LEGISLATIVE COUNCIL

Wednesday, March 31, 1971

The PRESIDENT (Hon. Sir Lyell McEwin) took the Chair at 2.15 p.m. and read prayers.

QUESTIONS

LOCAL GOVERNMENT ACT AMENDMENT BILL

The Hon. R. C. DeGARIS: I seek leave to make a short statement before asking a question of the Chief Secretary.

Leave granted.

The Hon. R. C. DeGARIS: During the second reading debate on the Local Government Act Amendment Bill the Hons. Sir Arthur Rymill, M. B. Dawkins, C. M. Hill and I, and probably other honourable members, clearly said that we favoured parts of the Bill, but for all practical purposes it was almost impossible to separate the other issues from the adult franchise issue. Will the Chief Secretary inform the Minister of Local Government of the attitude expressed in this Council, because it appears from newspaper reports that the Minister has not read the speeches made in this place?

The Hon. A. J. SHARD: The information that the Leader has asked me to pass on to my colleague has already been passed on. My colleagues would agree that the position has been put plainly to him. I do not know what he said in another place but I know what has been published in the press. I also know that newspapers do not always print the actual things said.

The Hon. D. H. L. BANFIELD: I seek leave to make a short statement before asking a question of the Leader of the Opposition.

Leave granted.

The Hon. D. H. L. BANFIELD: The Leader asked that the true attitude of this Council in regard to the Local Government Act Amendment Bill, which was defeated at the second reading stage, be conveyed to the Minister of Local Government. He thought that press reports did not line up with what honourable members had said about the Bill. An article in yesterday's *Advertiser* states:

In the present city council the Lord Mayor, Mr. Porter, all six aldermen and eight of the 12 councillors were endorsed L.C.L. candidates.

Can the Leader say how he lines up that article with the statements by Liberal members of this Council that politics do not enter into local government and that the L.C.L. endorses only the Lord Mayor?

The Hon. R. C. DeGARIS: The question I asked had no relation to the question asked by the honourable member. I asked about statements that had appeared in the press saying that this Council was opposed to certain measures in the Local Government Act Amendment Bill. This Council expressed support for some of those matters. If the honourable member requires a reply to his question, he should direct it to those honourable members concerned.

INDUSTRIES ASSISTANCE

The Hon. R. C. DeGARIS: Has the Chief Secretary a reply to the question I asked last week regarding assistance to industry in South Australia?

The Hon. A. J. SHARD: The financial assistance detailed in my previous reply was in relation to 10 applications, all of which were approved on the recommendation of the Industries Development Committee.

EYRE PENINSULA SCHOOLS

The Hon. A. M. WHYTE: I address my question to the Minister representing the Minister of Education. Area schools are to be built at Miltaburra and Karcultaby and, I believe, also at Streaky Bay. There has been a suggestion that a high school be built in the Streaky Bay area and, if this were built, it would serve the purpose of all these three area schools. Will the Minister ascertain from his colleague what consideration has been given to the proposal to build a high school in that area?

The Hon. T. M. CASEY: I will refer the question to the Minister of Education and obtain a reply for the honourable member.

LAND TAX

The Hon. H. K. KEMP: Has the Chief Secretary, representing the Treasurer, a reply to my recent question concerning land tax?

The Hon. A. J. SHARD: Assuming that the honourable member is seeking an indication of the rural areas in which the 1970 quinquennial land tax assessment has been reduced in relation to the 1965 assessment, the answer is that, apart from reductions made to some individual assessments in various areas, for example, land affected by the control of underground waters, or in the coastal strip stretching from Port Gawler to Port Wakefield, there has been no major reduction made in any area. No alteration from 1965 quinquennial assessment level other than

the correction of anomalies was made to valuations in the Murray River irrigation areas, in the Murray Mallee region, in county Hopetoun on Eyre Peninsula, in the minor country towns throughout the State, or in portions of the market gardening area on the underground water basin north of Adelaide.

If the honourable member is seeking an indication of the rural areas in which the previously proposed quinquennial assessment for 1970 was reduced in relation to the assessment finally issued for 1970, the answer is that reductions were made in all rural areas except the Adelaide Hills and areas where land was being used solely for orchards, viticulture, dairying and poultry farming. As stated previously, the irrigation areas of the Murray River and land in county Hopetoun on the far West Coast of Eyre Peninsula remained unchanged from the 1965 assessment valuations, as did the valuations in the minor country towns of South Australia. Resulting from these reductions, the Murray Mallee region reverted to the 1965 assessment level.

PRAWNS

The Hon. C. R. STORY: I seek leave to make a statement prior to asking a question of the Minister of Agriculture.

Leave granted.

The Hon. C. R. STORY: Recently, regulations affecting the prawning industry were brought into operation. These regulations govern the control of certain equipment used in the industry and redelineate certain zones or boundaries within which certain boats can operate. Can the Minister say whether or not there has been a reallocation of boats into new zones—whether, in fact, the zone system is still operating or whether there has been some change of policy?

The Hon. T. M. CASEY: There has been a change of policy owing to the present state of stocks of prawns in some of the waters, particularly in zones B, C and A. The position is that this year there has been a light stock of prawns in those areas and it was thought that some people were catching prawns whilst others were not. To make the situation more equitable for all persons holding prawn licences in those zones (A, B and C; and I may mention that zone D has been included because that was always an area kept aside to be used as a type of conservation area, but it was opened up recently for a trial period to see whether there were prawns in that area), all those boats now operating in those zones can operate independently of the zones.

The PRESIDENT: I am afraid I must interrupt the Minister, because two conferences are to be held at 2.30 p.m.—one on the Constitution Act Amendment Bill in the committee room in the basement, and the other on the Building Bill in the conference room on the first floor.

[*Sitting suspended from* 2.27 *to* 8.5 *p.m.*]

Later:

The Hon. T. M. CASEY: Zone E, which is St. Vincent Gulf, is not classified in the same category as the other zones because it is only a small gulf and there are not many prawns there anyway. The boats operating in that gulf come from Port Adelaide. It was thought that, rather than open up the whole of the State, it would be better to leave the position as it was. Most of the boats that are operating there (I think there are 10 at present) come from the Port Lincoln and Spencer Gulf areas. In order to conserve the prawn resources, we did not think it advisable to open it up for all boats.

CONSTITUTION ACT AMENDMENT BILL (VOTING AGE)

(Continued from March 30. Page 4442.)

At 2.30 p.m. the managers proceeded to the conference, the sitting of the Council being suspended. They returned at 8.5 p.m. The recommendations were as follows:

As to amendment No. 1:

That the Legislative Council do not further insist thereon.

As to amendment No. 2:

That the Legislative Council do not further insist on its amendment but make the following amendment in lieu thereof:—

Clause 2, page 1, line 11—

Leave out the words "a day to be fixed by proclamation" and insert in lieu thereof the words "the thirtieth day of June, 1972, or such earlier day as is fixed by proclamation after the Governor is satisfied that legislation has been enacted by the Parliament of the Commonwealth providing that the age at which persons shall become entitled to vote at elections for the House of Representatives of the Commonwealth shall be eighteen years, and that legislation is in operation."

and that the House of Assembly agree thereto.

As to amendment No. 4:

That the Legislative Council do not further insist thereon.

The Hon. A. J. SHARD (Chief Secretary) moved:

That the Council resolve itself into a Committee of the Whole for the purpose of considering the recommendations of the conference.

The Hon. C. R. STORY: I rise on a point of order, Mr. President. When the Council adjourned prior to the conferences the Minister of Agriculture was halfway through replying to a question I had asked. At that stage Question Time was in progress. I seek your ruling, Mr. President, as to whether honourable members will be given the opportunity of continuing with questions either now or at a later stage or whether the time for questions has passed.

The PRESIDENT: Under Standing Order No. 76 I think it is definite that the Council should resume at the point where its sitting was interrupted. We are now dealing with the recommendations of a conference which was the cause of the interruption. After those recommendations have been dealt with we can return to Question Time and, if the Minister wishes to continue his reply to a question, he can do so.

Motion carried.

In Committee.

The Hon. A. J. SHARD (Chief Secretary): I move:

That the recommendations of the conference be agreed to.

The managers of both Houses discussed the matter in the best frame of mind and in a most courteous manner, and all the pros and cons were put forward. We had one or two adjournments but agreement was finally reached. The Legislative Council's amendment No. 1 was closely connected with amendment No. 2. The effect of the change in amendment No. 2 is that, if the recommendation of the conference is agreed to, the voting age in South Australia will be 18 years, but the legislation may not come into force until June 30, 1972. As a result of what has been said in Premiers' Conferences and Conferences of Attorneys-General, it is believed that the Commonwealth Government intends to alter the voting age for Commonwealth elections to 18 years. It was thought that the Commonwealth Government would have enough time between now and June 30, 1972, to give effect to its intention. If the Commonwealth Government does not do that by then, the legislation will come into force on that date.

It would take some time after June 30, 1972, to prepare the roll for a State election, which is due to be held early in 1973. The amendment means that, if there is a State election by some chance (and that is possible in these times of political strain) before June 30, 1972, it will be held on the basis of the old electoral rolls. The Legislative Council's amendment No. 4 provided for voluntary voting for people who were enrolled and under 21 years of age, but the conference recommended that the Council should not further insist on that amendment. Consequently, once the name of a person between 18 years and 21 years is on the House of Assembly roll he will be compelled to vote.

The Hon. R. C. DeGARIS (Leader of the Opposition): I support the Chief Secretary's remarks. I am disappointed that we have been unable to achieve more from the House of Assembly during the conference. I am reliably informed that South Australia, with Russia and Turkey, is one of the few countries in the world that compels 18-year-olds to vote in an election. However, although our managers could not achieve the purpose for which the Council moved amendments to the Bill, I believe that a reasonable compromise has been arrived at. We must remember that we are dealing with voting for the House of Assembly; the matter largely concerns that House. It appears inevitable that in the future 18-year-olds will be able to vote, because it has been recommended at Premiers' Conferences and Conferences of Attorneys-General. There have been noises from Canberra that the Commonwealth Government will move in this regard but I thought it was perfectly reasonable that voting for 18-year-olds in South Australia should happen concurrently with voting for 18-year-olds in the Commonwealth sphere, to avoid confusion. However, we have arrived at a compromise. After 1972 this State can act in its own right.

The Hon. G. J. GILFILLAN: We all appreciate the very difficult task that our managers had in trying to maintain the amendments made to the Bill in this place. However, I did oppose the measure in the first instance and again on the third reading because I believed very sincerely, following a good deal of research, that there was no demand from the young people today for this measure. I have made further investigations among people very closely allied with youth groups of this age and I find a number of them are appalled at the prospect of forcing compulsory voting on young people at 18 years of age.

I believe we are doing the Commonwealth a disservice by putting further pressure on the Commonwealth Parliament in bringing in this legislation before the matter has been considered by that Parliament. Every move in this direction which takes place throughout Australia will tend to force such a measure on the Commonwealth, and I believe the lead

is coming from the wrong place and for the wrong reasons. I regret to say that I still oppose the measure.

The Hon. V. G. SPRINGETT: As one of the managers, naturally I was aware of and took part in the discussions which led to the situation presented to the Committee. Honourable members will know I was most interested in the fourth amendment concerning voluntary voting and voluntary enrolment. I believed in it very firmly, and I must confess I still do, although as one of the managers I was responsible for yielding inevitably on that issue. It is quite wrong that a man is not given the right to say "No", to make it a form of compulsory choice—nothing more and nothing less. This seems very wrong for youngsters at 18 years of age. This morning I spoke to some people who are deeply concerned with this age group, and in not one case did I hear other than the hope being expressed that this age group should be given the right to vote voluntarily. I believe in the principle of it. I cannot say other than that, and I would say no more than that at the moment. I accept the will of the conference, now that I have made my explanation at the conference, but not here. Any future moves for voluntary voting I will still support.

The Hon. M. B. DAWKINS: I rise to support the motion, like my colleagues, with somewhat mixed feelings. I regret in the first place the qualification placed in the amendment as to the time of implementation of the legislation, and I also regret very much that the fourth amendment is not to be further insisted upon. Like the Hon. Mr. Springett, I believe in voluntary voting, I believe it is the right type of voting for all elections, but I must agree with the Chief Secretary that the conference was conducted in a proper and dignified manner and, although I cannot raise any enthusiasm about some portions at least of the result, I do support the motion.

The Hon. D. H. L. BANFIELD: I, too, support the motion and I congratulate the spokesmen and the managers on the way they conducted the case. They held out to the end, and I feel they came out with a pretty fair compromise and did a good job for the Council. There are a couple of things that I think are misleading. The Hon. Mr. Springett and the Hon. Mr. Gilfillan implied that young people are compelled to vote at elections at the age of 18. This is not entirely correct, because the Bill only deals with voting for those who are enrolled. It is true that, if a person is sufficiently interested to become enrolled, voting becomes compulsory, but as it is not compulsory for 18-year-olds to enrol there is no compulsion on them to vote.

The Hon. R. C. DeGaris: Would you agree with this view when the Commonwealth reduces the age to 18?

The Hon. D. H. L. BANFIELD: I have no power over the Commonwealth. I have heard the honourable member opposite say, "Don't take any notice of what they are doing over there. Don't become a centralist." I am saying—

The Hon. R. C. DeGaris: You have missed the point.

The Hon. D. H. L. BANFIELD: —if the Commonwealth brings in a law to say it is compulsory that is its pigeon, and it will suffer as a result if the electors do not like it. Our pigeon is to put into operation the policy enunciated by the A.L.P. and the L.C.L. prior to the last election that voting for 18-year-olds would be introduced. That is all we are dealing with at present. It is wrong to say this Bill makes voting compulsory, because it is not compulsory until a person is enrolled, and enrolment is not compulsory at 18 years of age.

The Hon. A. M. WHYTE: Although I am quite sure the managers did their very best to uphold the intentions of the amendments, I merely want to say that I believe this State now has compulsory voting at 18 years of age forever, and I am sorry to see this come about.

The Hon. Sir NORMAN JUDE: I would not be sincere if I did not say I am more than disappointed with the result of this conference, and I think there would be many other members who would have equal reason to be so. The matter of the clause regarding any legislation on this subject introduced by the Commonwealth Parliament has been dealt with, in my view, in a very paltry manner. The time mentioned is June, 1972, by which time it is most unlikely there will be an election in this State, and that shows the value of the amendment. I very much regret that the managers of this Council allowed the matter to be settled in that way. It is an administrative matter more or less, and I felt it was a reasonable amendment which our managers should have supported to the fullest possible extent.

However, when we come to voluntary voting that is a principle and every member, without exception, on my political side in this Chamber has supported it openly from time to time. I know it can be said on this

occasion that we have made our gesture, but this is Labor policy, and we have compromised. I stand for no compromise in a direction such as this—none whatsoever.

I would remind honourable members that only seven months ago, as recorded at page 1030 of *Hansard*, the following people voted for a Bill directed deliberately at voluntary voting: the Hons. Jessie Cooper, M. B. Dawkins, R. C. DeGaris, R. A. Geddes, G. J. Gilfillan, L. R. Hart, C. M. Hill, Sir Norman Jude, H. K. Kemp, Sir Arthur Rymill, V. G. Springett, and C. R. Story, two others being absent who have also from time to time stated their views on that issue. As I say, one can do little about it but protest at the action of the managers in throwing away our position. I include the Chief Secretary in this, because I know that he would do his job as a manager in a conference. He knows the will of the majority of this Council and its intention. I should have hoped he, as a manager, would fight for it to the bitter end. I remind honourable members that within the past week this Council, with the overwhelming approval of the whole State of South Australia, rejected a Bill that would have meant compulsory voting for local government. This Council received public acclaim for its stand, yet this evening we have thrown away the same principle—and it is a principle. I shall certainly vote against the motion.

The Committee divided on the motion:

Ayes (11)—The Hons. D. H. L. Banfield, T. M. Casey, Jessie Cooper, M. B. Dawkins, R. C. DeGaris, L. R. Hart, A. F. Kneebone, F. J. Potter, Sir Arthur Rymill, A. J. Shard (teller), and C. R. Story.

Noes (6)—The Hons. R. A. Geddes, G. J. Gilfillan (teller), Sir Norman Jude, H. K. Kemp, E. K. Russack, and A. M. Whyte.

Pair—Aye—Hon. C. M. Hill. No—Hon. V. G. Springett.

Majority of 5 for the Ayes.

Motion thus carried.

BUILDING BILL

(Continued from March 30. Page 4442.)

At 2.30 p.m. the managers proceeded to the conference, the sitting of the Council being suspended. They returned at 8.5 p.m. The recommendations were as follows:

As to amendments Nos. 1, 2 and 3:

That the Legislative Council do not further insist on its amendments but make the following amendment in lieu thereof:

Clause 5, page 2—

After line 34 insert new subsection as follows:

(2a) Where a council by which a petition may be presented under this subsection presents a petition to the Governor that a proclamation be made modifying the operation of this Act under subsection (2) of this section in a manner specified in the petition, a proclamation shall be made modifying the operation of this Act in accordance with the petition of the council.

(2b) A petition may be presented under subsection (2a) of this section by a council to the area of which, or any portion of the area of which, the repealed Act did not, immediately before the commencement of this Act, apply.

and that the House of Assembly agree thereto.

As to amendments Nos. 4, 5 and 8:

That the Legislative Council do not further insist on its amendments.

As to Amendments Nos. 10 and 11:

That the Legislative Council do not further insist on its amendments but make the following amendment in lieu thereof:

Clause 9, page 7—

Lines 4 to 7—Leave out all words in subclause (7) after the word "refusal" in line 4.

and that the House of Assembly agree thereto.

