence that there may be economically workable deposits of extractive substances.

However, in view of the Crown Solicitor's opinion that a levy of the type contemplated in the Department's submissions would constitute an excise duty, the Committee does not feel justified in making a recommendation that a special section be established in the Department of Mines for this purpose.

In conformity with proposals for mineral resources surveys to be made in conjunction with the preparation of town and country planning schemes, and to be taken into consideration in giving approval to such schemes, the Department of Mines submitted that amendments should be made to Sections 9 and 30 of the *Town and Country Planning Act* 1961, to provide machinery for appropriate procedures.

Mr. F. C. Cook, Chairman of the Town and Country Planning Board, was of the opinion that amendment of Section 9 of that Act would be unnecessary, in view of provision in the Town and Country Planning Regulations 1962 for Government Departments to be notified by responsible planning authorities when a planning scheme is being prepared. Mr. Cook also submitted a proposed amendment to Section 30 of the Town and Country Planning Act, having a similar object to the amendment proposed by the Department of Mines. The latter Department agreed that the amendment proposed by the Town and Country Planning Board would be entirely acceptable.

In the Committee's opinion, consideration should be given to amending the *Town and Country Planning Act* 1961 to facilitate the incorporation of mineral resources surveys into planning procedures.

PAYMENTS TO MUNICIPALITIES.

The Department of Mines submitted that payments be made to municipalities, from one component of the proposed levy, for purposes incidental to or arising from the operations of extractive industries in their districts. The Committee can see no reason why this should be done.

While it is true that the presence of extractive industries is usually accompanied by heavy wear and tear upon roads, there is provision in the Commercial Goods Vehicles Act for payments to municipalities to cover such eventualities. In addition, Sections

542 and 543 of the Local Government Act provide for municipal councils to recover from owners of vehicles the cost of extraordinary road construction and/or maintenance incurred as a result of damage to roads by heavy vehicles. There appears to be some difficulty attached to establishing proof of damage in such cases.

The Committee considers that, if Sections 542 and 543 of the Local Government Act are strengthened so as to facilitate proof of damage, this, together with the existing provisions of the Commercial Goods Vehicles Act, will eliminate any need for payments to municipal councils such as those proposed by the Department of Mines.

OPEN-CUT MINING OPERATIONS.

It was submitted by the Department of Mines that the winning of brown coal by open-cut operations should be subject to extractive industrial leasing and licensing. The Committee does not agree. In its opinion these are mining operations and, as such, are outside the terms of reference of this Inquiry. If it is desired to bring such operations under governmental leasing and licensing control, separate legislation should be enacted for that purpose.

LIST OF WITNESSES.

The names, occupations, and addresses of witnesses who gave evidence in the Inquiry are as follows :—

Name.	Occupation and Address.	Examined at—	Transcript Page No.
Alder, J. R.	Senior Administrative Officer of the Department of Local Government, Melbourne	Melbourne ..	576
Allen, A. C.	Chief Clerk of the Department of Crown Lands and Survey, Melbourne	Melbourne ..	43
Alsop, A. H.	Builder, Lorne	Melbourne ..	555
Anderson, K.	Queen's Counsel, Melbourne	Melbourne ..	105, 848
Anderson, R. R. ..	City Engineer of the City of Bendigo, Bendigo ..	Bendigo ..	606
Bates, E. C.	Shire Secretary of the Shire of Benalla, Benalla	Melbourne ..	391
Beed, E. (Mrs.) ..	Housewife, Spotswood	Williamstown ..	231
Bell, G.	Officer in Charge of the Mineral Resources Section, Department of Mines, Melbourne	Melbourne ..	32
Billing, N. A.	Secretary, and a Councillor of the City of Springvale, Melbourne	Melbourne ..	490
Bowen, A. K. ..	Director of Consolidated Quarries Ltd., Coles Beach, via Balnarring	Melbourne ..	530
Bowen, K. G. ..	Geologist, Department of Mines, Melbourne ..	Melbourne ..	32
Brookes, J. D. ..	Technical Director of Australian Paper Manufacturers Ltd., Chairman of A.P.M. Forests Pty. Ltd., Chairman of Maddingley Brown Coal Pty. Ltd., Melbourne	Melbourne ..	207
Buckley, N. G. (Mrs.) ..	Housewife, Newport	Williamstown ..	232
Butler, V. W. ..	Part Owner of Butler Brick Works Pty. Ltd., Chairman of Oakleigh Brick Company Pty. Ltd., Managing Director of Co-operative Brick Company Pty. Ltd., Chairman and Managing Director of Standard Brick Works (Box Hill) Pty. Ltd., and a Member of the Executive Committee of the Australian Clay Products Association (Victorian Division) Melbourne	Melbourne ..	865
Campbell, C. D. ..	Poultry Processor, Newport	Williamstown ..	235
Cannard, S. E. ..	Deputy City Engineer of the City of Broadmeadows, Melbourne	Melbourne ..	454
Carlyle, W. J. ..	Shire Engineer of the Shire of Benalla, Benalla	Melbourne ..	391
Champion, J. P. ..	Professional Engineer, Postmater-General's Department, Melbourne	Melbourne ..	502
Christophers, A. J. (Dr.)	Chief Industrial Hygiene Officer of the Department of Health, Melbourne	Melbourne ..	197
Condon, E. J. ..	Secretary for Mines, Melbourne	Melbourne ..	2, 615, 889
Cook, F. C.	Chairman of the Town and Country Planning Board, Melbourne	Melbourne ..	158, 195
Cooper, R. J.	Councillor of the Shire of Altona and a Member of the Executive Committee of the Conference of Municipalities on Extractive Industries, Melbourne	Melbourne ..	300, 648

