1923.
(SECOND SESSION.)

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

REPORT

OF THE

ROYAL COMMISSION ON TAXATION.

FOURTH REPORT.

Presented by Command; ordered to be printed, 13th June, 1923.

[*Cost of Paper*:—Preparation not given; 845 copies; approximate cost of printing and publishing, £44.]

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.

No. 15.—F.12011.—PRICE 1s. 6D.

CONTENTS.

The numbering of the pages and paragraphs continue the numbering of the First, Second, and Third Reports.

COMMONWEALTH OF AUSTRALIA.

FOURTH REPORT OF THE COMMISSIONERS.

To His Excellency the Right Honorable HENRY WILLIAM, BARON FORSTER, *a Member of His Majesty's Most Honorable Privy Council, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor-General and Commander-in-Chief of the Commonwealth of Australia.*

MAY IT PLEASE YOUR EXCELLENCY:

We, the Commissioners appointed by Royal Letters Patent to inquire into and report upon the incidence of Commonwealth taxation, and into and upon any amendments which are necessary or desirable with a view to placing the system of taxation upon a sound and equitable basis, having regard generally to the public interest, and particularly to—

(1) The equitable distribution of the burdens of taxation;
(2) The harmonization of Commonwealth and State taxation;
(3) The giving to primary producers of special consideration as regards the assessment of Income Tax, particularly in relation to losses resulting from adverse weather conditions; and
(4) The simplification of the duties of taxpayers in relation to returns and in relation to objections and appeals,

have the honour, in continuation of our First, Second, and Third Reports, dated respectively 27th October, 1921, 13th April, 1922, and 21st July, 1922, to report hereunder upon the following subjects coming within the Terms of Reference:—

(19) Land taxation;
(20) Relation of present Report to previous Recommendation with regard to harmonization;
(21) Suggested elimination of "Secondary Taxpayer";
(22) Should rates be progressive or proportional;
(23) Taxation of Crown leaseholds;
(24) Should there be differentiation in taxation between urban and rural lands.
(25) Definitions as to Value.
(26) Establishment of Land Valuation Bureau.
(27) Board of Appeal.
(28) Relief Board.
(29) Office Orders.
(30) Comments on various Sections of the Commonwealth Land Tax Assessment Act.
31) Midland Railway Company of Western Australia.

SECTION XIX.

LAND TAXATION.

607. Some witnesses who appeared before us favoured the abolition of all other forms of taxation in favour of the imposition of a Single (Land) Tax. Others, while conceding the reasonableness of Land Taxation either by the Commonwealth or by the States—some favouring one course and some the other—held that it is economically unsound and politically inexpedient for both Taxing Authorities to levy concurrently a tax upon land. There were others again who failed to see any justification, under normal conditions, for the imposition of Land Taxation by either Commonwealth or States.

608. A witness representing the United Graziers Association of Queensland challenged the continuance of Land Taxation in Australia on three specific grounds, viz. :—

(1) That the tax is economically unsound, in that it singles out one form of wealth for taxation, while other forms of wealth are free from any such burden ;
(2) That Land Taxation ignores the principle of ability to pay ;
(3) That land is held in Australia mainly as a means of livelihood, and therefore corresponds with the tools of trade of a workman.

609. On the other hand, the advocates of Land Taxation with equal conviction and definiteness advance reasons in justification of the tax.

Such reasons were stated by the Right Hon. W. A. Watt, P.C. (then State Treasurer), who, in moving the second reading of the Victorian Land Tax Assessment Bill in 1909, quoted with approval the following remarks of Mr. Ure, then Lord Advocate of Scotland :—

> " First, I would say that land differs from all other forms of property in this, that its existence is not due to its owner ; secondly, it is limited in quantity ; thirdly, it is absolutely essential to existence and production; and, fourthly, it owes its value exclusively to the presence of the market created by the activity of the community."

In addition to the essential difference, thus concisely expressed, between land and all other forms of property, which is commonly regarded as warranting an impost upon it, further justification for taxation of land is found in the protection which the State affords to ownership, and in the fact that the increment in land values is always largely due and often wholly due to the activities of the community and not to the special exertions of the land-owner.

610. Whatever estimate may be formed as to the relative weight of these conflicting opinions, we have felt constrained to view the position from a practical rather than from a theoretical point of view. The Land Tax is with us. If the taxation of land were abandoned, the present revenue necessities of Australia could not be met without the imposition of other forms of taxation which might be open to greater objections and involve difficult and undesirable financial readjustments, both private and public. Our study of the general position confirms us in the opinions expressed in our recommendations respecting the harmonization of Commonwealth and State Taxation. It is our unaltered conviction that in the adoption of those recommendations lies the solution of the difficulties of the present complex and dual systems of Land Taxation.