As to amendments Nos. 16 and 17:

That the Legislative Council insist on its amendments and make the following further amendment to clause 13 of the Bill:

Clause 13, page 8—

After line 28 insert subclauses as follows:

(1a) The council may assign to any building erected before the commencement of this Act a classification that conforms to the regulations.

(1b) Where the council assigns a classification under subsection (1a) of this section, the council shall give notice in writing to the owner of the building to which the classification has been assigned of the classification assigned to the building.

(1c) A classification shall not be assigned to a building erected before the commencement of this Act if as a result of the classification being assigned to the building, the building could not continue to be used for a purpose for which it was lawfully being used before assignment of the classification.

and that the House of Assembly agree thereto.

As to amendments Nos. 20 and 25:

That the House of Assembly do not further insist on its disagreement thereto.

As to amendment No. 24:

That the Legislative Council insist on its amendment but make the following further amendment to clause 27 of the Bill:

Clause 27, page 13, line 18—
Leave out "heard and".
and that the House of Assembly agree thereto.
As to amendment No. 37:
That the Legislative Council insist on its amendment but make the following amendment to the Bill:
Page 22—The following clause is inserted after line 34—
51. (1) Except as provided in this section, this Act does not bind the Crown.
(2) Where a building is to be erected by or on behalf of the Crown in the area of a council, a notice shall, before the erection of the building is commenced, be sent to the council notifying the council of the fact that the building is to be erected.
(3) The council shall, in addition, be supplied with a plan delineating the site of the proposed building and the position of the building in relation to the site.
and that the House of Assembly agree thereto.

Consideration in Committee.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That the recommendations of the conference be agreed to.

The actions of the managers from the Council at the conference were up to the highest standards that have existed at past conferences. I thank the other managers who assisted me at the conference for the very good manner in which the conference was conducted. The managers from the House of Assembly also acted in a very amicable manner, and the co-operation by the managers of that House with the Council members was very good. As a result of that co-operation, we have been able to reach an agreement on the various amendments. I think I can say with assurance that those amendments were acceptable to the managers of the Council, as I believe they will be to the House of Assembly.

The Hon. G. J. GILFILLAN: I support the Minister's remarks and emphasize that what the Minister said about the manner in which the conference was conducted is factual. I express the appreciation of the members of the Opposition to the Minister and his colleagues for their assistance at the conference. I point out that initially, when the Bill went back from the Council to the other place, it contained 40 amendments, of which 25 were accepted by the House of Assembly. Of the 15 amendments returned to the Council, one was not insisted on, so 14 were in dispute at the conference. The overall result of the conference means that the Council received a good deal in the amending of this Bill.

I do not intend to go through the results of the conference in detail, because I believe it is obvious to honourable members what has been achieved. Perhaps I should mention amendments Nos. 1, 2 and 3, dealing with the subject of councils that are not now under the Building Act. As the Bill originally came to the Council, these councils were to be included automatically but would have the right to apply for exemption in whole or in part. However, there was no guarantee that such an application would be granted. As a result of the amendment, where a council which is now exempt and which is not under the Building Act applies for such an exemption, such exemption shall be granted. The other amendments are self-explanatory. I support the motion.

The Hon. R. A. GEDDES: I endorse the remarks made by the Minister in charge of the Bill and those made by the Hon. Mr. Gilfillan. It had been said throughout the debate on this Bill that it was a Committee Bill, and in the conference the discussion by the managers of both Houses continued in a similar vein, trying to make the Bill work and keeping in mind the opinions of both Houses. In consequence, I feel sure that the intent of the Council in the amendments it moved initially has been maintained by the actions of the conference. The conference was conducted in an extremely sensible atmosphere. There was no feeling of animosity, because of the constructive attitude taken by the managers of both Houses. I support the motion.

The Hon. L. R. HART: I support the motion and the views expressed by the Minister. Managers from both sides of Parliament approached the conference in a spirit of compromise, and the results achieved at the conference have resulted in improved legislation. I think the results of the conference again emphasize the justification of the bicameral system. I realize that conferences are time-consuming, but when improved legislation results from them the time is well spent. A conference also brings about a better understanding of the points of view of both Houses, and this was apparent at this conference. I also support the views expressed by the Hon. Mr. Gilfillan and the Hon. Mr. Geddes.

Motion carried.

SOUTH-EAST RENTALS

The Hon. R. C. DeGARIS (Leader of the Opposition): I move:

That the Prayer contained in Petition No. 2, namely, that this Parliament by whose authority the petitioners have entered into occupation of their respective holdings and worked and expended money thereon will take such action as it may to ensure that the petitioners forthwith be granted leases of land respectively occupied by them to take effect from such date appropriate to each of the petitioners respectively at a rental comparable with the provisional rental fixed for same and at a level which will bear comparison with those of similar land held by soldier settlers who have been granted leases in other parts of the South-East, be granted.

I seek leave to have incorporated in *Hansard* the judgment delivered by His Honour Mr. Justice Bright in the case *Heinrich v. Dunsford*. I will be referring to that judgment in the remarks I will make, and it will assist if it can be included in *Hansard* before I deal with the matter.

Leave granted.

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HEINRICH v. *DUNSFORD*
No. 1714 of 1967

This is a claim by petition of right wherein, in essence, the petitioner asserts that he has been since 1st April 1953 in possession of certain Crown land, viz sec. 167 in the hundred of Bowaka, as a tenant of Her Majesty the Queen in right of the State of South Australia. He further asserts that in the events that have happened he holds as tenant either under an agreement for lease or under perpetual lease on the terms and conditions set forth in the War Service Land Settlement Agreement Act 1945 (S.A.) and the schedule thereto. He further asserts that the rental of the said land was fixed in 1954 at £200 per annum, but that in 1963 the Director of Lands, being the servant of The Queen, purported to fix the rental at £481 per annum. He claims a declaration that the latter fixation is invalid and that the proper rent is £200 per annum, or if not £200 is a sum to be determined by computation either according to a method set forth in the petition or alternatively according to such a method as shall be thought just, and in the latter event he seeks an inquiry. Certain other relief claimed was not pressed at the hearing.

The defendant, the Director of Lands, was named by His Excellency the Governor's Deputy as the nominal defendant and the petition was referred to this Court. I am informed that the petitioner is one of many similar claimants.

The defence denies the claim that the true rent was £200. Even more importantly, and somewhat surprisingly, in view of the contentions of the Crown in *Matthews* v. *South Eastern Drainage Board* (1965) S.A.S.R. 328, the defence sets up that as a matter of law no tenancy or other legal relationship binding in law between the petitioner and any other person or persons was ever created with respect to the said land.

It is therefore necessary to relate the facts proved at the trial, insofar as those facts may be relevant to prove or disprove the

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existence of any such legal relationship.

I may begin the narration by incorporating and adopting a passage from *Gilbert* v. *Western Australia* 107 C.L.R. 494 at 501.

> "In 1945 the Commonwealth Parliament passed the War Service Land Settlement Agreements Act 1945 authorizing the execution by or on behalf of the Commonwealth of Agreements between the Commonwealth and the several States in relation to War Service Land Settlement. This Act contained two schedules. The first was the form of the Agreements authorised to be made by the Commonwealth with the States of New South Wales, Victoria and Queensland. The second was the form of the Agreements authorised to be made by the Commonwealth with the States of South Australia, Western Australia and Tasmania."

The Commonwealth and the State of South Australia duly entered into an agreement in the second schedule form. Parliamentary authorisation was given by the War Service Land Settlement Agreement Act 1945 of the State of South Australia and the form of agreement between the contracting parties is set forth in the schedule thereto. By sec. 3 of the authorising Act it was provided:

> "For the purpose of carrying into effect any agreement made pursuant to this Act any Minister or other authority of the State may—
>
> (*a*) exercise any power conferred upon him or it by any other Act relating to Crown lands;
>
> (*b*) enter into any transaction or do any act matter or thing recommended by the Land Board."

In April 1948 the petitioner having been classified as a suitable applicant for settlement under the War Service Land Settlement Scheme applied for a section. The application was on a printed form. Question 19 was:

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> "If allotted a holding would you be prepared to undergo a short intensive course of training at a residential school prior to occupying the land?"

He answered yes.

Question 20 was:

> "If allotted a holding would you be willing to abide by all the terms and conditions of settlement as laid down under the War Service Land Settlement Agreement Act, 1945, and the terms and conditions under which the land is gazetted open to application?"

He answered yes.

In February 1949 the then Director of Lands wrote to the petitioner and the first two paragraphs of his letter read as follows:

"I desire to inform you that because shortages of essential materials, particularly fencing wire, netting, piping and galvanized iron, prevent the developing of lands to the standard originally set up under the War Service Land Settlement Agreement, it has been decided to allocate blocks at a much earlier stage of development.

The applicants selected by the Land Board will be placed on the blocks as employees and their services utilized in the completion of the developmental programme. This will mean that the selected men will know that the block to which they are allocated will, provided they prove satisfactory, become theirs under Perpetual Lease when the standard of development required under the Agreement has been achieved."

In June, 1949, the Director of Lands sent a letter to the petitioner enclosing in a schedule a list of blocks which would become available for occupation or allotment and asked him to state his order of preference. In August, 1949, the Director advised the petitioner by letter that he had been selected for the allocation of a section in the Hundred of Bowaka under the War Service Land Settlement Agreement Act. He was required to

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accept full time employment with the Department on the development of the land from a date to be notified. In October, 1950, the petitioner was requested to enter into full time employment with the Department not later than 30th November, 1950, and he complied with the request. In February, 1951, the petitioner and other applicants met an officer of the Department and went on an inspection of the blocks available. In March, 1951, following the inspection the petitioner stated in writing his order of preference for the sections available in the Hundred of Bowaka and made an application. On 14th March, 1951, the Director of Lands wrote a letter to him in which it was stated:

"referring to your application for land in terms of the War Service Land Settlement Agreement Act, I desire to inform you that on the recommendation of the Land Board the Minister of Lands has approved of your being selected for the allotment of section 167, Hundred of Bowaka.

"At a later date when the required standard has been reached in the development and the construction of improvements the area will be gazetted for allotment to you under Perpetual Lease conditions in accordance with the provisions of the War Service Land Settlement Agreement Act."

The petitioner appears to have been granted occupation of his holding, but not I think as a tenant, later in the year 1951. He remained in occupation, and in March, 1953, received a letter from the Director of Lands reading as follows:

"Referring to previous advice from this office that you had been selected for the allotment of section 167, Hundred of Bowaka, I wish to inform you that this land is now gazetted open to application under Perpetual Lease conditions in accordance with the provisions of the War Service Land Settlement Agreement Act.

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"A plan and a copy of the *Gazette* notice giving details of the holding have been forwarded to you under separate cover.

"To enable the allotment to be dealt with the attached formal application must be completed and returned so as to reach this office not later than 3 p.m. on Tuesday, 24th March, 1953."

The enclosed copy of the *Gazette* notice sets out under the heading:

"Conditions under which War Service Perpetual Leases are allotted"

a series of conditions. One may contrast the particularity in those conditions with the uncertainty that existed in *Milne* v. *A.G. for Tasmania* 95 C.L.R. 460. There is a schedule to the document setting out descriptions of a number of holdings and in each case mentioning a particular settler at the foot, *e.g.*, that section which in fact is section 167 has a note at the foot:

"An application from G. E. Heinrich will receive favourable consideration from the Land Board."

A note at the foot of the *Gazette* notice reads as follows:

"Note: The above holdings being still in process of development are gazetted open to application without rent for the land and ground improvements or the purchase money for structural improvements having been fixed. The said rent and purchase money will be fixed within a period of 12 months after date of allotment. H. L. Fisk, Surveyor-General."

The petitioner filled in, signed and duly returned to the Minister of Lands a form of application for section 167, hundred of Bokawa:

"under the conditions on which the land is available for application as published in the *Government Gazette* of 5th March, 1953."

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A departmental minute indicates that his application came before the Land Board. The minute reads:

"The board recommends allotment of section 167, hundred of Bokawa, 806 acres to G. E. Heinrich under War Service Perpetual Lease personal residence as from 1.4.53. Category 2. Due date for payment 1st May."

There is an endorsement:

"G. E. Heinrich advised 28.4.53."

The letter of 28.4.53 conveying the advice reads in part as follows:

"I have to inform you that on the recommendation of the Land Board, the Minister of Lands has approved of section 167, hundred of Bowaka, being allotted to you under the provisions of the War Service Land Settlement Agreement Act on the terms and conditions as gazetted. The allotment will date from 1st April, 1953."

On May 7, 1954, the Director wrote a letter to the petitioner which I shall quote in full

because it forms the foundation of the claim that the proper rent is £200 per annum.

"Referring to previous correspondence regarding the allotment to you of section 167, hundred of Bowaka, under the War Service Land Settlement Act, I desire to inform you that in accordance with the conditions of allotment, the due date for payment of rent and instalments of principal and interest on account of advances, etc., has been fixed at May 1 in each year.

"Properties purchased for settlement of ex-servicemen have been zoned according to similarity of the types of country, etc., and until all holdings in the zone in which your holding is included have been allotted and valued in accordance with the War Service Land Settlement Agreement, the rental cannot be finally fixed.

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"However, to enable payments to be made, thus avoiding the accumulation of arrears, the Department has fixed a provisional rental and charge for structural improvements. It must be distinctly understood that these charges are only provisional and may be increased or decreased when the rental and charges are finally fixed.

"The rent now asked for is at the rate of £200 per annum.

"The value of the structural improvements is payable in 29 equal annual instalments of principal, with interest at the rate of 3¾% on the balance remaining unpaid from time to time. The provisional charge fixed in your case is £2,700, to which must be added advances made since allotment, £183.0.6d, making a total of £2,883.0.6d.

"Amounts advanced for stock and plant are payable in 9 equal annual instalments of principal with interest at the rate of 3¾% on the balance remaining unpaid from time to time.

"A general insurance cover from the date of allotment has been taken over the improvements on the land and your estimated liability has been calculated. Any stock and plant for which advances have been made have been insured from date of debit.

"The conditions of allotment provided that no rent or payments on account of advances be charged during the first twelve months after allotment; this is called the assistance period.

"In your case the assistance period ended on the 31st March, 1954, and the attached account includes rent, which is payable in advance, covering the period from the 1st April, 1954, to the 30th April, 1954, in addition to the full year's rent due on the 1st May, 1954. The statement also includes interests from the 1st April, 1954, to 30th April, 1954, on the improvements and stock and plant accounts, as well as insurance

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premiums. No principal will be due on the improvements and stock and plant accounts until the 1st May, 1955, when full instalments of principal and interest and a further year's rent will be payable.

"It will be appreciated if the amount of £277.15.8d shown in the account can be paid not later than the 7th June, 1954, as any payments not made by that date will be subject to a penalty at the rate of 3¾% per annum from the date of this letter and account.

"Any settler who is in a position to do so may pay, in addition to the amount of the account, any amounts desired on account of advances, thereby reducing his liability to the Department and particularly his interest charge.

"When the rents, etc., are finally fixed, all payments made will be adjusted."

The petitioner objected to the rent which he regarded as excessive and received a reply reading as follows:

"With reference to your letter of the 23rd ultimo regarding the rental for section 167, hundred of Bowaka, held by you under War Service Perpetual Lease 285, I desire to point out that as stated in my letter of the 7th May last, this rent is only provisional and the Department is not yet in a position to fix a definite rent and charge for improvements.

When the rent is finally fixed, it will be made retrospective and all payments made will be adjusted, but in the meantime, it is not considered necessary to make any alteration in the provisional rent."

The petitioner apparently submitted to paying £200 per annum but on 19.7.54 he wrote again to the Director:

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"As I mentioned in my last letter my carrying capacity at the end of category 2 period was 700 sheep and 20 cattle and then I had to bring fodder from outside whereas in five years time I hope to be able to double that number. Could you please explain how the property is finally assessed and on whose development?"

To this he received the following reply:

"I acknowledge receipt of your letter of the 19th ultimo, with regard to the rent under War Service Perpetual Lease 285, under which you hold section 167, hundred of Bowaka.

"As you are aware, the Commonwealth Government agreed that rentals of War Service Land Settlement holdings should be based on cost or productivity, whichever is the lower. It will not be necessary for the Department to wait five or ten years as suggested by you, in order to make the assessment for the purpose of fixing the rent, as the assessment of productivity is made approximately twelve months after allotment.

"However, as explained in my letter of the 7th May last, properties purchased for the settlement of ex-servicemen have been zoned, and until all holdings in the zone in which your holding is included have been allotted and valued in accordance with the Agreement, the actual cost attributable to your holding is not known and it therefore is not

known whether the cost is lower or higher than the productive value.

"For this reason, the final rent is not fixed at this stage, but a provisional rent and charge for improvements only have been fixed. You may rest assured, however, that when the final rent is fixed, improvements effected or development carried out by you will not be included in the value on which that rental is based."

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Then on 24th November, 1954, the petitioner received a printed form with the signature of the Director stamped upon it. The form begins:

"Now that you are to some extent established on your holding under the War Service Land Settlement Scheme it is felt that it would be in your interest to call your attention to a number of facts with most of which you are no doubt familiar.

"You either hold or will hold a Perpetual Lease over the land. This lease is in perpetuity and the right has recently been given for you to apply to acquire the freehold after ten years (or earlier if special circumstances exist) . . .

"You obtain an improved property with new pastures and necessary plant the allotment of which was made after Commonwealth and State officers were satisfied that the stage of development as provided in the War Service Land Settlement Agreement would be reached within twelve months from the date of allotment."

The petitioner remained in occupation of the land paying £200 per annum rental. In 1963 he received from the Director of Lands a letter dated 16th May, reading as follows:

"In letter from this Office of the 7th May, 1954, you were advised of the provisional charges fixed for your holding pending determination of the final rental and structural improvements charges.