LIST OF WITNESSES—*continued.*

Name.	Occupation and Address.	Examined at—	Transcript Page No.
Craig, A. S.	School Teacher and Mayor of the City of Bendigo, Bendigo	Bendigo ..	613
Downes, R. G. ..	Chairman of the Soil Conservation Authority, Melbourne	Melbourne ..	54
Dowsett, J. H. MacG. ..	Life Assurance Consultant, Councillor of the City of Geelong, and Chairman of the Gherang Gravel Conference, East Geelong	Melbourne ..	474
Doyle, D. B.	Managing Director of David Mitchell Estate Ltd., Melbourne	Melbourne ..	449
Drever, P.	Farmer, Enfield	Melbourne ..	387
Dunton, D. J. R. ..	Shire Secretary of the Shire of Newstead, Newstead	Bendigo ..	590
Dutton, T.	Sheet Metal Worker, Newport	Williamstown ..	242
Evans, E. A. (Mrs.) ..	Housewife, Newport	Williamstown ..	233
Fagan, J. D.	Secretary of the Municipal Association of Victoria, Melbourne	Melbourne ..	548
Gifford, K. H. ..	Barrister at Law, Melbourne..	Melbourne ..	277, 406, 648, 715, 781
Guymer, S.	Leading Fireman, Newport	Williamstown ..	249
Hadden, G.	Chief Mining Inspector of the Department of Mines, Melbourne	Melbourne ..	2. 615, 889
Hall, D.	Barrister and Solicitor, Melbourne	Melbourne ..	277
Hammond, C. H. ..	State Secretary of the Australian Primary Producers' Union (Victorian Division), Frankston	Melbourne ..	276
Hancock, H. W. ..	Watchman, Newport	Williamstown ..	240
Harding, G. F. ..	Shire Engineer, of the Shire of Numurkah, Numurkah	Bendigo ..	581
Harriott, T.	Retired Farmer, Councillor of the City of Newtown and Chilwell, and Secretary of the Newtown and Chilwell Ratepayers Defence League, Newtown	Melbourne ..	484
Hawthorn, N. C. ..	Senior Health Inspector of the City of Williamstown, Melbourne	Williamstown ..	257
Heinze, N.	Councillor of the City of Keilor and a Member of the Executive Committee of the Conference of Municipalities on Extractive Industries, Melbourne	Melbourne ..	300
Hepburn, J. A. ..	Chief Planner of the Melbourne and Metropolitan Board of Works, Melbourne	Melbourne ..	184, 836
Hobbs, H. W. P. ..	Programme Engineer, Country Roads Board, Melbourne	Melbourne ..	65
Kane, H. H.	Town Engineer of the Town of Castlemaine, Castlemaine	Bendigo ..	600
Laker, A. E.	Shell and Sand Merchant and a Councillor of the Borough of Queenscliffe, Calcium Park, Queenscliff	Melbourne ..	367A
Lawrence, A. O. P. ..	Chairman of the Forests Commission of Victoria, Melbourne	Melbourne ..	85
Little, H. G.	Chief Executive of the Flat Glass Division, Australian Consolidated Industries Ltd., Melbourne	Melbourne ..	343
Lloyd, R. W.	Barrister and Solicitor, Melbourne	Melbourne ..	512
Longmuir, J. K. ..	Chief Engineer of the Forests Commission of Victoria, Melbourne	Melbourne ..	80
Lynch, D. D.	Superintendent of Marine Fisheries Management, Department of Fisheries and Wildlife, Melbourne	Melbourne ..	99
McDonough, R. J. ..	General Manager of the Colac Brick Company Ltd., Lorne	Melbourne ..	557C
Mackenzie, E. F. (Dr.) ..	Assistant Chief Health Officer of the Commission of Public Health, Melbourne	Melbourne ..	197
McLaren, J. C. ..	Shire Engineer of the Shire of Maffra, Maffra ..	Melbourne ..	444
Maddox, W. G. ..	Shire Engineer of the Shire of Portland, Heywood	Melbourne ..	399
Malanyi, J.	Driver, Newport	Williamstown ..	252
Moffatt, R. C. G. ..	Engineer for Civil Works, Australian Paper Manufacturers Ltd., Melbourne	Melbourne ..	216
Moore, F. J.	Diver, Newport	Williamstown ..	253
Morgan, F. R. ..	Company Secretary of Alcoa of Australia Pty. Ltd., Melbourne	Melbourne ..	376
Munro, A. H.	City Engineer of the City of Footscray, Melbourne	Melbourne ..	457