> *Note.*—It is to be noted that in this paragraph and in paragraphs 631, 632 and 660 (1) the expressions of continued adherence to recommendations already made in the section of our Second Report on the subject of Harmonization of Commonwealth and State Taxation (paragraphs 249 and 250) are to be read in the case of Mr. Commissioner Jolly as referring to the recommendations made by him in his reservation. (See Second Report, paragraph 256.)

611. **Commonwealth Land Tax—Twofold Object.**—The passing of the Commonwealth Land Tax Assessment Act in November, 1910, marked the entry of the Federal Parliament into the field of direct taxation. Reference to the debates in Parliament on the Bill appear to justify the conclusion that the Government, in introducing the measure, had a twofold object in view, viz., the breaking up of large estates and the raising of revenue.

612. The then Prime Minister (Right Hon. Andrew Fisher, P.C.), in the course of his second-reading speech on the Bill in August, 1910, said—

> " Unimproved value taxation is a sound principle, and, while the incidence will tend to break up large estates and help to develop the country from an economic point of view without any other embarrassing conditions, it is a proper kind of taxation for the purpose of raising Commonwealth revenue."

On the ground that the Bill was one which, though nominally a taxation measure, was in reality one of Land Settlement policy, its constitutionality was questioned during the debate in Parliament.

613. In 1911 the validity of the law was challenged before the High Court in what is known as the Osborne case. Two of the various grounds of objection taken to the *Land Tax Assessment Act* 1910 and the *Land Tax Act* 1910 were—

(2) That the Acts are not in substance an exercise of the taxing powers of the Commonwealth, but an attempt to regulate the holding of land in the Commonwealth, which, it is contended, is *extra vires* the Parliament; and

(3) That the Acts, either together or separately, are in contravention of Section 55 of the Constitution.

The Court unanimously held that the Act as a whole was valid.

Griffith, *C.J.*, in the course of his Judgment, remarked :—

" In support of the second objection—that is, that the Acts are not in substance an exercise of the power of taxation—it is contended that the real purpose of the so-called taxation is not so much to raise revenue as to prevent the holding of large quantities of land by a single person. There is no doubt that that may be the consequence of the imposition of a progressive Land Tax, and it may well be that that indirect consequence was contemplated and desired by the Legislature. But, as was pointed out by this Court in R. *v.* Barger, although it is a frequent result of taxation to bring about indirect consequences which could not practically or could not so easily be brought about by other means, yet the circumstance that taxation has such a result is irrelevant to the question of the competence to impose the tax. In my opinion, these Acts are, in substance as well as in form, Acts imposing taxation, although there may be some provisions which may be open to objection upon other grounds. That objection therefore fails."

614. **Official Explanation of the Policy of the Federal Land Tax Acts.**—The Dominions Royal Commission (which in the course of its inquiry sat in Melbourne in 1913), before leaving England received evidence in which the policy of the Federal Land Tax Acts was attacked. The late Mr. G. A. McKay, then Federal Commissioner of Land Tax, submitted a memorandum to the Commission in Melbourne which purported to set out the reasons that actuated Parliament in passing the measure into law, and criticised certain suggestions made for the amendment of the Acts by English witnesses.

615. In the course of his memorandum, Mr. McKay stated :—

" Admittedly, the graduation method deals more severely with the owner of the largest landed estates. The reason for the discrimination against him is twofold. There is the primary object of securing from those deemed best able to bear the impost the revenue needed to meet the growing financial necessities of the Commonwealth in connexion with defence and social betterment schemes. A secondary, but very important object is to facilitate settlement. It is considered to be opposed to the best interests of Australia to permit large aggregations of land in the hands of a few, that are fit for occupation by the many. The expectation of the authors of the Act was that those subject to the largest tax would be induced to escape the burden by disposing of their lands. In the three years the tax has been in operation, over £20,000,000* worth of land (unimproved value) has passed into the hands of persons who are not taxable under the Federal law.

" The principle of graduation in taxation is not new. It has long been applied, and with much greater severity, in connexion with Probate Duties. The basic reason is social rather than economic. The view is held by the present dominant party in Federal politics that the ownership of land in very large estates is opposed to the best interests of the Commonwealth. The scheme of taxation was therefore designed to give the large land-owner the alternative of surrendering part of his large estate or paying more heavily for the privilege of holding it.

" The reasons for the higher rate applicable to the land of absentees are broadly that the revenues earned in Australia are sent out of Australia, though, in common with other property in Australia, the land of absentees benefits by public expenditure, and is protected by the machinery of Australian Law. Also in certain instances the land is held without adequate development while participating in unearned increment due to the efforts or enterprise of other persons and of the Governments of Australia.