"I am now directed by the Minister of Lands to inform you that the Commonwealth and State Authorities have reached agreement on the final rental and charge for structural improvements at date of allotment.

Final Rental £481 0s. 0d. per annum as from 1st May, 1963. Structural Improvements at date of allotment £2,590 0s. 0d. which amount will be increased by advances for structural improvements made since date of allotment.

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"Your account will be adjusted and you will be advised of the position."

He wrote an indignant reply which includes the following:

"I have no intention of signing a lease under such conditions and if not given the opportunity to appeal I wish the Department to pay me for my equity in the property and see if they can get another settler to take the property over.

"Could the Department please tell me how they have arrived at the rental and how much per sheep acre they have put on the property?"

The Director on 12th June, 1963, wrote to the petitioner giving details of advances for structural improvements and informing him that his letter appealing against the rental had been received. Further letters were sent by the petitioner including one in which he asked the price to convert his holding to freehold. On 25th March, 1966, the Director wrote again to the petitioner confirming the rent at £481 and notifying that a form of perpetual lease of the holding had been forwarded for signature by separate post. The letter stated that the rental at the higher rate was payable from 1st May, 1963, but no such concession was contained in the draft lease which provided for rental at that rate from 1954 onwards.

The petitioner declined to sign the lease and applied for an extension of time in which to sign. Various extensions were given and as far as appears are still in force. It would appear therefore that the petitioner is in this respect at any rate not in default.

There are three possibilities with regard to any supposed legal relationship between the Queen and the petitioner with respect to section 167 hundred of Bowaka

(*a*) That some such relationship came into existence on 1st April, 1953, being the date mentioned in the letter from the Director of Lands notifying him that the Minister of Lands had approved of the allotment of the said section to him under the provisions of the War

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Service Land Settlement Agreement Act on the terms and conditions as gazetted.

(*b*) That at some later point of time some such relationship came into existence.

(*c*) That no such relationship ever came into existence.

The second possibility is most improbable. Events and statements occurring or made after 1st April, 1953, may well point to the existence of a legal relationship on that date. They may serve to clarify the terms of that legal relationship. But I find it most difficult to conceive of a legal relationship arising at a subsequent date, although perhaps subsequent events or statements, in certain circumstances, may prevent one party from denying that the other party has certain rights, and perhaps subsequent events or statements may supply the necessary particularity to enable an agreement previously made to become enforceable.

The third possibility is one from which I recoil. If that is the true position then the petitioner has, since 1953, been in physical occupation of the land in question. He has received the profits from it over that period, and has paid throughout, after the first year, a sum which bears the character of rent in respect of it. He has at his own cost in money and labour made improvements to the land. Yet if there is no legal relationship between him and the Crown he can be forced off the land now, presumably without compensation (cf. *Malone* v. *Williams* (1905)

5 S.R. N.S.W. 665). It must be kept in mind that he was no mere speculative investor, but a person who in consequence of and as a recognition of his service to the Queen in the 1939-1945 War was permitted entry upon the land. If I may borrow a phrase, my enthusiasm for the proposition that he can now be ejected as a trespasser is under total control.

I shall come back to these possibilities later. But first I must mention the State and Commonwealth agreement. No point is taken that the State has acted merely as agent for the

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Commonwealth, although originally that appears to have been so. The State in this case asserts its rights and denies the petitioner's rights in the character of a principal. The agreements made between the State and the Commonwealth are not agreements to which the petitioner is a party or with which he is concerned save in so far as the provisions contained in those agreements may have been imported into the arrangements (to use a neutral word) subsisting between the State and the petitioner.

Another matter of importance is that if it emerges from the whole of the evidence that a legal relationship was intended to come into existence then the parties to that intent ought if reasonably possible to be held to have given effect thereto and to have, in consequence, created a contract between themselves. If it is not possible to spell out one or more essential terms of the intended arrangement then the intent is, no doubt, frustrated, but a difficulty, falling short of impossibility, ought not to deter a court from giving legal effect to an arrangement which the parties intended to be legally effective.

In the present case there is only one matter of uncertainty alleged: that is the matter of the rent. I think that all other matters of substance were made certain by the various statements issuing from the State authorities and in particular by the *Gazette* notice and by the acquiescence therein by the petitioner as evidenced by his own writings and his own conduct. If any residual uncertainty on any other matter remained it could not, in my opinion, survive after the sending to him of the form of lease for his signature. That form of lease recognized him as lessee from 1st April, 1953, of section 167 in the hundred of Bowaka County of Robe subject to the reservations covenants and conditions therein stated. It is true that he refused to sign the lease but the only ground of refusal was that the rent was incorrectly stated.

I regard the State as having demonstrated an intention that a legal relationship should subsist between the State and the petitioner, viz, the relationship of Crown as owner and petitioner as War Service Lessee in Perpetuity with right of purchase. The lease, it will be noted, was not submitted in 1966 as an

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offer but as a document expressing in formal terms the arrangement which was, in the view of the State, already in existence. It dated back to 1953 and therefore purported to refer to a legal relationship which had already been in existence for 13 years. All the letters issuing from servants of the Crown to the petitioner support the same view.

The question which I have to answer is therefore whether there ever was an agreement between the State and the petitioner which either was itself an agreement to pay an agreed sum or which afforded a method sufficiently precise in its terms to enable me to say that the rent was capable of being fixed in a manner binding on the parties. It may be said at once that the parties never agreed on a rental. Did they agree upon or acquiesce in a method? The terms of the *Gazette* notice include a term requiring the annual rent to be paid in advance, but they contain nothing expressly stating a method of computation. Nor is any certainty to be achieved by a reference to the Commonwealth and State Agreement scheduled to the War Service Land Settlement Agreement Act 1945, being one of the two State Acts under which the conditions in the *Gazette* notice are stated to have been fixed. The only references to the rent to be found in the Agreement are in paragraphs 16 (2) and 16 (3) which read as follows:

> "16. (2) The rent payable under the lease shall be recommended to the Commonwealth by the officers appointed to make the valuations referred to in subclause (4) of clause 6 of this agreement.
>
> 16. (3) The rent payable under the lease may include an amount calculated at a rate to be agreed upon between the Commonwealth and the State in respect of the cost of State administration of the scheme arising after the allotment of the holding to the settler. This amount shall be retained by the State and the balance of the rent shall be credited by the State to the Commonwealth."

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Does that mean that the settler has no agreement, or does it mean that he has a right to a holding at a rental to be fixed by the Crown? And can he, as a consequence, claim that the Crown has a duty to fix a rent? I think he can. Moreover, the Crown *has* purported to fix a rent, whether the rent be £200 per annum or £481 per annum. It seems to me that the Crown, having purported to quantify the rent, and so to render certain the only matter which was uncertain, ought not to be allowed to assert that there is no agreement. For again it is not a matter of the Crown making an offer to accept rent at a certain sum, but of the Crown having set in motion machinery for the computation of the annual rental, and having rightly or wrongly applied the resulting figure to the holding already held by the petitioner, as the Crown recognized, as tenant of the Crown.

In my view therefore the evidence enables me to find, and I do find, that the petitioner has a right to a lease of which all the terms save annual rental are contained in the lease submitted for his signature.

The remaining question is whether he has any right to challenge the fixation of rent which the Crown purports to have made.

I must first notice that I see nothing inconsistent with legal principle in the view that a lease from the Crown can come into existence before the rent has been fixed. No-one would doubt this if the facts disclosed that lessor and lessee had become bound to a sufficiently precise method of fixation in which both participated. But another possibility is that, although there was a method of fixation of rent, the Crown alone had the responsibility and right of following the method and making the fixation. This is not a power at large to fix at any figure, but a power to fix by acting rightly in accordance with a prescribed method. This also seems to me to be sufficiently precise to enable a Court to say that a leasehold tenure has come into existence. In effect the proposed lesseee has

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accepted the position that the Crown will act rightly and in accordance with a prescribed method in making the fixation. I do not think that this involves a full knowledge by the proposed lessee of the method to be used, but merely an awareness that the rent will be fixed according to settled principles. The lessee may make representations but he does not in a legal sense participate in rent fixations.

I do not overlook the possible view that the Crown, having an unfettered right to fix the rent at any sum it chooses, by nominating a sum makes an offer to the proposed lessee and that if he then signs a lease which states that rental he accepts the offer and a lease results. The petitioner, on that view, may still adopt this course so long as it remains open to him.

In my opinion the true position emerging from the evidence is that a leasehold tenure came into existence on April 1, 1953, and that the Crown had a duty to fix a rental according to principles and procedures which were sufficiently precise to constitute a prescribed method. The petitioner was not aware of the full details of the method when he became lessee but he then knew that a method would be employed and he agreed to allow the Crown, following the method, to fix his rent My reasons for this critical finding are:

1. The conduct of the parties prior to the entry of the petitioner upon the land indicate an intention to create a leasehold relationship and their subsequent conduct confirms that intention.
2. It is wholly inconsistent with that intention that the petitioner should be regarded as a person having no tenure at a time years after he started farming operations on the land.
3. The communications from the Crown were such as would lead a person in the position of the petitioner to believe that some prescribed process of rent fixation would be adopted. I have already referred to some of these communications.

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4. The evidence, such as it is, confirms the the fact that there was a prescribed process of rent fixation.
5. It would be probable, even without that evidence, that two Governments, working in concert, dealing with a large number of holdings, and imbued with a desire to provide a permanent livelihood for a large number of ex-servicemen, would act according to just and prescribed principles in giving effect to that desire.

I cannot accede to the submission that the original fixation of £200 per annum established the permanent rental. The only reason for saying so seems to be that despite its description as a "provisional" fixation it somehow acquired the status of a final rental from the fact that it was the only rental fixed within twelve months of occupancy as mentioned in the note, already quoted, at the foot of the *Gazette* notice. But if no rent had been fixed, provisionally or otherwise, within that twelve months would the result be that no rent was ever payable? And why should a fixation which was expressly stated not to be the final fixation be nevertheless given a different character from that which it was stated to have? It may be, and I thankfully refrain from concluding upon it, that the petitioner could have taken some proceedings after 12 months to compel or hasten a fixation. But he is not entitled to say that an annual sum is that which it is not. I do not overlook the argument that the length of time during which the £200 rental operated sufficiently demonstrated that this sum was the final fixation despite its original description. But the evidence does not enable me to make such a finding.

So I come to what is perhaps the key question in this whole case. An assessment of £481 per annum is put forward as being the fixation made by the Crown, and, now that I have discarded the £200 per annum, it is the *only* fixation. Is there anything before me which requires me to interfere with it? I have already referred to the 1945 agreement, a document which does not express a method of fixation of rent. But I have also before me later

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arrangements between the Commonwealth and the State. It is necessary to recite some of the background.

In the 1945 agreement the State acted as agent for the Commonwealth and not as a principal. But in *Magennis' Case* ((1949) 80 C.L.R. 382) the High Court pointed out that the Commonwealth could acquire land only on just terms, and that this requirement had not been observed. So the basis of the scheme was changed and the scheme turned into one in which the State became a principal instead of an agent, and received advances from the Commonwealth in aid of War Service Land Settlement. Those advances were made on terms which in certain vital respects bound the State. As I have said, persons in the position of the petitioner were not parties to the arrangement between the Commonwealth and the State, but the State's transaction with the

petitioner was made in consequence of that arrangement and is expressed, in communications issued by the State to the settler, to be so made. The correspondence between Ministers of the Commonwealth and State on the subject of that arrangement runs from 13th March, 1950, to 29th October, 1952, both dates being earlier than the date of the petitioner's entry on the holding as lessee. A set of conditions accompanied the last letter. Then on 30th July, 1953, the Commonwealth Minister sent to the State Minister a further set of conditions. That was a later date than the petitioner's entry but the covering letter states that

"The memorandum of conditions has been re-arranged to incorporate the later statements on valuation and option price and to present the conditions generally in a more orderly sequence without varying the conditions themselves."

I shall therefore relate back the later set of conditions and treat it as being a sort of code set up by the Commonwealth and the State and in existence at the time of the petitioner's entry. The set of conditions is lengthy. It was not in South Australia ratified by legislation, but it is not suggested that legislation was necessary.

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A "project" is defined as follows:

"'Project' means an approved plan of settlement or such aggregation of approved plans of settlement as form a unit for development and subdivision."

"The scheme" means "the scheme of land settlement contained in this statement."

Para. 4 (5) (*d*) provides

"The approved cost of the provision of the land for a project and of the planned works other than those executed by the settler at his own expense is referred to in this Statement as 'the approved capital costs.'"

Para. 4 (8) provides

"All moneys received by the State from the sale of land and improvements under the scheme or from the disposal of land under the last preceding sub-clause shall be paid or credited to the Commonwealth. All rent payable to the State under any lease of land under the scheme shall be paid or credited to the Commonwealth, after deduction and retention by the State of the amount mentioned in sub-clause (4) of clause 7 of this Statement."

Para. 5 provides

"*Development and valuation of holdings*:

The following provisions shall apply to the development and valuation of holdings:—

(1) The State will provide and subdivide the land comprised in an approved project and undertake the planned works to a stage where holdings can be brought into production by settlers within a reasonable time having regard to the type of production proposed, and will use its best endeavours to have the planned works completed without delay.

(2) When the planned works involved in any holding forming part of the project have been substantially completed, a valuation of the holding

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shall be made in consultation by officers appointed by the Commonwealth and State for that purpose.

(3) The total cost of the land and of the planned works of a project shall be apportioned over the holdings derived from the project.

(4) The total cost referred to in sub-clause (3) of this clause shall comprise the sum of—

(*a*) the total value of the land provided for the project as included in the approved capital costs less the proceeds of any land disposed of in accordance with sub-clause 7 of clause 4 of this statement.

(*b*) the cost of any portion of the planned works completed by the State;

(*c*) the cost of any portion of the planned works completed by a settler;

(*d*) the estimated cost of any portion of the planned works not then completed; and

(*e*) interest at the prevailing long-term bond rate on the approved capital costs provided from loan raisings.

The costs under paragraphs (*c*) and (*d*) of this sub-clause will be assessed on the basis of the costs which it is estimated would be incurred if the work were undertaken by the State.

(5) The valuation of a holding when developed shall be that part of the total cost apportioned to it under sub-clause (3) of this clause on which a settler possessing no capital could meet the commitments (excluding principal repayments under any agreement between the State and settler for the purchase of land) from the net proceeds of the developed holding (based on conservative estimates of yields for products at prices conservative to those ruling for those products as at the time of valuation) and obtain a reasonable living.

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(6) The State shall pay to the Commonwealth in respect of each project an amount equal to two-fifths of the excess of the total cost of the land and of the planned works of the project as set out in this clause over the sum of the valuations determined in accordance with the last preceding sub-clause of the holdings derived from the project."

Para. 5 (5) seems clearly to recite a test of land productivity, that being treated as part of the total cost. Para. 6 (6) and (7) provide

"(6) There may be granted to a settler during the period of one year immediately following the first allotment of a holding under the scheme (in this statement referred to as "the assistance period") a living allowance at such rate and subject to such conditions as may be fixed by the Commonwealth.

(7) During the assistance period, the settler shall not be required to pay any rent or interest in respect of the holding, or to make any payments on account of principal or interest in respect of advances (other than advances for working capital) made under subclause (6) of clause 8 of this Statement."

That provision, at any rate, was applied to the petitioner, for he had the first year of his holding free of rent.

Para. 7 (3) and (4) provide

"(3) The annual rent payable under the lease shall be 2½% of the valuation made under sub-clause (5) of clause 5 of this Statement after deducting from the valuation the price payable by the settler for the existing structural improvements and the cost,

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estimated as required by sub-clause (4) of clause 5 of this Statement, of any planned works completed by the settler and of any planned works yet to be completed on that holding, but it shall be a condition of the lease that, on completion of any further planned works, other than those completed by the settler at his own expense, the rental shall be increased by 2½% of the cost of those further planned works after deducting from the cost the price payable by the settler for any structural improvements included in those further planned works.

(4) There may be added to the rent payable under the lease an amount to be agreed upon between the Commonwealth and the State in respect of any State service in connexion with the scheme."

So the rent was to be 2½% of a capital value based on productivity with some prescribed deductions and additions. This seems definite enough. It is to be noted again that the valuation of capital in para. 5 (5) refers to "that part of the total cost" and it seems to follow that the productivity value can never exceed the total cost and that in consequence the rent can never exceed 2½% of the cost or productivity value, whichever is the lower.

Some confirmation can be obtained of this conclusion from a letter received by the petitioner's solicitor in 1954. This letter relates to another settler but as we are dealing with a suposed general code it is permissible to refer to it. The relevant paragraph reads:

"This lease was issued pursuant to the War Service Land Settlement Agreement between the Commonwealth and the State and as you are probably aware, both Governments have agreed that to give settlers the most favourable conditions, rents shall be based on costs or on the productive value of the holdings

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whichever is the lower. Further, to level out anomalies between holdings which would otherwise be unavoidable owing to the widely varying costs where properties of a similar type were purchased and developed at different times, a system of zoning has been agreed upon. The final cost figures for the zone in which section 642 is situated are not yet available as some estates are not completed and it is not known at this stage whether the basis of costs or productivity would provide the lower rental."

I find that the proper method of fixing the rental for the petitioner's land was to assess the value in terms of para. 5 of the recited conditions and to take 2½% of that figure with the adjustments provided therein.