LIST OF WITNESSES—*continued.*

Name.	Occupation and Address.	Examined at—	Transcript Page No.
Murray, J. A. ..	Barrister and Solicitor, Melbourne	Melbourne ..	343
Nash, E. L. (Mrs.) ..	Housewife, Newport	Williamstown ..	226
Officer, V. W. ..	Secretary of the Graziers' Association of Victoria, Melbourne	Melbourne ..	267, 881
Oliver, R. N.	General Manager of Australian Cement Ltd., Melbourne	Melbourne ..	561, 845
Opas, P. H. N. ..	Queen's Counsel, Melbourne	Melbourne ..	406
Pitrus, J.	Labourer, Newport	Williamstown ..	256
Reid, C. H.	Chairman of Directors of Reid's Quarries Ltd., Chairman of the Victorian Quarry Masters' Association, and a Member of the Executive Committee of the Victorian Crushed Stone Association, Melbourne	Melbourne ..	140, 865
Reifschneider, V. ..	Crane Driver, Newport	Williamstown ..	228
Saathoff, A.	Driver, Newport	Williamstown ..	230
Sanders, C. L. ..	Chief Engineer, Major Works, State Rivers and Water Supply Commission, Melbourne	Melbourne ..	50
Scott, K. H.	Shire Engineer of the Shire of Lillydale, Lilydale	Melbourne ..	277
Scott, R. R.	Public Servant, Councillor of the Shire of Whittlesea, and a Member of the Executive Committee of the Conference of Municipalities on Extractive Industries, Melbourne	Melbourne ..	715
Sheehan, J. M. ..	Councillor of the Town of Castlemaine, Castlemaine	Bendigo ..	594
Smith, L. H. (Dr.) ..	Director of National Parks, National Parks Authority, Melbourne	Melbourne ..	91
Stanton, C. W. R. ..	Iron Machinist, Newport	Williamstown ..	223
Stephen, N.	Barrister at Law, Melbourne..	Melbourne ..	343
Strauss, S.	Barrister at Law, Melbourne..	Melbourne ..	105, 848
Taylor, H. L.	Health Inspector of the City of Newtown and Chilwell, Newtown	Melbourne ..	477
Thorne, K. W. ..	General Secretary of the Victorian Dairyfarmers' Association, Melbourne	Melbourne ..	275
Vincent, L. W. ..	Secretary of the Victorian Brick Manufacturers' Association and a Member of the Executive Committee of the Australian Clay Products Association (Victorian Division), Melbourne	Melbourne ..	140
Walker, B. A. ..	Quarry Manager, Melbourne	Melbourne ..	531
Waters, C. H. ..	Retired, Melbourne	Melbourne ..	497
Webster, K. M. ..	Farmer and President of the Shire of Bulla, Greenvale	Melbourne ..	463
Weedon, R.	Stone-mason, Geelong	Melbourne ..	567
Whiting, R. G. ..	Assistant Director of Geological Survey (Technical), Department of Mines, Melbourne	Melbourne ..	2, 615, 889
Williams, L. F. (Mrs.) ..	Housewife, Newport	Williamstown ..	225
Wise, B. B.	Manager of McGrath Sand and Stone Pty. Ltd., and Sunshine Quarries Pty. Ltd., Melbourne	Melbourne ..	406

ACKNOWLEDGMENTS.

The Committee desires to place on record its appreciation of the valuable assistance it received from so many quarters during the Inquiry.

The Committee is indebted to authorities in the other Australian States for valuable information concerning their legislation in the field of extractive industries. The Victorian Departments of Mines, Crown Lands and Survey, Forests, Local Government, and the Victorian Town and Country Planning Board have all given the Committee much valuable assistance.

The large volume of evidence tendered during the Inquiry was recorded capably by Mr. J. J. May, Chief Government Shorthand Writer and his staff, and the Committee desires to express its sincere appreciation of their excellent work.

It is desired to convey to all witnesses the Committee's appreciation of their co-operative approach to the Inquiry, the great interest taken by them, and the way in which their evidence was prepared and presented.

The Committee desires to express its appreciation of the work on its behalf of Miss D. Joy, the Committee's typiste.

The Committee records with pleasure its appreciation of the very capable manner in which its Secretary, F. R. Kenny, carried out the multitudinous and exacting duties connected with this important Inquiry. His courtesy and efficiency at all times is deserving of the highest approbation.

During the Inquiry, the membership of the Committee changed following the General Elections in June, 1964. The Honorable A. Smith, M.L.C., Mr. B. J. Evans, M.P., and Mr. G. R. Schintler, M.P., retired from the Committee and their places were filled by the Honorable A. W. Knight, M.L.C., Mr. R. A. Clarey, M.P., and Mr. W. Phelan, M.P. The members of the present Committee wish to express their gratitude to the former members for their untiring efforts and the meticulous way in which they pursued their duties.

A. R. MANSELL, Chairman.

R. J. WILTSHIRE, Vice-Chairman.

R. A. CLAREY, Member.

A. W. KNIGHT, Member.

WILLIAM PHELAN, Member.

EDGAR S. TANNER, Member.

F. R. KENNY, Secretary,
30th October, 1964.

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