" It should, however, be remembered that no company or joint ownership or trustee, as such, can be dealt with as an absentee.†

" I have already mentioned that over £20,000,000 worth of land (unimproved value) has passed out of the field of Federal land taxation since the inception of the Act. The whole of these alienations cannot reasonably be claimed as evidencing the increased settlement of lands.

* Later information shows that up to 30th June, 1919, the amount is approximately £77,250,000.

† For Recommendation of the Commission with regard to Absentee Companies, see para. 733.

" Many families have subdivided their joint interests so as to secure the advantage of lower rate of tax and separate deduction for the individual share. In these cases the total ownership remains virtually the same.

" Other joint ownerships, such as partnerships, &c., have followed a similar course for similar reasons. The Federal law permits the joint working of land without aggregating the interests for taxation purposes, excepting in the cases where the land is an asset of the partnership.

" Some absentees sold their Australian lands in the fear that the tax would seriously lower their income and that they might be subject to the penalties in the law provided for default.

" Some land-owners, whose holdings were heavily mortgaged and whose income provided little or no margin over their interest charges, were unable to pay the tax, and got rid of their holdings.

" In many cases, however, in anticipation of the tax, and during the period it has been in operation, land has passed from the large to the smaller ownership by ordinary processes of sale.

" In some notable cases, the tenants in large estates were permitted by the owners to purchase on favorable terms. The rate of sale has diminished since the inception of the tax. In the first year of the tax £11,500,000 worth of land (unimproved value) passed out of the taxable field. In the second year the amount receded to £9,000,000, and for the first nine months of the third year to £2,000,000, or an estimated total of £3,500,000 for the whole year.

" The reduction, in my opinion, has been caused by—

(1) The passing out of the taxable field of those who feared the incidence of the tax, such as many absentees ;

(2) The completion of the schemes of apportionment of joint owners and families who previously were jointly taxable ;

(3) The lessening reserve of large estates where the margin of difference between tax and net revenue, after providing for interest charges, &c., was small ;

(4) The general condition of the money market, which precluded speculative dealings in land, and even interposed obstacles in the way of persons who desired bank or other financial assistance in purchasing land for occupation ;

(5) The persistence of good seasons, which made it easy for land-owners to continue to earn such revenues that the payment of the tax was not difficult. Even in cases where the burden has been felt, the land-owner has been willing to pay rather than break up a holding which he may have owned for many years and to which he may have a sentimental attachment.

" The tax undoubtedly is preventing the accumulation of land in large estates, and its general effect is in the direction of inducing subdivisions of the estates now held."

616. **General Scope and Incidence of the Land Tax.**—Tax on a graduated scale is charged on each resident, joint ownership, trust estate, company, or institution not specifically exempted. The tax operates where the interests in land amount to £5,000 or over of unimproved value, except in the case of an individual absentee owner, who is taxed upon the aggregate unimproved value of his interests in land, with no exemption.

617. Land Tax is due and payable each year on an appointed date, as to which not less than one month's notice is given by publication in the *Government Gazette*.

618. No deduction is allowed in respect of the amount of any mortgage on the land, a mortgagee being expressly exempted from tax on his interest under the mortgage, unless he has entered into possession of the land and has remained in possession for three years. Even in that case the mortgagor continues to be liable for payment of the tax as primary taxpayer.

619. For the protection of the revenue, if the Commissioner is of opinion that a land-owner, in his return, has understated the unimproved value of his land to the extent of 25 per cent. or more, the Commissioner may apply to the High Court (constituted by a single Justice, whose decision is final and without appeal), and the Court may declare that the Commonwealth is entitled to acquire the land. As compensation, the owner is entitled to receive an amount based on the " improved value of the land, obtained by adding the fair value of improvements to the unimproved value stated in the owner's return, plus 10 per cent. of that improved value by way of allowance for compulsory dispossession."

620. The Act provides that, where a taxpayer has become bankrupt or insolvent, or has suffered such loss that the exaction of the full amount of tax would entail serious hardship, or that by reason of drought or adverse seasons the returns from the land have been seriously impaired, a Board, consisting of the Commissioner (who acts as Chairman), the Secretary to the Treasury, and the Comptroller-General of Customs, may release the taxpayer, wholly or in part, from his liability.

621. "Interests" in land include freehold interests, leasehold interests, and beneficial interests under trusts.

622. The aggregation in one assessment of all interests in land held by any one person or entity secures to the revenue the collection of tax at the highest rate applicable in each case.

623. The scheme of the Act involves in a number of cases the placing of liability to taxation upon two taxpayers in respect of the same land, one being called the primary taxpayer and the other the secondary taxpayer. Examples are—

A partner's undivided interest in land owned by a partnership as primary owner (Partners are Secondary Owners, Section 38 (3) (4)).

A shareholder's undivided interest in land owned by a company as primary owner (Shareholders are Secondary Owners, Section 39).