I have no right to substitute myself for the Minister. I cannot make the necessary valuation. cf. *de Smith "Judicial Review of Administrative Action"* 2 ed. 126. The most that I can do is to examine the material before me in order to ascertain whether it leads me to a conclusion that the Minister has or has not acted in the prescribed manner in purporting to fix the petitioner's rental. In doing so I must bear in mind that in the absence of evidence to the contrary all things done are presumed to have been properly done. In its application to this case that rule at least means that I must not assume irregularity, much less bad faith, in the absence of proof. It is not sufficient for me to say that some other valuation might have been made if other alleged facts had been taken into account. I have already held that the petitioner had no legal right to participate in the valuation process. It is the due performance of the process, and not the final figure that must engage my attention. There must however be a final figure which appears to be an assessment of rent arrived at in due compliance with the process. I have already said that the rent of £200 per annum provisionally fixed in 1954 was not such an assessment.

The evidence in this case establishes that Mr. Colquhoun was at all material times the

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officer appointed by the Commonwealth Minister to make valuations of war service land. He had an implied authority, stemming from the office he held, from 1953 and an express appointment from 1960. In fact he made valuations of the land (including the petitioner's land) in Zone 5 in 1963 in consultation with the South Australian Director of Lands. It seems reasonable to assume that the latter officer, the highest

placed public servant in the Department of Lands, had authority from the State Minister. Certainly the South Australian Director of Lands is described in the certificates of valuation as having that authority. The two officers both signed the valuations, which show, in addition to a sufficient description of the land, the value of structural improvements, the capitalized value of land and non-structural improvements, and the rental.

The valuations are dated respectively:

first valuation
12th September, 1962, (State Director)
5th April, 1963 (Commonwealth Director)

second valuation
7th January, 1966 (State Director)
25th January, 1966 (Commonwealth Director)

The petitioner's rental is stated in each to be £481 which is 2½% of the assessed value. Each valuation contains at the foot the following statement:

"In making the valuation, regard has been had to the need for the proceeds of the holding (based on conservative estimates over a long term period of prices and yields for products) being sufficient to provide a reasonable living for the settler after meeting such financial commitments as would be incurred by a settler possessing no capital."

That statement is not quite the same as the requirement in para. 5 (5) of the conditions. The language has been turned around. But, more significantly, the valuation does not state

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the date as at which it is made. I must refer back to the *Gazette* notice pursuant to which the petitioner applied for his land. I have already quoted the footnote to that notice. I quote again

"The said rent and purchase-money will be fixed within a period of 12 months after date of allotment."

This footnote emanated from the State without prior knowledge or concurrence from the Commonwealth. But the Commonwealth deputy director (the valuation officer) knew of it, and I think it is a fair inference that he knew of it soon after the *Gazette* was issued. He gave evidence that

"The factor of allotment is under State legislation and is done entirely by the State authority."

He said that his approval was not required. I think this means that the footnote must be regarded as amounting to an authentic condition relating to the offer by the State of the land. This does not mean that either the rent must be fixed within 12 months or no rent is payable. The case is not like *Cullimore* v. *Lyme Regis Corp.* (1962) 1 Q.B. 718 where failure to determine certain charges within a specified time meant that the charges could never be levied. But it does mean, in my view, that when the rent is fixed it must be fixed as if it had been fixed during the first 12 months. Nothing in either certificate of valuation leads me to think that this requirement was observed, and I do not overlook that the valuations were respectively 9 years and 12 years overdue when made. No ready assumption of relation back is possible. I cannot find expressly that the valuations made were improper. It may be that they are completely just and proper. It is obvious that I cannot adjudge what is a proper rent. But it is not at all clear that the valuations are proper, and I am justified in directing the attention of the Crown to this matter.

There is another feature that seems to me irregular. The notice of fixation of rent given to the petitioner states that the rent is fixed as from 1st May, 1963. The lease presented for his signature says that that rent is payable

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from 1st April, 1954. The first notification is not a competent one: it does not fix the rent in terms of the conditions, for it leaves 9 years rental at large. But it also, to my mind, prevents the statement in the lease from being authoritative. Moreover the statement in the lease merely assumes that a fixation has been made and notified: it is not itself a fixation and in the circumstances not a notification.

I am therefore left quite uncertain whether the rent has ever been properly fixed and I am clear that it has never been properly notified. I do not think I have any power to direct the Minister, or to order an enquiry. What should I do in these circumstances? These proceedings are by way of petition of right and it appears that the judgement ought to be declaratory. (cf. *de Smith* (*sup.*) 496 sqq.; *Dyson* v. *A.G.* (1912) 1 Ch. 158; *Wigg* v. *A.G. for Irish Free State A.C.* (1927) 674). I am anxious not to attempt an unwarranted interference in the administrative process, but at the same time I desire to clarify the petitioner's rights as far as possible. I am entitled to declare as to his rights because the Crown, by its pleading, denies that he has any lease or right to a lease. I think I can as a consequential step draw attention to the duties, and in particular the duty to make a just valuation, which are imposed upon officers of the Crown because of the petitioner's rights. I am not unmindful of the comment of Professor Wade in *Administrative Law* 2 ed. p. 152 that there seems no case in which a declaratory judgment has been used to declare the Crown to be subject to a duty. In the present case the duty is an inevitable consequence of the petitioner's right to a lease. I propose to make declarations as to the petitioner's rights, leaving it to the authorities to act justly in accordance therewith.

I declare:

(*a*) The petitioner is entitled to a lease from the Crown in right of South Australia of section 167 hundred of Bowaka upon and subject to the terms and conditions (other than rent) contained in the lease submitted for his signature.

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(*b*) The petitioner is obliged to pay an annual rental, calculated from 1st

April, 1954. The amount of the annual rental is to be fixed in accordance with the War Service Land Settlement Agreement between the Commonwealth and the State of South Australia dated the 2nd November, 1945, as amended by the conditions annexed to the letter dated 30th July, 1953, from the Commonwealth Minister for the Interior to the State Minister for Lands.

(c) It has not been established on the evidence that the annual rental has been so fixed and in particular it has not been established that any fixation has been made within a period of 12 months after date of allotment, viz., 1st April, 1953, or that any subsequent fixation has been made which would have been a proper fixation if it had been made within that period.

The petitioner has been substantially successful in these proceedings and ought to be paid his costs by the defendant.

The Hon. R. C. DeGARIS: The series of events that I will relate constitutes a classic example of the almost impossible position ordinary people in the community can find themselves in to find a way of gaining redress from a wrong perpetrated by the Crown. Undoubtedly a wrong has been perpetrated by the Crown in this case. In my maiden speech in this Council I devoted my time to two matters: the future of local government in South Australia and the question of the war service land settlement scheme, particularly zone 5, to which this motion refers. In 1963 in my maiden speech I said:

Recently some soldier settlers in zone 5 received their final rentals and at the same time many received their assessments for drainage betterment and maintenance. The settlers are concerned with what appears to be an anomalous position. They called a special meeting at Greenways and a committee was appointed to meet the Minister of Lands. The Minister has now appointed a committee to investigate the position. I have had the privilege of investigating many matters in relation to this problem. I do not intend to deal with the matter at length but will refer to one or two points. Several of the settlers in zone 5 have been on their blocks for 12 years and many of the settlers have been in category 2 for periods of more than 10 years. They have repeatedly asked for their final rentals but were informed that the rentals could not be determined until their drainage commitments were known. They find now that they have to meet a substantial drainage commitment and at the same time an increase in their rental. In most cases the rental is more than 200 per cent above their provisional rental. This virtually means that any equity the settlers have established over 12 years of occupancy has been destroyed.

Some say that the solution to this problem is the appointment of an ombudsman, a proposition to which I can lend no support whatsoever. The facts of this case as they unfold will, I am sure, show the complete futility and impotence of such an appointment. I believe that a second Chamber can fulfil far more effectively the role of a public voice against the sort of tyranny that I will relate to this Council. I have heard the Hon. Sir Arthur Rymill on many occasions speaking on the cost involved to an ordinary person seeking redress against a Crown decision, where the Crown has available to it financial resources and legal advice that no ordinary person can afford.

A case will unfold of about 100 people who for 17 years have sought to right a wrong. In all their negotiations to have this wrong corrected, they have met with obstruction after obstruction on the part of officials. Not once has this group of people, whom I know very well, lost the confidence they have in their rightness and not once have they gone beyond the normal avenues to press their case. In the 17-year period of this dissatisfaction they have never sought emotional publicity. I can imagine what an outcry there would be if a similar set of circumstances occurred to our wellknown public demonstrators. Yet, because it happens to about 100 soldier settlers, the matter is of little consequence!

I point out that the motion is no attack on the present Minister: the matter has been dragging on for 17 years. At the same time, I strongly point out that the present Minister, under instruction from his Cabinet, is the only person now able to correct this anomaly. If the Minister speaks in this debate he may well argue that others before him had the opportunity to correct the matter but did not do so. However, I point out that since the judgment of His Honour Justice Bright was given the Minister's position has been different from that of any other Minister of Lands during the period of this difficulty. I will be making further submissions on this point towards the end of my remarks. I have already quoted my maiden speech in this Council, and before I made it I spent a good deal of time collecting evidence from the settlers. I must admit now that much of the material I collected then was irrelevant, but I did begin to understand the nature of the problem facing this group of settlers.

Later in that year, 1963, the then Minister of Lands, Mr. Bill Quirke, appointed a committee known as the Eastick committee, which

was charged with the responsibility of investigating and reporting to the Minister on this case. The committee comprised Sir Thomas Eastick as chairman and Messrs. Bowden, Rowe, Pearson and Byrne. It went about its job expeditiously, and just before Christmas, 1963, its report was made available to the then Minister of Lands. Later in a document he is quoted by another person as saying that the Eastick committee report was a nation-rocking document. The report still remains unknown to Parliament, except that we know from word of mouth and comment that it is a nation-rocking document.

I ask that the Eastick committee report on the zone 5 soldier settlement be printed as a Parliamentary Paper. I am not asking for all the evidence to be presented, but if the report is available it should be printed as a Parliamentary Paper to allow honourable members in this Council and the other place to understand fully the nature of the problems facing settlers in zone 5.

After the Eastick committee report, the settlers had some hope that their problem may be solved. Some eight months later, nothing had happened, and I invited the then Premier, Sir Thomas Playford, to visit Greenways with me and speak to the settlers. He began the discussion (and I remember this meeting quite well) naturally taking the side of the Crown, but as the story unfolded the correctness of the settlers began to impress him. If my memory serves me correctly, Sir Thomas agreed in principle to budget for a write-off of the State's share of the rent in dispute, if the Commonwealth Government agreed to write off its share. In the original agreement the write-off was agreed to at two-fifths for the State and three-fifths for the Commonwealth. I remember very clearly the advice Sir Thomas Playford gave to the settlers: "Don't go to law, as the cost to you would be astronomical. I, too, have taken the Commonwealth to law and found it difficult and expensive, and I have seldom won".

It is quite obvious that during 1964 Mr. Quirke, as Minister of Lands, negotiated with the Commonwealth because, at that time he was armed with the Eastick report and he was convinced that he would be able to achieve something. He agreed to address settlers on May 20, 1964, but the meeting was cancelled, and I would assume that he would have hoped to have had an answer from the Commonwealth by that time. I can only guess at the reason for the cancellation of the meeting, but I believe that to be a reasonable assumption. The settlers at that stage had waited almost 12 months after the Eastick committee report, and they decided that on the ground of negotiation at the political level they were losing ground, so they took their case to law. Writs were issued in October, 1964. From that point onwards the whole issue became *sub judice,* and from that point the settlers, I believe, became the victims of the subtlety of official obstruction. I am quite convinced that if the truth ever emerges it will show that pressures were brought to frustrate the cause of justice—how and for what reason one can only guess.

Following legal advice, the settlers withdrew the writ and brought a petition of right. One may ask why the writ was withdrawn. This procedure was adopted because of technical objections taken by the Crown to the procedure by way of writ. The settlers were not prepared to take the risk of these objections, but this manoeuvre by the Crown merely delayed a decision on its merits. The petition of right has now been heard, and a declaration was made by His Honour Mr. Justice Bright on September 8, 1970. I sought permission of the Council to have this judgment incorporated in *Hansard* without reading it so that anyone reading this speech will be able to refer back to it. On pages 26 and 27 of the judgment the following appears:

I am therefore left quite uncertain whether the rent has ever been properly fixed and I am clear that it has never been properly notified. I do not think I have any power to direct the Minister, or to order an inquiry. What should I do in these circumstances? These proceedings are by way of petition of right and it appears that the judgment ought to be declaratory. (cf. de Smith (sup.) 496 sqq.; Dyson v A. G. (1912) 1 Ch. 158; Wigg v A. G. for Irish Free State A. C. (1927) 674). I am anxious not to attempt an unwarranted interference in the administrative process, but at the same time I desire to clarify the petitioner's rights as far as possible. I am entitled to declare as to his rights because the Crown, by its pleading, denies that he has any lease or right to a lease. I think I can as a consequential step draw attention to the duties, and in particular the duty to make a just valuation, which are imposed upon officers of the Crown because of the petitioner's rights. I am not unmindful of the comment of Professor Wade in Administrative Law 2 ed. p. 152 that there seems no case in which a declaratory judgment has been used to declare the Crown to be subject

to a duty. In the present case the duty is an inevitable consequence of the petitioner's right to a lease. I propose to make declarations as to the petitioner's rights, leaving it to the authorities to act justly in accordance therewith.

I declare:

(*a*) the petitioner is entitled to a lease from the Crown in right of South Australia of Section 167 Hundred of Bowaka upon and subject to the terms and conditions (other than rent) contained in the lease submitted for his signature.

(*b*) The petitioner is obliged to pay an annual rental, calculated from April 1, 1954. The amount of the annual rental is to be fixed in accordance with the War Service Land Settlement Agreement between the Commonwealth and the State of South Australia dated November 2, 1945, as amended by the conditions annexed to the letter dated July 30, 1953, from the Commonwealth Minister for the Interior to the State Minister of Lands.

(*c*) It has not been established on the evidence that the annual rental has been so fixed and in particular it has not been established that any fixation has been made within a period of 12 months after date of allotment (April 1, 1953) or that any subsequent fixation has been made which would have been a proper fixation if it had been made within that period.

The petitioner has been substantially successful in these proceedings and ought to be paid his costs by the defendant.

There is the declaration. I emphasize that it was made on September 8, 1970, and still it has not been implemented. This group of people has been awaiting justice for 17 years. I know there are many gaps in this argument to be filled but, so far in the remarks I have made, I have recounted the chronological order of events as far as my direct association with this case is concerned.

Let me now go back to 1945, the time of the first agreement between the Commonwealth and South Australia in relation to a scheme called the War Service Land Settlement Scheme. The original agreement between the Commonwealth and South Australia differed from the present agreement in that in the first agreement South Australia acted as the financial agent of the Commonwealth, establishing and administering the scheme on its behalf. On March 13, 1950, there was a letter to Sir Thomas Playford, the Premier of South Australia, from Sir Philip McBride, the Minister for the Interior, dealing with a High Court decision in the case of *Magennis Pty. Ltd.* v. *the Commonwealth*. That letter deals with the fact that there was a need for the agreement between the State and the Commonwealth to be varied because of a judgment given by the High Court in that case. Although I believe the case had no direct bearing on South Australia (a situation arose in New South Wales in relation to the Magennis case) the agreement was varied then by agreement at both Commonwealth and State levels. I should like to read that letter from Sir Philip McBride, acting for the Prime Minister, to the Premier of South Australia, Sir Thomas Playford:

I refer to previous correspondence with regard to the scheme of War Service Land Settlement following on the recent decision of the High Court in the case of *P. J. Magennis Pty. Ltd. v. the Commonwealth*. The adverse decision was in no sense caused by any difference of opinion between the Commonwealth and the States as to the scheme as embodied in the various agreements. In fact, the cause of the invalidation was of relatively small compass, namely, the lack of provision for the payment of just terms in respect of lands to be acquired. My Government is anxious that action should be taken to restore the scheme, with necessary modifications, quickly and effectively.

Representations have been made that the new agreement should also provide for a tenure in fee simple instead of perpetual leasehold, and the Commonwealth is prepared to discuss the question of the most desirable tenure. This, however, should not be allowed to delay the restoration of the scheme on a proper legal basis, and means of providing for this restoration have been considered by my colleague the Minister for the Interior, together with the Commonwealth's legal advisers.

Having regard to the High Court's decision, the Commonwealth wishes to remove the defect which caused the invalidation of the agreement but otherwise to re-affirm the intention to carry out the agreement according to its tenor, with the additional provision that an alternative tenure to perpetual leasehold may be adopted if agreed upon by the Commonwealth and the State. This could be done very simply by a short agreement between the Commonwealth and the State, supported to any necessary extent by Commonwealth and State legislation. As the execution of the original arrangement was authorised by the Commonwealth Parliament, my Government would propose to seek Parliamentary approval for the conclusion of a new agreement. Whether, in the light of the decision of the High Court, it is necessary for any further State legislation is a matter on which you would, no doubt, consult your own legal advisers.

The proposed Commonwealth Act would be limited to two main provisions: one authorising in general terms the making of an agreement with the States for the purposes of War Service Land Settlement, and the other providing for the payment to the States of such financial assistance as the Minister for the

Interior certifies to be necessary for the purposes of the agreement. In the interests of expedition, it is suggested that the new agreement might be along the following lines:

(1) A preamble reciting the signing of the earlier agreement and its invalidation by the High Court and reciting the desire of the parties to ensure the future valid operation of the provisions of the agreement (subject only to the modifications, as specified in the schedule) necessitated by the decision of the High Court, and the additional provision for an alternative form of tenure if agreed upon by the Commonwealth and the State.

(2) The parties agree, as from the date of the new agreement, to carry out and be bound by the provisions of the agreement signed in 1945 subject to the modifications mentioned in paragraph (1).

(3) The provisions referred to shall, as from the date on which the original agreement was expressed to have effect, be deemed to have had full force and effect.

(4) The schedule would consist of the following modifications:

Omit clause 1 (not necessary to include in the agreement).

Amend clause 11 (1) by omitting the words "at a value to be approved by the Commonwealth" and inserting in their stead the words "and in respect of lands compulsorily acquired shall pay full compensation".

For clause 16 (1) substitute the following:

"Holdings will be allotted by the State, on perpetual leasehold tenure provided, however, that the Commonwealth and a State may agree that holdings in that State will be allotted upon a tenure other than perpetual leasehold. The general terms and conditions upon which the holding is allotted shall be such as are approved by the Commonwealth".

If the foregoing general plan commends itself to your Government, it should not be necessary to arrange for the holding of any general conference of State Ministers, although consultations would, of course, be desirable between Commonwealth and State officers.

I am writing in similar terms to the other States and shall be glad to learn as early as practicable the views of your Government on the foregoing.

That is the first letter, dated March 13, 1950, by which the original 1945 agreement between the Commonwealth and the State in respect of this scheme was varied. It may well be argued that in the 1945 agreement South Australia acted as the financial agent of the Commonwealth, establishing and administering the scheme on its behalf; but it can also be argued that even in the 1945 agreement South Australia was a principal. When we go through all the correspondence that took place between the State and the Commonwealth, from the first letter from Sir Philip McBride, we eventually come to the final letter in the series, dated July 13, 1953, and signed by W. S. Kent Hughes. The letter stated:

On October 25, 1952, I forwarded to you a memorandum of the agreed upon conditions under which the Commonwealth would make grants of financial assistance to your State in connection with War Service Land Settlement and followed this at a later date with statements on the valuation of holdings for leasehold purposes and on the determination of the option price for the purchase of the freehold. The memorandum of conditions has been rearranged to incorporate the later statements on valuation and option price and to present the conditions generally in a more orderly sequence without varying the conditions themselves. I now forward signed copy of the amended document for adoption as the arrangement between your State and the Commonwealth and would be pleased to receive advice of your agreement to the acceptance of the conditions set out therein.

I do not think there is any doubt that the State at present is the principal. There may be an argument regarding the 1945 agreement that the State acted as agent for the Commonwealth, but there is no doubt (and this is borne out by the Bright declaration) that in the following agreement the State was the principal. Regarding some of the changes that took place, the first page setting out the conditions to be complied with by the State, I make the point that one of the changes was that the financial assistance from the Commonwealth under the new agreement came under section 96 of the Commonwealth Constitution. In order to qualify for the grant of financial assistance as set out in the statement, the State would operate a scheme of War Service Land Settlement in accordance with the following provisions:

All rent payable to the State under any lease of land under the scheme shall be paid or credited to the Commonwealth, after deduction and retention by the State of the amount mentioned in subclause (4) of clause 7 of this statement . . . When the planned works involved in any holding forming part of the project have been substantially completed, a valuation of the holding shall be made in consultation by officers appointed by the Commonwealth and State for that purpose. The total cost of the land and of the planned works of a project shall be apportioned over the holdings derived from the project. Finally, an application for settlement shall be made to the State. Applications made to the

appropriate State authority under a scheme of war service land settlement administered by any State may, if made within the time limited by subclauses (1) and (2) of this clause, be treated by the State as applications for settlement under the scheme.

I do not think there is any question that in the new agreement, even though there may be some doubt about the first agreement, the State is the principal. Following South Australia's acceptance of the new agreement in 1953 it ceased to act as an agent for the Commonwealth, although the Commonwealth still claimed an interest in the financial arrangements made with settlers by virtue of its agreement with the State. The petitioner to whom the declaration had been made was George Heinrich, of the hundred of Bowaka, about 20 miles south of Kingston, whose case was treated as a test case for all settlers in zone 5. The State in many respects was always a principal in relation to the settlers. For example, it was always contemplated that the State would be a lessor, granting Crown leases under State law.

Strictly speaking, the Magennis case, which caused the difficulty in the 1945 agreement, had no application to the scheme in South Australia because our agreement with the Commonwealth did not, as the New South Wales agreement did, stipulate the value at which lands were to be acquired for the purpose of the scheme. This provision in the New South Wales agreement was held invalid in the Magennis case, because it involved acquisition of land for a Commonwealth purpose (but not by the Commonwealth) on other than just terms and, therefore, contravened section 51 of the Constitution. The Commonwealth therefore altered the financial structure of the scheme in each State by making grants-in-aid to the States under section 96 of the Constitution, so that it became a wholly State scheme, using moneys belonging to the State, and the amended State agreements with the Commonwealth became in effect collateral arrangements for partial reimbursement by the Commonwealth.

I shall quickly go through the details of the Heinrich case against the Director of Lands. In 1948, George Heinrich was classified as a suitable applicant for settlement under the War Service Settlement Scheme. In 1949, the Director advised him that he had been selected and was required to take employment with the Lands Department on the development of a block on a date to be notified. In October, 1950, Mr. Heinrich began full-time employment with the department, and he complied with the order. In March, 1951, the Director of Lands wrote the following letter to Mr. Heinrich:

Referring to your application for land in terms of the War Service Land Settlement Agreement Act, I desire to inform you that on the recommendation of the Land Board the Minister of Lands has approved of your being selected for the allotment of section 167, hundred of Bowaka. At a later date when the required standard has been reached in the development and the construction of improvements the area will be gazetted for allotment to you under perpetual lease conditions in accordance with the provisions of the War Service Land Settlement Agreement Act.

Mr. Heinrich was granted occupation of his holding in 1951. He remained in occupation until March, 1953, when he received the following letter from the Director of Lands:

Referring to the previous advice from this office that you had been selected for the allotment of section 167, hundred of Bowaka, I wish to inform you that this land is now gazetted open to application under perpetual lease conditions in accordance with the provisions of the War Service Land Settlement Agreement Act. A plan and a copy of the *Gazette* notice giving details of the holding have been forwarded to you under separate cover. To enable the allotment to be dealt with the attached formal application must be completed and returned so as to reach this office not later than 3 p.m. on Tuesday, March 24, 1953. The enclosed copy of the *Gazette* notice sets out under the heading "conditions under which war service perpetual leases are allotted" a series of conditions.

On May 7, 1954, the Director of Lands wrote the following letter to Mr. Heinrich:

Referring to previous correspondence regarding the allotment to you of section 167, hundred of Bowaka, under the War Service Land Settlement Act, I desire to inform you that in accordance with the conditions of allotment, the due date for payment of rent and instalments of principal and interest on account of advances, etc., has been fixed at the 1st May in each year. Properties purchased for settlement of ex-servicemen have been zoned according to similarity of the types of country, etc., and until all holdings in the zone in which your holding is included have been allotted and valued in accordance with the war service land settlement agreement, the rental cannot be finally fixed.

However, to enable payments to be made, thus avoiding the accumulation of arrears, the department has fixed a provisional rental and charge for structural improvement. It must be distinctly understood that these charges are only provisional and may be increased or decreased when the rental and charges

are finally fixed. The rent now asked for is at the rate of £200 per annum.

That was the provisional rent fixed. Mr. Heinrich objected to the provisional rental of £200 on the ground that it was too high. There were two ways in which the rent had to be assessed—on the cost of the block or productivity, whichever was the lesser amount. When Mr. Heinrich disagreed to the rental provisionally fixed at £200 he received the following letter from the Director of Lands:

With reference to your letter of the 23rd ultimo regarding the rental for section 167, hundred of Bowaka, held by you under war service perpetual lease 285, I desire to point out that as stated in my letter of the 7th May last, this rent is only provisional and the department is not yet in a position to fix a definite rent and charge for improvements. When the rent is finally fixed, it will be made retrospective and all payments made will be adjusted, but in the meantime, it is not considered necessary to make any alteration in the provisional rent.

One may reasonably assume from those words that £200 would be the ceiling rent. Heinrich and 100 others went on their blocks in 1952 or 1953 and the *Gazette* notice appeared saying that the final rentals would be notified 12 months after the allocation. The provisional rental was fixed at £200, which was 10 per cent above the rentals in the other zones. In continuing this case on the question that it was reasonably expected that the provisional rental would be more than the final rental, one has only to follow through the correspondence and the replies given to the Returned Services League, which took up this matter on behalf of all the settlers. The following article, headed "Reduced Rents at Soldier Settlement", appeared in the *Advertiser* on July 23, 1951:

The present rents charged in soldier settlements were only tentative, and it was hoped to have them reduced, the Lands Director, Mr. A. H. Peters, told the delegates at a meeting of the R.S.L. Land Settlement Committee today. Mr. Peters said present rents were fixed on the basis that they would be in excess of final rentals. Under the Act there was no provision for freeholding of land, the Minister (Mr. Hincks) however, had considered a limited period of not less than 10 years.

The following letter was written by the Director of Lands to the State Secretary of the Returned Services League on September 19, 1951:

I desire to refer to your letter of 29th instant forwarding a resolution under the heading "Review of Rentals" carried at your recent sub-branch conference. The statement attributed to the chairman of the Land Board is not a correct interpretation of what was said during the inspections in May, 1950. At that time it was explained to settlers that, as final figures for costs were not available, the tentative rentals were based on estimated costs of providing and developing the holdings spread over zones. These zones were adopted in order to level out between settlers the varying circumstances and costs associated with purchase and development of estates within the zones. It was further stated that rentals so based on costs would in all probability be lower than rentals based on productivity and that a margin had been provided so that when final cost figures became available the adjustment if any were necessary would be downward. Final cost figures for any zone are not yet available so that it is not practicable to review the rentals at this stage. A review of carrying capacity figures would not serve any useful purpose at present as this is only one of the factors to be considered when permanent rentals are being fixed. All factors involved will be reviewed in due course.

So, one can go on through letter after letter to the Returned Services League from the office of the Minister of Lands and the Director of Lands pointing out that the rentals, although higher than rentals in zones 1, 2 or 3, were only tentative and it was hoped and expected that the final rentals would be lower. The following is the conclusion of a letter dated April 21, 1952, from the office of the Minister of Lands:

In the meantime the settlers are under no disability, as it is not anticipated that the final rent will differ to any extent from the tentative rental.

Sir Thomas Eastick made the following report to the zone 5 sub-branch conference in 1969:

I think that an explanation (on the matter of zone 5) is due. Some years ago when Mr. Quirke was Minister of Lands at a sub-branch conference he announced that he had asked me to become chairman of a committee to deal with the question of zone 5. . . . The Minister told me that the report had been printed and it had been circularized to all members of the Cabinet, who had accepted it in full and that as we were then an agent State it was necessary that this matter should be approved by the Commonwealth Government, who provide, of course, for land settlement, the bulk of the funds.

Even in 1969 Sir Thomas referred to the fact that the State could not do anything about it because the State was acting as an agent for the Commonwealth Government. That has been exposed as not being the correct position. It is exposed in the 1953 agreement and in the declaratory judgment of Mr. Justice Bright; right through these letters the settlers were assured by the Minister of Lands and the Director of

Lands that the tentative rental of £200 a block was the ceiling rental, and I am certain that that was the intention. In 1963 (up to 10, 11 or 12 years after the settlers had taken their blocks) the final rental was fixed at £481 for Mr. Heinrich's block. I shall read a letter sent by the Director of Lands in November, 1963. Remember, the settlers had been on the blocks for 12 years and had contributed much to their development. The letter states:

In a letter from this office of May 7, 1954, you were advised of the provisional charges fixed for your holding pending determination of the final rental and structural improvements charges. I am now directed by the Minister of Lands to inform you that the Commonwealth and State authorities have reached agreement on the final rental and charge for structural improvements at date of allotment. Final rental is £481.0.0 per annum as from May 1, 1963.

This was fixed about 12 years after the settlers went on the blocks. Of course, Mr. Heinrich wrote an indignant reply, as follows:

I have no intention of signing a lease under such conditions and if not given the opportunity to appeal I wish the department to pay me for my equity in the property and see if they can get another settler to take the property over. Could the department please tell me how they have arrived at the rental and how much per sheep acre they have put on the property?

Zoning was adopted, as was stated in the letters I have read to the House, to prevent settlers taking up blocks in the closing stages being adversely affected by high costs. Any examination of costs in zone 5 will demonstrate that the rentals are too high based on a cost basis. I should like honourable members to clearly realize three points that have been dealt with so far: final rentals were to be made 12 months after the allocation of the property (but these 100 people received them up to 12 years after the settler had been on the block); final rentals were to be based on 2½ per cent of cost or productivity, whichever was the lower; and tentative rentals given in 1953 were looked on as being a ceiling rental (and this is borne out by the correspondence between the Director of Lands, the Minister of Lands, and the R.S.L.).

In zones 1, 2, and 3 provisional rentals were based on the carrying capacity of a standard property of 1,200 dry sheep at 3s. a head or thereabouts. This meant a rental of about £180 a year, and this is the basis of the rental system in zones 1, 2, and 3. In 1958, five years after the allocation to Mr. Heinrich, the departmental valuation of his property for freeholding purposes showed a valuation of £11,320. No doubt this valuation included some of the work done by Mr. Heinrich. If one goes back to the criterion that final rentals are based on 2½ per cent of costs, we see that the valuation 5 years after Mr. Heinrich's occupation would have been £284. Yet, in 1963, 10 years after allocation, Mr. Heinrich's final rental is £481.

I quote the case of another gentleman in this area whose council assessment in 1954 was £10,664, yet his final rental is based on a valuation of almost £20,000. This council valuation includes about 200 or 300 acres of work done by the settler himself. A further criterion has to be considered, and that is productivity. In zones 1, 2, and 3 the criterion was about 3s. a dry sheep. If one fixes the final rentals of these properties on that basis of productivity, the settlers must have gone on the blocks with a carrying capacity of 3,000 to 4,000 dry sheep, and this is an absurd figure. No property in this scheme would have a carrying capacity near this figure.

One may well ask how could the figure of £450 or £550 be arrived at. It became clear in the evidence in Heinrich's case that about eight years after allocation of these properties a new figure had to be found to fit a new scale of rental. Previously, it is admitted that 3s. a dry sheep had been taken as the productivity figure to reach a valuation. In zone 5 the figure used was 6s. 6d. a dry sheep. To me as a layman the answer is obvious: somewhere along the line someone decided that he wanted a certain sum and designed a system to get it, and he designed a system eight years after the properties were allocated. When the settlers were issued with the writ they found that there was a compromise being offered to them. I should like permission to have this document included in *Hansard* without my reading it.

Leave granted.

Estate	Lessee	Assessed Dry Sheep Areas	Provisional Rent	Final Rents Based on Production Assessments	Betterment to be Deducted from Rent	Final Rents Adjusted for Betterment (as notified)	Suggested Final Rents Based on Cost or Production Whichever is the Lesser	Betterment to be Deducted from Rent	Suggested Final Rent as Based on Cost or Production Whichever is the Lesser Adjusted for Betterment
Nosworthy Copping..	Snodgrass	1,480	180	481	—	481	212	—	212*
	Martin.....	1,480	180	481	—	481	212	—	212*
Bellinger Copping....	Watson	1,200	180	390	—	390	240	—	240*
	Alford	1,200	180	390	—	390	240	—	240*
Copping	McWaters.....	1,540	220	496	—	496	288	—	288
Cowan	Murch	1,280	200	416	—	416	241	—	241*
	Ashenden	1,290	200	419	—	419	243	—	243*
	Davis.....	1,300	200	423	—	423	245	—	245*
	Simpson	1,405	200	457	—	457	264	—	264*
	Matthews	1,440	200	468	—	468	270	—	270*
	Prance.....	1,470	200	478	—	478	275	—	275*
	Winter.....	1,405	200	457	—	457	264	—	264*
	Beck	1,700	200	553	—	553	317	—	317*
De Garis	Cole.....	1,460	220	475	—	475	298	—	298
	McPhail	1,350	220	439	—	439	276	—	276
	Brown	1,330	220	434	—	434	272	—	272
	Wilson.....	1,210	220	393	—	393	249	—	249
	Richardson.....	1,600	220	520	21	499	325	21	304
	Cordwell	1,440	220	468	—	468	294	—	294
McBride.....	Andrews	1,658	225	539	—	539	288	—	288*
	Gibbs	1,550	200	504	—	504	270	—	270
	O. L. Heinrich	1,390	200	452	—	452	244	—	244
	G. E. Heinrich.....	1,480	200	481	—	481	259	—	259*
	Carter	1,520	200	494	—	494	265	—	265*
	Barnett	1,500	200	488	—	488	262	—	262*
	Westover.....	1,470	200	478	—	478	257	—	257*
Ryan & Bellinger ...	Cunneen	1,250	220	406	22	384	304	22	282
	Portlock	1,200	180	390	19	371	292	19	273*
	Weston	1,220	180	397	19	378	297	19	278*
	Thompson	1,210	200	393	27	366	294	27	267*

Estate	Lessee	Assessed Dry Sheep Areas	Provisional Rent	Final Rents Based on Production Assessments	Betterment to be Deducted from Rent	Final Rents Adjusted for Betterment (as notified)	Suggested Final Rents Based on Cost or Production Whichever is the Lesser	Betterment to be Deducted from Rent	Suggested Final Rent as Based on Cost or Production Whichever is the Lesser. Adjusted for Betterment
Watson	Carman	1,500	250	488	48	440	412	48	364
	Hondow	1,600	250	520	78	442	439	78	361
	Wallis	1,570	250	510	75	435	431	75	356
	Boylan	1,450	250	471	90	381	399	90	309
	Atkinson	1,640	250	553	78	477	449	76	373
	Klingberg	1,400	250	455	81	374	385	81	304
	Seears	1,420	250	462	79	383	391	79	312
Andre	Wyatt	1,560	250	507	12	495	448	12	436
	Hawthorne	1,580	250	514	11	503	453	11	442
	McLean	1,240	220	403	13	390	358	13	345
	Anderson	1,220	220	397	13	384	353	13	340
	Wright	1,200	220	390	38	352	347	38	309
	Oakley	1,430	220	465	—	465	411	—	411
	Peake	1,520	220	494	—	494	436	—	436
	Goldsmith	1,340	220	436	—	436	386	—	386
	Atkins	1,430	220	465	5	460	411	5	406
	Kirkland	1,350	220	439	8	431	389	8	381
Limbert, H.	Hensel	1,420	250	464	—	464	426	—	426
Grieve & Lambert	Stevens	1,260	250	410	—	410	Cost 410 (411)	—	410
	Bourne	1,360	250	442	—	442	442 (443)	—	442
	Hansbery	1,300	250	423	—	423	423 (424)	—	423
	McDowall	1,350	250	439	—	439	439 (440)	—	439
Glen Roy Forest	Bennett	1,670	180	543	—	543	543 (541)	—	543
	Cordon	1,670	180	543	—	543	543 (541)	—	543
	Fitzsimmons	1,685	180	548	—	548	548 (546)	—	548
	Clonan	1,640	180	533	—	533	533 (531)	—	533
	Orchard	1,460	180	475	—	475	475 (474)	—	475
	Werner	1,360	180	442	—	442	442 (443)	—	442
	Willis	1,460	180	475	—	475	475 (474)	—	475
	Walker	1,500	180	488	—	488	488 (487)	—	488

Canunda	Johnston	1,610	250	523	—	523	523 (555)	—	523
	Hamilton	1,600	250	520	—	520	520 (552)	—	520
	O'Brien	1,500	250	488	—	488	488 (518)	—	488
	Scanlon	1,750	250	569	—	569	569 (603)	—	569
	Evans	1,775	250	577	—	577	577 (611)	—	577
	Ellis	1,700	250	553	—	553	553 (586)	—	553
Bott, W. J.	Little	1,780	250	579	24	555	579 (628)	24	555
	Staude	1,765	250	574	23	551	574 (622)	23	551
	Masters	1,740	250	566	31	535	566 (614)	31	535
Lavers	Baldock	1,600	250	520	20	500	520 (572)	20	500
	McEwen	1,640	250	533	19	514	533 (586)	19	514
	Carter	1,240	220	403	—	403	403 (446)	—	403
	White	1,270	220	413	—	413	413 (456)	—	413
McBain	Maughan	1,450	250	471	17	454	471 (544)	17	454
	Treloar	1,270	250	413	10	403	413 (478)	10	403
	Quast	1,300	250	423	11	412	423 (489)	11	412
	Bawde	1,360	250	442	8	434	442 (511)	8	434
	Wachtel	1,340	250	436	20	416	436 (503)	20	416
	Tiller	1,300	250	423	28	395	423 (483)	28	395
	Lomman	1,390	250	452	35	417	452 (522)	35	417
	Hughes	1,340	250	436	34	402	436 (503)	34	402
	Breaker	1,450	250	471	14	457	471 (544)	14	457
	Baker	1,390	250	452	—	452	452 (522)	—	452
	Small	1,380	250	449	—	449	449 (518)	—	449
	Ewer	1,360	250	442	—	442	442 (511)	—	442
	Miegel	1,270	250	413	9	404	413 (478)	9	404
Reedy Creek II	Cooper	1,500	250	487	176	311+	487 (568)	176	311
	Raven	1,400	250	455	26	429+	455 (531)	26	429
	Stewein	1,460	250	475	—	475+	475 (553)	—	475
	Brown	1,540	250	500	173	327+	500 (583)	173	327
	Millard	1,680	250	546	215	331+	546 (654)	215	331
Konreedy	Rabbitt	1,340	250	436	47	389+	436 (509)	47	389
Earthquake Springs	Loxton	†*1,300	†*250	†*423	106	317+	†*423 (494)	106	†*317
LeGoe	Jarred	1,350	250	439	—	439	439 (535)	—	439
Nosworthy	Hewton	1,300	250	423	—	423	423 (516)	—	423
	Phillips	1,260	250	420	—	420	420 (500)	—	420
	Reiger	1,470	250	478	—	478	478 (582)	—	478
Seymour II	Reeve	1,350	250	439	—	439	439 (558)	—	439
	Penny	1,370	250	445	—	445	445 (566)	—	445
	Geering	1,560	250	507	—	507	507 (643)	—	507
	Modistach	1,340	250	436	—	436	436 (554)	—	436
	McKenzie	1,360	250	442	—	442	442 (562)	—	442
	Hitch	1,300	250	423	—	423	423 (537)	—	423

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							Cost		
Seymour II—*continued*	Matheson	1,230	250	400	—	400	400 (509)	—	400
	Cooke	1,420	250	462	—	462	462 (586)	—	462
	Wegner	1,340	250	435	—	435	435 (554)	—	435
	Tuxford	1,280	250	416	—	416	416 (529)	—	416
	Scott	1,450	250	471	—	471	471 (598)	—	471
	Day	1,510	250	491	—	491	491 (622)	—	491
	Carpenter	1,420	250	462	—	462	462 (586)	—	462
	Johnson, R. R.	1,450	250	471	—	471	471 (598)	—	471
	Zadow	1,575	250	512	—	512	512 (649)	—	512
	Johnson, A. C.	1,600	250	520	—	520	520 (659)	—	520
	Flavel	1,550	250	503	—	503	503 (638)	—	503
	Jolly	1,470	250	478	—	478+	478 (606)	—	478
Pendleton	Jenkins	1,305	250	424	—	424+	424 (605)	—	424
	Kostera	†*	†*250	†*536	—	†*536+	390 (512)	—	†*536(+)
	Marshall	1,360	250	442	—	442+	442 (630)	—	442
	Berry	1,340	250	436	—	436+	436 (621)	—	436
	O'Toole	1,200	250	501	—	501+	390 (557)	—	501(+)
	Karger	1,220	250	505	—	505+	396 (566)	—	505(+)
Bryson	Airy	1,260	250	409	—	409+	409 (647)	—	409
						£55,517			£48,805

Rents receivable on basis of 6/6 per D.S.A. are estimated at £55,517
Rents receivable where the lesser of Cost or Production value (6/6) per D.S.A. is applied, would be.... £48,805

Reduction of £6,712

Capital Loss—£268,480.

Explanatory Notes—

* The 20 holdings marked thus were gazetted with the footnote indicating the rents would be fixed within 12 months of allotment. All other holdings were gazetted with a footnote that rents would be fixed as soon as practicable.

†* These holdings not yet allotted or finally assessed (2).

(+) Provision made for the inclusion of part of the holding ex Woodroffe.

+ The fixing of final rents for these holdings has been deferred.

All costs include interest at £1,660 per holding.

Glenroy Forest Holdings—

If the eight holdings in this project had final rents fixed on the Zone III basis as compared with those notified for Zone V the difference would be—

	Zone III	Zone V (notified)
Bennett	240	543
Cordon	240	543
Fitzsimmons	242	548
Clonan	236	533
Willis	210	475
Orchard	210	475
Werner	196	442
Walker	216	488
	1,790	4,047

The difference in rentals is £2,257 which represents a capital loss, if Zone III rentals were adopted, of £90,280.

Alternatively, if the first four were determined on the basis of Zone III and the later four on the Zone V basis the position would be—

	Zone III basis	Zone V basis	
Bennett	240		
Cordon	240		
Fitzsimmons	242		
Clonan	236		
Willis		475	
Orchard		475	
Werner		442	
Walker		488	
	958	1,880	Total £2,838

The difference in rentals if this alternative is adopted, compared with rents already notified is £1,209, representing a capital loss of £48,360.

The Hon. R. C. DeGARIS: In the interrogation a question was asked, "Could the department ascertain the cost of producing each property?" and the answer was "No". Yet the people acting on behalf of the Crown gave to the solicitors representing the settlers a copy of this document, which sets out the costs of producing the properties. I quote one or two cases that I know well. In Mr. Heinrich's case we can read the figures easily. The assessed dry sheep area was 1,480; provisional rent was £200; the final rental based on production was £481; the final rent adjusted for betterment was £481; and the suggested final rent based on cost or production, whichever is the lesser, was £259, about half of the final rental issued to Mr. Heinrich. In this document, which was given to the settlers as a compromise, about 30 per cent of the settlers who are arguing about this were given a considerable reduction, almost back to where they started, in rental, but the remainder have not been changed.

Someone along the line knows the cost of producing these particular blocks. This document refers to the Glen Roy Forest area. The settlers there found themselves saddled once again with this almost trebling of the rentals from the provisional stage. In the argument here they suddenly found that a line had been drawn incorrectly and the forest was shown in zone 3 and not zone 5, so the rental was reduced to probably under half. We have an anomaly in the area of Canunda, which was settled very late. This is still in zone 1, but the rentals are about £500 or £600.

I have been putting views that I hold strongly on this matter. I sum up with some notes on the judgment and the evidence, because from these several points emerge. A proper method of fixing the rental would be to assess the value in terms of paragraph 5 of the Commonwealth-State arrangement and to take 2½ per cent of that figure, with the adjustments provided therein. (This can be found on page 23 of the judgment). Paragraph 5 (5) seems clearly to recite a test of land productivity, that being treated as part of the total cost. (Page 21.)

The third point is that rent was to be 2½ per cent of capital value based on productivity, with some prescribed deductions and additions. This capital value based on productivity is alway to be part of the total cost, with the consequence that productivity value can never exceed the total cost and the further consequence that the rent can never exceed 2½ per cent of the cost or productivity, whichever is the lower. (That can be found on page 22.) The rent must be fixed as at 12 months after allotment, and this does not appear to have been done. The rent was fixed as from May 1, 1963, 10 years after this applicant went on the block. (That is on page 25.)

It is submitted that these principles have not been applied in fixing the rent. The rent was fixed from May 1, 1963, instead of from April 1, 1954. I believe the Commonwealth ignored the terms of the contract requiring rent to be fixed as from 12 months after allotment, contrary to His Honour's findings. The public servant concerned at Commonwealth level did not regard the Commonwealth as being bound by this; that can be found in the evidence.

Zones 1 and 3 were equivalent in productivity to zone 5, and therefore the factor of 3s. or thereabouts should have been approximately the same. It is clear that this factor was applied in determining the provisional rental, that is, the notional carrying capacity of 1200 dry sheep equivalent, which was the base figure, (This is found in the evidence at pages 94 and 95.) The annual value of 3s. 4d. a sheep yields a provisional rent of £200. The State Department has repeatedly said the final rents would not exceed the provisional rents, and I believe it is now for the State to act justly, as the judge said it should, and these statements should be adhered to.

The State has now been established clearly as a principal in this case. Many frustrations have occurred over the years because the State has agreed on many occasions with the settlers' contention. Sir Thomas Playford agreed with it and the Eastick committee report agreed with it, but always we find that the State cannot act because it is the agent of the Commonwealth. It has been established now, beyond any shadow of doubt, that the State is a principal in this case. Although the State is a principal, it has consistently deferred to the Commonwealth. In the Supreme Court recently, in the case before Mr. Justice Bright, not one officer of the State Lands Department gave evidence to support the Crown case; all the Crown witnesses were Commonwealth officers. The disputed rental valuations which His Honour set aside were made by Commonwealth officers. In order to avoid the manifest injustice of fixing rents which were more than double the provisional rents, with retrospective operation for 10 years, the Crown denied there was any agreement for lease in 1954, although in an earlier case involving only State law (Mathews v. South-Eastern Drainage

Board) the State authorities agreed that there was an agreement for lease in 1954.

I believe this somersault by the State authorities was dictated by the Commonwealth. It was said in evidence by Mr. Colquhoun in particular that he thought the State had no right to say in the *Government Gazette* notice in 1953 that the rent would be fixed 12 months after allotment, and he therefore ignored it. I believe he was wrong. His Honour held that the State was bound by this notice. Mr. Colquhoun also said that he ignored the advice of the Eastick committee, set up to advise the State Government. How long is the Commonwealth to be allowed to frustrate the scheme and the settlers by refusing to agree a proper rental with effect from 1954? The State should assert its authority and its determination to implement the judgment, if necessary without Commonwealth concurrence.

The present Minister, I believe, finds it convenient to pass the buck to the Commonwealth because he is not prepared and the Government is not prepared to risk a public row with the Commonwealth (which, in my view, has not a leg to stand on in this matter) with possibly adverse effects on Commonwealth-State relations. The interests and rights of the settlers are being sacrificed to the assumed interests of the State to keep on-side with the Commonwealth, notwithstanding that the settlers have a judgment in their favour.

To me the declaration of His Honour is absolutely clear. The argument now, seeing it has been established that the State is a principal, is between the State and the Commonwealth. The settlers' case should be finished now. They have made their point and they have argued it for 17 years. The judge has given a declaration in their favour, and it has been established beyond doubt that the State is the principal, yet eight months after the judgment the settlers have received no relief. We are still deferring to the Commonwealth, and there is absolutely no reason why the State should do so. The settlers have made their case. The argument now rests between the State and the Commonwealth, and the State should act immediately to correct this situation which has dragged on for 17 years.

The Hon. A. F. KNEEBONE (Minister of Lands): I have listened with interest to the Leader. I am getting used to this sort of thing. We are being told by members opposite that we should do something now that we are in Government that they did not do in the many years they had in which to correct the situation. We heard this the other day with the Building Bill, and we have had it in other things. They have said, "Here is something that will cost the Government something, therefore this Government should do it, although we have refused to do it for so long". The Leader said this situation had been going on for 17 years. We were told that Sir Thomas Playford agreed with the settlers, but he did nothing about it.

The Hon. R. C. DeGaris: I made the point that we are in a different situation now.

The Hon. A. F. KNEEBONE: Yes, because we are in Government! But you agreed with the people before they went to court that something should be done. Why did you not do it?

The Hon. R. C. DeGaris: Everyone thought the State was an agent, but it has been shown clearly now that this is not so.

The Hon. A. F. KNEEBONE: I do not propose to argue across the floor with the Leader. He has had his say and I propose to have mine. I hope to show that some of the things he has said are not according to what I am informed is the true situation.

The motion submitted by the Leader of the Opposition suggests that this Government issue leases to the war service settlers in zone 5 with rentals comparable with the provisional rental fixed in these cases. This matter has been under notice of various Governments, including that of which the Leader was a member, during the past eight to nine years (we say, but the Leader says 17 years, and that will do for me, too) and it is significant that none of the Governments during these years has considered itself able to issue leases under the conditions now suggested. The reasons for this are quite clear when an examination is made of the conditions that were laid down in the schedule to the War Service Land Settlement Agreement Act, 1945, and the subsequent arrangements entered into between the Commonwealth and the State in 1953. I submit that the State Act was not invalidated and therefore remained in force. This followed the opinion given by Sir Edgar Bean and the Crown Solicitor that the High Court case had no effect on the State Act. The proposals put forward by the Commonwealth were substantially the same as the schedule to the State War Service Land Settlement Agreement Act, 1945.

This State, in common with the States of Western Australia and Tasmania, entered into

agreements with the Commonwealth for the purpose of carying out war service land settlement schemes to re-establish exservicemen on the land. It is quite clear that, when one looks at the terms and conditions of the original schedule and of the arrangements, the State must act with the approval of the Commonwealth in administering this scheme. I do not wish to go into great detail on the various matters which were included and which support this contention. I would, however, refer to clause 9 of the schedule to the War Service Land Settlement Agreement Act, which states that all financial matters relating and incidental to the carrying out of the scheme shall be arranged in a manner satisfactory to the Treasurer of the Commonwealth and the Treasurer of the State. Furthermore, clause 6 (6) provides that the valuations shall be made by officers appointed by the Commonwealth and the State in consultation for the purpose of rental fixation. Clause 16 (1) provides that holdings will be allotted by the State on perpetual leasehold tenure. The general terms and conditions shall be such as are approved by the Commonwealth. Clause 16 (2) provides that the rent payable under a lease shall be recommended to the Commonwealth by the officers appointed to make the valuations in terms of clause 6 of this agreement. Clause 16 (7) provides that the lease shall not be transferable except with the consent of the Commonwealth and the State and on such conditions that the Commonwealth and the State agree upon.

The foregoing conditions were repeated in the arrangements laid down by the Commonwealth in 1953 and, in addition, the new arrangements provided that all moneys received by the State from the sale of land and improvements under the scheme or from the disposal of land which was surplus to requirements should be paid to the Commonwealth. All rents payable to the State under any lease of land under the scheme shall be paid to the Commonwealth. I believe that the sections I have quoted clearly demonstrate that this State is acting in concert with the Commonwealth and can act in any of the matters concerned only with the approval and concurrence of the Commonwealth.

To understand the background of this scheme, it is necessary to go back some 18 or 19 years to when the first blocks in zone 5 were allotted. Blocks were allotted in this zone during the year 1952 and the years up to and including 1960. It is true that in the first *Gazette* notices it was stated that rents would be fixed within 12 months after allotment. As things turned out, this was not possible, and later *Gazette* notices stated "as soon as practicable thereafter". The arrangements entered into with the Commonwealth in 1953 provided, formally for the first time, that cost was a factor to be recognized in the fixation of rent. It was not possible under the 1945 agreement, scheduled to Act No. 33 of 1945, to proceed to fix rents taking costs into consideration. In the early years costs were not known and for this reason provisional rents—not tentative rents but provisional rents were fixed—

The Hon. R. C. DeGaris: Do you know the cost now?

The Hon. A. F. KNEEBONE: —to avoid the accumulation of arrears between the settlers and the Government. Originally, final rentals were to be retrospective but as the Commonwealth, at a later stage, indicated that it would not seek retrospective adjustments when final rents were determined, provisional rents were not increased although development costs were increasing considerably from about 1954.

It was not until 1962 that the total cost of zone 5 could be ascertained or reasonably estimated and it was in that year that action was taken to finally determine the rentals that would apply to the blocks allotted in zone 5. Recommendations for rental were submitted to the Commonwealth and these were notified to settlers in May, 1963. Immediately after this notification settlers objected and declined to sign the leases that were forwarded to them. The then Minister of Lands constituted a committee to look into the matter; this committee took evidence from settlers and subsequently reported to the Minister, as the Leader has said. The submissions made by this committee were considered by the Government of the day and subsequently submissions were made to the Commonwealth. Some of the submissions made by the committee which were accepted by the State Government were accepted by the Commonwealth, but those referring to rentals were not approved.

The Hon. R. C. DeGaris: Would you table that document?

The Hon. A. F. KNEEBONE: I will consider doing that. Following the Commonwealth's refusal to accept the State's recommendations regarding rents, the matter was further examined in great detail by State officers and a further proposal was prepared. This proposal, which was discussed with Commonwealth officers, was subsequently accepted by

the South Australian Government and submitted to the Commonwealth. Once again, the Commonwealth declined to accept these submissions and the State was left with no other course of action than to proceed with the rentals determined in May, 1963, in accordance with the arrangements between the Commonwealth and the State. In 1966 rents were renotified to settlers and leases were reissued but in very many cases the settlers concerned refused to sign. At the present time 29 settlers have signed their leases and 73 are still outstanding.

Following the reissue of the leases in 1966, the settlers resorted to legal action and, after much delay, a considerable proportion of which was caused by changes in legal advisers to the settlers and from other causes outside the control of the South Australian Government, the matter was heard in the Supreme Court in the latter part of 1970. On September 8th, 1970, His Honour Mr. Justice Bright gave judgment in the matter. I propose to quote from the judgment, despite the fact that the Leader has asked to have inserted in *Hansard* its full text. Some of the things cited by the Leader, I thought, assisted my case more than they did his.

The Hon. C. R. Story: Whose side are you on?

The Hon. A. F. KNEEBONE: I have great sympathy for the settlers in this matter. Since I have been Minister of Lands, I have attempted to do more than has been done for some time to assist them in approaching the Commonwealth. I do not bow to anybody on that, because I have made every effort to bring the Commonwealth to the table to discuss these problems affecting settlers in the South-East. When the honourable member asks me whose side I am on, I in turn ask him whose side he is on. I am not making a charge here for the purpose of political gain: I am doing it because I think I can assist the settlers in zone 5 by approaching the Commonwealth in the right manner instead of putting forward a motion of this nature for political reasons. The relevant part of the judgment states:

(*a*) the petitioner is entitled to a lease from the Crown in right of South Australia of section 167 hundred of Bowaka upon and subject to the terms and conditions (other than rent) contained in the lease submitted for his signature.

(*b*) The petitioner is obliged to pay an annual rental, calculated from April 1, 1954. The amount of the annual rental is to be fixed in accordance with the War Service Land Settlement Agreement between the Commonwealth and the State of South Australia dated November 2, 1945, as amended by the conditions annexed to the letter dated July 30, 1953, from the Commonwealth Minister for the Interior to the State Minister of Lands.

The Leader said that that was invalid, but he quoted from Justice Bright's judgment. The judgment continues:

(*c*) It has not been established on the evidence that the annual rental has been so fixed and in particular it has not been established that any fixation has been made within a period of 12 months after date of allotment, viz., April 1, 1953, or that any subsequent fixation has been made which would have been a proper fixation if it had been made within that period.

His Honour gave his reasons for reaching the conclusion that settlers were entitled to a lease and stated:

In my view therefore the evidence enables me to find, and I do find, that the petitioner has a right to a lease of which all terms save annual rental are contained in the lease submitted for his signature.

The Hon. R. C. DeGaris: Has that been done?

The Hon. A. F. KNEEBONE: The Leader can make his own judgment on that. Mr. Justice Bright then went on to consider the question of rental and dealt with this matter at some length. In dealing with the question of provisional rent His Honour stated:

I cannot accede to the submission that the original fixation of £200 per annum established the permanent rental. The only reason for saying so seems to be that despite its description as a "provisional" fixation it somehow acquired the status of a final rental from the fact that it was the only rental fixed within 12 months of occupancy as mentioned in the note, already quoted, at the foot of the *Gazette* notice. But if no rent had been fixed, provisionally or otherwise, within that 12 months would the result be that no rent was ever payable? And why should a fixation which was expressly stated not to be the final fixation be nevertheless given a different character from that which it was stated to have? It may be, and I thankfully refrain from concluding upon it, that the petitioner could have taken some proceedings after 12 months to compel or hasten a fixation. But he is not entitled to say that an annual sum is that which it is not. I do not overlook the argument that the length of time during which the £200 rental operated sufficiently demonstrated that this sum was the final fixation despite its original description. But the evidence does not enable me to make such a finding.

And at a later stage His Honour went on to say:

I find that the proper method of fixing the rental for the petitioner's land was to assess the value in terms of paragraph 5 of the recited conditions and to take 2½ per cent of that figure with the adjustments provided therein.

The Hon. R. C. DeGaris: Weren't the rentals supposed to be fixed in 1954?

The Hon. A. F. KNEEBONE: I do not propose to engage in an argument with the Leader across the floor. I listened to him without interjecting. His Honour continued:

I have no right to substitute myself for the Minister. I cannot make the necessary valuation. cf. *de Smith "Judicial Review of Administrative Action" 2 ed.* 126. The most that I can do is to examine the material before me in order to ascertain whether it leads me to a conclusion that the Minister has or has not acted in the prescribed manner in purporting to fix the petitioner's rental. In doing so I must bear in mind that in the absence of evidence to the contrary all things done are presumed to have been properly done. In its application to this case that rule at least means that I must not assume irregularity, much less bad faith, in the absence of proof. It is not sufficient for me to say that some other valuation might have been made if other alleged facts had been taken into account.

I have already held that the petitioner had no legal right to participate in the valuation process. It is the due performance of the process, and not the final figure, that must engage my attention. There must however be a final figure which appears to be an assessment of rent arrived at in due compliance with the process. I have already said that the rent of £200 per annum provisionally fixed in 1954 was not such an assessment.

The evidence in this case establishes that Mr. Colquhoun was at all times the officer appointed by the Commonwealth Minister to make valuations of war service land. He had an implied authority, stemming from the office he held, from 1953 and an express appointment from 1960. In fact he made valuations of the land (including the petitioner's land) in zone 5 in 1963 in consultation with the South Australian Director of Lands. It seems reasonable to assume that the latter officer, the highest placed public servant in the Department of Lands, had authority from the State Minister. Certainly the South Australian Director of Lands is described in the certificates of valuation as having that authority. The two officers both signed the valuations, which show, in addition to a sufficient description of the land, the value of structural improvements, the capitalized value of land and non-structural improvements, and the rental. The valuations are dated respectively: first valuation, September 12, 1962 (State Director), April 5, 1963 (Commonwealth Director); second valuation, January 7, 1966 (State Director), January 25, 1966 (Commonwealth Director).

The petitioner's rental is stated in each to be £481, which is 2½ per cent of the assessed value. Each valuation contains at the foot the following statement:

> In making the valuation, regard has been had to the need for the proceeds of the holding (based on conservative estimates over a long-term period of prices and yields for products) being sufficient to provide a reasonable living for the settler after meeting such financial commitments as would be incurred by a settler possessing no capital.

That statement is not quite the same as the requirement in paragraph 5 (5) of the conditions. The language has been turned around. But, more significantly, the valuation does not state the date as to which it is made. I must refer back to the *Gazette* notice pursuant to which the petitioner applied for his land. I have already quoted the footnote to that notice. I quote again:

> The said rent and purchase-money will be fixed within a period of 12 months after date of allotment.

This footnote emanated from the State without prior knowledge or concurrence from the Commonwealth. But the Commonwealth Deputy Director (the valuation officer) knew of it, and I think it is a fair inference that he knew of it soon after the *Gazette* was issued. He gave evidence that:

> The factor of allotment is under State legislation and is done entirely by the State authority.

He said that his approval was not required. I think this means that the footnote must be regarded as amounting to an authentic condition relating to the offer by the State of the land. This does not mean that either the rent must be fixed within 12 months or no rent is payable. The case is not like *Cullimore v. Lyme Regis Corp.* (1962) 1 G.B. 718 where failure to determine certain charges within a specified time meant that the charges could never be levied. But it does mean, in my view, that when the rent is fixed it must be fixed as if it had been fixed during the first 12 months. Nothing in either certificate of valuation leads me to think that this requirement was observed and I do not overlook that the valuations were respectively 9 years and 12 years overdue when made. No ready assumption of relation back is possible. I cannot find expressly that the valuations made were improper. It may be that they are completely just and proper. It is obvious that I cannot adjudge what is a proper rent. But it is not at all clear that the valuations are proper, and I am justified in directing the attention of the Crown to this matter.

There is another feature that seems to me irregular. The notice of fixation of rent given to the petitioner states that the rent is fixed as from May 1, 1963. The lease presented for his signature says that the rent is payable from April 1, 1954. The first notification is not a competent one: it does not fix the rent in terms of the conditions, for it leaves nine years' rental at large. But it also, to my mind, prevents the statement in the lease from being authoritative. Moreover the statement in the lease merely assumes that a fixation has been made and notified: it is not itself a fixation and in the circumstances not a notification. I

am therefore left quite uncertain whether the rent has ever been properly fixed and I am clear that it has never been properly notified. I do not think I have any power to direct the Minister, or to order an inquiry.

I have not given Mr. Justice Bright's reasons in their entirety but the foregoing are the most important sections which bear upon the question before the Council. Subsequent to receiving the judgment of Mr. Justice Bright I sought advice from my officers and the Government's legal advisers which indicated that the method declared by Mr. Justice Bright to be the proper method of fixing the rental for the petitioner's land had, in fact, been complied with, although the form of certificates issued by the Commonwealth and State officers and produced at the hearing of the case did not appear to His Honour to say so.

It appeared that the State Government should consider issuing fresh certificates which would satisfy the difficulties referred to by Mr. Justice Bright. If this procedure was adopted, the rents would be notified to the settlers concerned in order to comply with the statements in the judgment. In these circumstances the notification would not involve any reduction in the final rentals already communicated, as those rentals had been fixed in accordance with the arrangements between the Commonwealth and State. They had been calculated as if they had been fixed during the first 12 months after the date of allotment.

This opinion did not support the contention of the settlers. The Government, in seeking the Commonwealth's concurrence in any action to be taken, has made further submissions to the Commonwealth and conveyed the settlers' views to it. This submission was made because, as I have earlier pointed out, the rentals must be approved by the Commonwealth and, furthermore, as this is a financial matter it is subject to the approval of the Treasurer of the Commonwealth and the Treasurer of the State.

The Hon. R. C. DeGaris: But not at the present time. That was the point I was making.

The Hon. A. F. KNEEBONE: I have just explained that. I cannot help it if the Leader is talking to other honourable members and not listening to me. Although I submitted this matter to the Commonwealth on November 27, 1970, I have not yet had the courtesy of a reply. I have written and telephoned the Commonwealth Minister and Commonwealth officers on a number of occasions seeking a reply. Some of this action is as late as last week.

Although I sympathize with the settlers in their present predicament I believe I cannot take any action in this matter which would involve the State in a breach of the conditions and arrangements of the War Service Land Settlement Scheme. There is no doubt that this State has acted in partnership with the Commonwealth in this matter and, if it is in breach of the agreement, it could become answerable financially to the Commonwealth for any such breach. In the present case, were this State to agree to the terms of this petition and issue leases with the provisional rents or rents resembling these, the State would incur a liability, should the Commonwealth so decide, in excess of $1,800,000. This is the capitalized difference between the rental already determined and the provisional rental.

I can only suggest that this Council should not approve this motion as, if it does, it would appear to me to be ignoring an Act of this Parliament in the War Service Land Settlement Agreement Act, 1945, without seeking to have it amended in a proper way. The settlers' claim may reveal that other settlers have gained an advantage in rents because development costs in their zones were low, but the increase in costs of development of zone 5 may result in the settlers in that zone being asked to pay an economic rent, not an unrealistic one. The original concession made as to costs was a political decision independent of the terms of the 1945 agreement. It involved the conception that the Governments should not make a profit out of the scheme. Costs in zone 5 being what they are, the rents have been based on productivity, not cost. To give effect to the petition would involve the Government's ignoring its arrangement and making a loss out of the development of zone 5. May I ask the Leader what suggestions he has to make by which the objects of the motion which he has moved might be given effect; that is, without forcing the State Government to break its agreement with the Commonwealth, which breach would involve this State in the payment of $1,800,000. It seems to me that if honourable members on the other side wish to make a contribution to the settlement of this matter they should join with the Government in endeavouring to prevail upon the Commonwealth, as it is obvious that, unless the Commonwealth is prepared to agree to some arrangements other than those notified to date, settlement of this matter to the satisfaction of all parties may not be achieved.

The Hon. A. M. WHYTE secured the adjournment of the debate.

FRUIT FLY (COMPENSATION) BILL (SEATON)

Second reading.

The Hon. T. M. CASEY (Minister of Agriculture): I move:

That this Bill be now read a second time.

This is the second measure of this kind which has come before the Council in this portion of the session. It is in the usual form of measures of this nature and relates to the most recent outbreak of fruit fly, that is, the outbreak in the Seaton area. In substance it provides for compensation for losses sustained by commercial and domestic fruit growers consequent upon the eradication campaign. Clause 2 makes the appropriate provision for compensation. Clause 3 provides for the lodging of claims by August 31, 1971. It is estimated that, from approximately 350 domestic properties attended to, 100 claims will arise and that compensation of the order of $3,000 will be payable in respect of those claims. In addition, a further $1,000 will be necessary to meet certain commercial claims so, in all, the compensation payable under this Bill will be of the order of $4,000.

I draw to the attention of honourable members that this is the second Bill of this nature. It is most unfortunate that we have had two outbreaks of fruit fly in South Australia this season, and I ask honourable members seriously to consider putting the Bill through all stages tonight.

The Hon. C. R. STORY (Midland): I support the second reading of the Bill, which is in conformity with the measure passed a few weeks ago regarding the fruit fly outbreak. As the Minister has said, this Bill is the second of its kind. I reiterate what I have said so often over the years I have been in this Chamber: we are tremendously grateful for the very prompt action taken by a former Director of Agriculture, the late Mr. Strickland, and the manner in which this whole matter of fruit fly was tackled when the pest first appeared. This is something quite unique when we hear what has happened in other capital cities of Australia. It is a great tribute to the officers who tackled the problem in the first place as well as those who have carried on since that time.

I congratulate the Government upon the speed with which compensation Bills are brought down. This is a very important part of public relations, and it is necessary to maintain good public relations to ensure that people co-operate fully with the department. If it gets away, fruit fly is one of the greatest scourges known in Australia.

The Hon. C. M. Hill: How are public relations at St. Peters on this matter?

The Hon. C. R. STORY: Public relations in most places with thinking people are very good indeed. We get the odd person who always wants to not conform, but I think from the number of telephone calls I received from interested commercial growers, urging me to do what I could to persuade the department and the Minister to take very stringent action against people who obstructed the department in the course of its duty, that co-operation in St. Peters and elsewhere is of the usual high order, and I therefore support the measure.

The Hon. H. K. KEMP (Southern): I support the Bill. We should acknowledge the tremendous number of people who, over the years, as private citizens, have reported the detection of fruit fly in the very early stages, making possible the control of outbreaks. I do not think sufficient acknowledgment has been made of this in the past. In nearly every case in recent years there has been no time wasted at all before fruit fly has been brought to the attention of the Government.

In one or two cases recently the first detection has been by the departmental officers themselves as a result of using a very efficient set of equipment that is spread through the suburban area, but over the years the great majority of detections of fruit fly have come from the ordinary citizens of Adelaide who have been warned and who have decided to co-operate. They have given wholehearted co-operation in this difficult task of keeping out of the State this most damaging of all pests in the fruit-growing industry.

I think a commendation is due to the Government for sustaining a policy which has cost a great deal of money, but which has preserved undamaged the fruit industries which are in South Australia irreplaceable and indispensible to our economy. I support the Bill.

Bill read a second time and taken through its remaining stages.

LOTTERY AND GAMING ACT AMENDMENT BILL (TROTTING)

In Committee.

(Continued from March 30. Page 4439.)

Clause 7—"Enactment of Part IIIb of principal Act."

The Hon. L. R. HART: I move:

In new section 31x (11) after "person" first occurring to insert "who is not disqualified from being a member".

I am grateful to the Chief Secretary for allowing me time to prepare two amendments that I have put on file. I said yesterday that I was not satisfied with one or two matters in the Bill, one being the clause setting out the term of appointment for members of the Trotting Control Board to be a period not exceeding 12 months. I was of the opinion yesterday that the term of appointment for members of the board should be longer. However, after conferring with members of the trotting fraternity, I am informed that this is the way they want it. One reason why the term does not exceed 12 months is that certain authorities, named in the Bill, nominate members to the board. They have a meeting each year at which they nominate their representatives. It could happen that a person who was no longer a member of one of those authorities was still a member of the board, a situation that no-one would like to see arise.

The other provision I was not entirely satisfied with is new section 31x (11). Under the present legislation, a member of the board must have certain qualifications before he can be elected. However, under this new subsection, he may authorize to act as his proxy a person who does not possess those qualifications. That position should be remedied. This is a carry-over from the present legislation, which provides that a person may be appointed as a proxy even though he may not possess the necessary qualifications. Neither did the members of the executive need to possess any particular qualifications. I have discussed my amendment with the Chief Secretary, who, I think, is prepared to accept it.

Amendment carried.

The Hon. L. R. HART: I move:

In new section 31x to insert the following new subsection:

"(16) The board shall keep full and proper accounts of all its financial transactions and shall cause those accounts to be audited annually by an auditor appointed by the board".

The need for this amendment occurs in new section 31xc (2), which provides:

The board may appoint auditors and such officers and servants upon such terms and conditions as the board thinks fit and remunerate them out of the funds of the board.

Under that provision, the board is not obliged to appoint an auditor: it can do so at its discretion. That should not be the case. As the board will be handling large sums of other people's money, it is necessary that its annual accounts be audited.

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The Hon. A. J. SHARD (Chief Secretary): I have no objection to the amendment. In effect, it spells out what everyone thought should be done.

Amendment carried.

The Hon. A. M. WHYTE: I should like clarification of new section 31x (9), which provides:

If the chairman is not present at a meeting of the board at which a quorum is present, the members of the board present at that meeting shall elect an acting chairman for the day.

The question arises whether the permanent chairman has different qualifications from those of the other six office-holders. If the Chairman were absent, a temporary Chairman would be elected from the six members who might not have the necessary qualifications. It has been suggested that an independent Chairman should be elected from outside the board in the absence of the Chairman. However, this may not be necessary, because the Chairman is appointed only for the day. A different Chairman could be elected each day. In the event of the first appointed Chairman suffering illness that caused his absence from board meetings, it would be the Minister's prerogative to appoint another Chairman. Can the Chief Secretary say what would happen if the proxy Chairman appointed from the six members did not qualify under the requirements for a Chairman?

The Hon. A. J. SHARD: The Chairman of the board is also a board member and is appointed by the Minister of the day. Under the Hon. Mr. Hart's amendment, a board member must possess the necessary qualifications. It is possible that on a given day the members themselves could appoint one of the six members to act as Chairman for that day. If the Chairman were ill for any length of time, he or the Minister should appoint a person with the necessary qualifications to act as Chairman. The Minister of the day should see that that was done, as it would be the common-sense approach to the problem.

The Hon. A. M. WHYTE: I am happy to hear the Chief Secretary's explanation, which is what I had hoped it would be. I am satisfied that he would act in the best possible way to ensure that the legislation worked smoothly and in the best interests of the industry. As his explanation will be recorded in *Hansard*, there is no need for me to take the matter any further.

Clause passed.

Clause 8 and titled passed.

Bill read a third time and passed.

WORKMEN'S COMPENSATION BILL

Received from the House of Assembly and read a first time.

The Hon. A. F. KNEEBONE (Minister of Lands): I move:

That this Bill be now read a second time.

Every year more than 50,000 workers in industry and commerce in South Australia suffer an accident at work that results in a claim being made under the Workmen's Compensation Act. Many of these accidents do not result in absence from work, although first-aid or medical attention is needed, but it is an unfortunate fact that every year in South Australia at least 10 persons are killed at work and about 10,000 workers suffer accidents which result in their being absent from employment for a week or more. In the last 10 years educational activities of various types have been developed, both by the Department of Labour and Industry and voluntary bodies such as the National Safety Council of Australia (S.A. Division), in an effort to reduce the number of industrial accidents. It is clear that this educational campaign is having some effect because in the last five years the number of claims made under the Workmen's Compensation Act increased by less than 5 per cent although there was an increase of 16.5 per cent in the work force in the same period. Even more significantly, the number of accidents at work which resulted in loss of time from work of a week or more fell from 11,800 in the year ended June 30, 1965, to 9,800 in the year ended June 30 last, which represents a fall of 17.5 per cent in the five years, during which the number of people at work increased by 16.5 per cent.

Because accidents at work will never be completely eliminated, it is necessary that adequate measures be taken to ensure that an injured workman and his family do not suffer severe financial embarrassment as a result of such injuries. In his policy speech given before last year's election, the Premier indicated that the Australian Labor Party would modernize the Workmen's Compensation Act. Among the matters which the Premier specifically mentioned were increases in the present amount of weekly payments, action to ensure that payments to a workman when absent on compensation cannot be terminated until the claim had been settled, and a simplification and shortening of procedures to enforce compensation rights. The present Workmen's Compensation Act was passed in 1932 and in nearly 40 years of operation it has been amended by no fewer than 19 amending Acts. It can best be described as a patchwork quilt. It is not legislation of which we can be proud, as during most of the time it has been in operation the Governments of the day were not noted for their generosity to the working men and women of this State, whose labours have resulted in such significant industrial development. It can readily be seen from the date of the original Act that it was passed in the midst of the depression of the 1930's. Conditions have changed so much since those days that the Government considers that, rather than trying substantially to amend the present law, it is preferable for the present Workmen's Compensation Act to be repealed and for a completely new Act to be enacted. This Bill is such a measure.

It will be appreciated that the drafting of a Bill of this magnitude has taken some months. About the middle of last month, when the draft of this Bill was completed, the New South Wales Government released a report of an inquiry which had been conducted by the Chairman of the Workers' Compensation Commission of New South Wales into the feasibility of establishing a scheme for the rehabilitation of injured workers in New South Wales. It has obviously been impossible since then to give a great deal of attention to the 129 page report, which includes a number of matters that I consider should be carefully considered in this State, even though the inquiry was conducted in New South Wales. For many years any attention given to the plight of injured workmen was centred around compensating him for injuries which he received at work. This is clearly the wrong approach, as the main emphasis should be on taking steps to prevent accidents, which the Government and some employers are doing but to which many employers have not directed much attention. If accidents do occur the second step should be to do all that is possible to rehabilitate injured workers to enable them to return to work at the earliest possible date, even if for a time they are unable to perform all of the work that they previously undertook. The purpose of workmen's compensation legislation should be to ensure that workmen do not suffer financially because they have been injured in the course of employment, and so are unable to earn a living or, if injured seriously, suffer permanent disablement.

This Bill makes a number of significant changes to the present legislation. The amounts of weekly compensation payable to

workmen during disablement are increased, as are the lump sum payments for death and injuries which cause permanent disablement. I will refer to these matters in detail when explaining the clauses concerned. A new requirement is that the payments of weekly amounts of compensation must be commenced as soon as practicable after the injury occurs, but in every case such payment must be commenced not later than two weeks after the injury. This will overcome the delays which have occurred in the past in commencing payments, so that in many cases injured workmen have not had any income at a time when their need was greater than normal.

That the Bill provides for the Industrial Court to determine questions or disputes regarding the payment of, or liability to pay, compensation should come as no surprise, as this view was forcibly expressed in 1969 during the debate in this Council on a Workmen's Compensation Act Amendment Bill. The Government proposes to appoint an extra Judge to the Industrial Court to handle workmen's compensation matters, the procedure in respect of which I will explain in detail when dealing with the sections of the Bill concerned. It will be seen from an examination of those sections that the intention of the Bill is to have a comparatively simple system whereby workmen can claim compensation and can have their claims dealt with expeditiously and with the least amount of technicality.

In view of the nature of the Bill it is appropriate that detailed explanations should be given in connection with a number of its provisions instead of dealing with matters generally. Thus, to consider the Bill in some detail: clauses 1 to 3 are formal, and clauses 4 to 7 set out the necessary transitional provisions. Clause 8 sets out the definitions necessary for the purposes of the Act; the most significant of these are the definitions of "disease" and "injury".

Clause 9 sets out the basic right to compensation under this Bill and in broad terms is similar to that contained in section 4 of the present Act. Clause 10 is a new provision taken from the corresponding law of New South Wales and has the effect of clarifying a particular aspect of the "scope of employment". It seems unreasonable that a workman should run the risk of being deprived of his compensation in the circumstances set out in that clause. Clause 11 is a new provision and arises from a fairly recent decision on a claim for compensation in *re Pretty*. This provision, which is along the lines of comparable provisions in other States, provides for compensation for a workman injured outside the State in cases where it can be shown that the employment has a substantial connection with this State.

Clause 12 in terms follows the substance of section 9 of the present Act. However, the provision for the giving of an indemnity by the hirer of a workman to the true employer of the workman has been omitted. The effect of this provision was to expose the hirer of the workman to a somewhat unforeseen and unexpected liability. Clause 13 is in terms the same as section 10 of the present Act, except that section 10 (3) has been omitted, since the effect of this subsection was to impose an unnecessary limitation on the scope of the provision.

Clauses 14 to 17 respectively re-enact sections 11 to 13 of the present Act. Clause 18 re-enacts the substance of section 14 of the present Act taking into account provisions of section 292 of the Companies Act, 1962, which differs somewhat from the provisions of the repealed 1934 Companies Act. Clause 19 follows the principles set out in section 15 of the repealed Act. Clause 20 follows the principles expressed in section 8 of the present Act but has been subject to some drafting modifications.

Clauses 21 to 25 constitute Division I of Part III of the Bill and vest jurisdiction over claims under this Act in the Industrial Court of South Australia. Formerly, this jurisdiction was vested in the Local Court. Provision is made, at clause 23, for assistance to be provided, if necessary, by Judges of the Local Court. Division II of Part III of the Bill deals with matters of procedure generally. Clause 26 provides for the giving of notice. Clause 27 excuses in certain circumstances a failure by the workman to give notice as required in clause 25. Clauses 28 and 29 in substance reproduce the provisions of sections 32, 33 and 34 of the present Act.

Clause 30 re-enacts section 34a of the present Act, and clause 31 does the same for section 35 of that Act. Clause 32 re-enacts in a somewhat expanded form section 33a of the present Act as subclause (1). It provides that a report shall be made of every medical examination made of a workman under the Bill and that a copy of the report shall be given to the workman. Clause 33 is a new provision and, in effect, provides that copies of all statements made by a workman that have been

reduced to writing shall be supplied to the workman.

Clause 34 is again a new provision and provides for a right of inspection by representatives of the workman of plant or premises where an injury has occurred. Clauses 35 to 38 which comprise Division III of Part II of the Bill relate to agreements for the payment of lump sums by way of compensation. It is intended that these provisions will assist in the speedy resolution of claims for compensation where the substance of the matter is not in dispute. Clause 38 corresponds to section 58a of the present Act.

Clauses 39 to 43, which comprise Division IV of Part II, provide for the resolution of disputed claims. Provision is made for a relatively informal hearing by the use of the "summary list" procedure or at the request of either party for a formal hearing. Clause 41, which limits costs in the proceeding, re-enacts section 58 of the present Act. The provisions of this Division of the Bill are based on corresponding provisions in Victoria and are intended to provide the means for the speedy settlement of disputed claims. Clauses 42 and 43 re-enact sections 59 and 60 of the present Act. Division V of Part II, being clauses 44 to 48, sets out the system of appeals from decisions of the Industrial Court.

Clause 49 is in terms similar to section 16 of the present Act and sets out the lump sum payments to be made when a workman dies leaving dependants. However, compensation for death has been increased from the total of the previous four years' earnings to the total of the previous six years' earnings, with an upper limit of $15,000 and a minimum payment of $5,000. The payment for a dependent child has been increased from $210 to $300. Clause 50, which relates to compensation for the death of a workman without dependants, re-enacts section 17 of the present Act. The funeral expenses have been increased to $300.

Clause 51 relates to compensation for incapacity for work and corresponds to section 18 of the present Act. However, in relation to the levels of compensation payable there have been some significant changes. Weekly payments have been increased from three-quarters of average weekly earnings to 85 per cent of those earnings. The class of persons having the status of a member of the family of the workman has been extended; it is defined in clause 7 of the Bill and the allowances payable in respect of dependent members of the family have been increased. The maximum weekly payment has been increased from $40 a week to a more realistic amount of $65 a week. The maximum liability of the employer has been fixed at $12,000, except in the case of total permanent incapacity for work, in which case the maximum liability is $15,000.

Clauses 52 and 53 are new provisions and provide for weekly payments to continue throughout incapacity and to ensure that weekly payments are commenced as quickly as possible after incapacity has been established. Clause 54 deals with payments for holidays occurring during a period of absence on weekly payments. Clause 55 is intended to protect an employer who makes a weekly payment in accordance with clause 53 by providing that the making of a weekly payment shall not of itself constitute an admission of liability.

Clause 56 re-enacts section 31 of the present Act. Clauses 57 and 58 respectively re-enact sections 36 and 37 of the present Act. Clause 59 re-enacts the substance of section 18a of the present Act. However, payments under this provision are now provided for loss or damage of tools of trade associated with an injury. The clause provides that rehabilitation services and constant attendance services are to be paid for as well as medical and hospital expenses. Clause 60 follows closely section 20 of the present Act. Clauses 61, 62, 63 and 64 respectively re-enact sections 22, 21, 23 and 24 of the present Act.

Clause 65 is a new provision and is intended to provide that absences on compensation will count as service for the purposes of the accumulation of annual and sick leave. Clause 66 makes the similar provision, as far as is within the constitutional competence of this Parliament, in relation to employees under Commonwealth awards. Clause 67 is based on section 24a of the present Act but throws the onus on the employer to provide suitable alternative employment that is within the workman's capacity.

Clause 68 re-enacts section 25 of the present Act. Clause 69 substantially follows section 26 of the present Act in that it provides fixed rates of compensation for what are commonly known as "table injuries" since they appear in the table to that section. The present maximum amount of compensation of $9,000 has been increased here to $12,000 and some new injuries have been included in the table. Subclause (6) makes it clear that, in determining the degree of loss of the full efficient use of a member or faculty mentioned in the table, no regard shall be had to the

extent to which that loss may be reduced by the use of artificial aids.

Clause 70 is a new provision and provides for the application of the "table injuries" principle to injuries that may not necessarily involve incapacity for work. In the application of this clause the court will have the capacity to fix an appropriate lump sum as compensation for a wide variety of injuries. Clause 71 re-enacts section 27 of the present Act. Clause 72 reproduces section 28 of the present Act with modifications, except that an application for redemption of weekly payments or other compensation may, under the proposed provision, be made before weekly payments have continued for six months. In subclause (2) the increase of total liability to $15,000 has been recognized in cases of assumed total incapacity.

Clause 73 is again a new provision and will enable the court to allow for the natural deterioration in hearing due to old age in claims relating to noise-induced hearing loss. Clause 74 is also a new provision and is intended to ensure that full compensation is available under this Bill for noise-induced hearing loss in respect of which no claim has previously been made, even though some of the loss may have occurred before the commencement of the Act proposed by this Bill. Part V (clauses 75 to 81), which deals with payment and investment of compensation, substantially reproduces Part IV of the present Act. Clause 82 re-enacts section 69 of the present Act and deals with claims for damages made independently of this Act. Clause 83 substantially re-enacts section 70 of the present Act with an additional provision contained in subclause (2). This clause applies the principles expressed in subclause (1) to the case where although damages would have been obtained they would have been less than the appropriate compensation payment under this Act.

Clause 84 re-enacts section 71 of the present Act. However it is made clear in paragraph (*d*) that the indemnity that the employer has at present against a third party is enforceable by action. Clause 85 substantially reproduces section 72 of the present Act. Clause 86 follows section 73 of the present Act in that it forbids the practice of "contracting out". In the present Act this provision was subject to an exception in favour of compensation schemes supervised by the Public Actuary. In fact, for many years no such schemes have existed nor in the present or future circumstances are any likely to be established. Accordingly, such schemes are not provided for in the Bill.

Part VII (clauses 87 to 89), which deals with the application of the measure to special classes of persons, closely follows the provisions of Part VIII of the present Act. Part VIII (clauses 90 to 96), which deals with certain industrial diseases is based on Part IX of the present Act with some modifications. Clause 90 fixes the last employer in the "disease-causing employment" with the primary liability for compensation, but at subclause (2) permits that employer to seek a contribution from any employer who employed the workman within the preceding 10 years in employment of the same nature. Clause 91 requires the workman to provide details of his previous employers, and is similar to section 83 of the present Act.

Clauses 92 and 93 respectively re-enact sections 86 and 87 of the present Act. Clause 94 refers to the traditional scheduled diseases and processes which are to be found in the second schedule to the Bill. Two new diseases have been added to the schedule, namely, "asbestosis" and "noise-induced hearing loss"; a common manifestation of the latter is "boiler-makers deafness". Clauses 95 and 96 respectively re-enact sections 91 and 94 of the present Act. Part IX and Part X deal with "Silicosis" and "Industrial Diseases Contracted at Port Pirie" respectively and re-enact the corresponding provisions of the present Act. Clauses 120, 121 and 122 respectively re-enact sections 105, 106 and 107 of the present Act.

Clause 123 provides for certain information to be given to a workman in relation to the identity of his employer. A new provision has been included as subclause (2) of clause 124, which reproduces section 108 of the repealed Act to protect the workman against a default by the insurer on the ground that, if some breach of the policy of insurance has been committed by the employer of the workman, there is, of course, a right of indemnity by the insurer against the employer in this case. Clause 125 reproduces section 109 of the repealed Act. Clause 126 provides, in effect, that orders for the payment of money by the Industrial Court shall be enforced by and as orders of the Local Court. Clause 127 is a general regulation-making power with a particular power to require periodical returns for statistical purposes from insurers and employers, together with a power to prescribe rates of premiums for policies of insurance

and for the appointment of an advisory committee to advise on these.

Clause 128 provides for the duties under this Act of inspectors, appointed under the Industrial Code. Clause 129 provides for information as to insurance cover, etc., to be provided by an employer to his workman, and clause 130 corresponds to section 111 of the present Act. Clause 131 provides appropriate rule-making power for the Industrial Court. Clause 132 which exempts agreements, etc., from stamp duty follows section 113 of the present Act, and clause 133 provides for summary procedures in relation to offences under the Act. The first schedule sets out the titles of the Acts and portions of Acts repealed. The second schedule sets out the diseases and processes mentioned in connection with clause 94.

The Hon. F. J. POTTER secured the adjournment of the debate.

ADJOURNMENT

At 11.10 p.m. the Council adjourned until Thursday, April 1, at 2.15 p.m.