A beneficiary's undivided interest in land held under trust for him and others (Trustees are Primary Owners; Beneficiaries, Secondary Owners, Section 33).

The owner of the legal estate in land is the primary taxpayer, the owner of an equitable estate in the same land, secondary taxpayer (Section 35).

624. The Commissioner of Taxation explains the provisions with regard to primary and secondary taxpayers thus :—

> "Where the primary taxpayer is not exempt, the land or interest in land is always included in his assessment, as he is the legal owner (Section 35). The secondary taxpayer is an owner either at law or in equity or by special provision in the Act, and the interest is included in his assessment for the purpose of ascertaining the rate of tax payable on each £1 of taxable unimproved value held by him (Section 11). If his rate of tax is less than the rate of tax paid on the interest in the land by the primary owner, the secondary owner receives a rebate of the part of his own tax which is proportionate to the doubly assessed interest included in his assessment. But if his rate exceeds that of the primary taxpayer, the rebate to the secondary taxpayer is limited to the part of the primary owner's tax which is proportionate to the secondary owner's interest in the primary owner's land (Sections 43 and 43A). The primary owner never receives a rebate."

625. The effect of the scheme of primary and secondary taxpayers is to cause the rate of tax payable by the secondary taxpayer to be raised,* because, in determining his total ownership and the rate of tax applicable thereto, there is added to the value of his severally owned lands his proportionate interest in the lands of the primary taxpayer (*e.g.*, a company or a partnership of which he is a member). Where the rate of tax payable by the secondary taxpayer is higher than that of the primary taxpayer, the former is under the further obligation (inherent in the scheme) of having to pay in respect of his interest in the primary taxpayer's land the difference between the lower rate payable by the primary taxpayer and the higher rate imposed on himself.

626. In the case of sales of land, the buyer is liable to the tax as primary taxpayer so soon as he has obtained possession of the land, and the seller is liable to assessment as a secondary taxpayer until possession of the land has been delivered to the purchaser and at least 15 per cent. of the purchase money has been paid. The Commissioner has power to exempt the seller if he is satisfied that the agreement for sale has been made in good faith and not for the purpose of evading the payment of tax and that the agreement is still in force.

627. As a protection to the revenue against attempts to evade the tax by persons who formally dispose of their interest in land, but actually retain full control of the land, Section 42 of the Act provides :—

> "Notwithstanding any conveyance, transfer, declaration of trust, settlement, or other disposition of land, whether made before or after the commencement of the Act, the person making the same shall, so long as he remains or is in possession or in receipt of the rents and profits of the land, whether on his own account or on account of any other person, be deemed (though not to the exclusion of any other person) to be the owner of the land."

---

* This does not apply in the case of an absentee whose total interests in land do not exceed £5,000, as absentees are taxed at a flat rate of 1d. in the £1 on every £1 of unimproved value up to £5,000, the exemption of £5,000 allowed to resident land-owners not being allowed to absentees.

628. Section 40 of the Act provides that two or more companies consisting of substantially the same shareholders shall be assessed as one company. It also provides that companies are deemed to consist substantially of the same shareholders if not less than three-fourths of the paid-up capital of each of them is held by or on behalf of the shareholders of the other. Shares in one company held by or on behalf of another company are deemed to be held by the shareholders of the last-mentioned company.

629. Within a time prescribed by regulation a taxpayer may lodge an objection against an assessment for consideration by the Commissioner, and, if dissatisfied with the decision of the Commissioner, may appeal therefrom to the Court, or alternatively he may lodge an Appeal direct with the Court.

630. As might be supposed from its scope (including as it does both the valuation of land and the assessment of tax thereon) and its general complexity, the Commonwealth Land Tax Assessment Act has given rise to a great deal of litigation. A fruitful source of dispute between taxpayers and the Department, not always resulting in litigation, is the question of valuation. **Should our recommendations** respecting the elimination of the "secondary" taxpayer from the scheme of the Act (See paragraph 638) and the entire separation of land valuation from the Taxation Department (See paragraph 714) **be given effect, it is anticipated that not only will there be the gain of greater simplicity in the law, but that the occasions of friction between taxpayers and the Department will be much less frequent and that the cost of administration will be materially reduced.**

SECTION XX.

RELATION OF PRESENT REPORT TO PREVIOUS RECOMMENDATIONS WITH REGARD TO "HARMONIZATION."

631. In our Second Report (paragraphs 249-50) we recommended, among other things, that the power to impose Land Tax should, subject to certain reciprocal action, be exclusively vested in the States, reserving however the over-riding powers of the Commonwealth in case of War. While that was recommended as part of the ultimate and permanent solution of the question of "Harmonization," we also recommended that an agreement be entered into between the Commonwealth and States providing, *inter alia*, that during a provisional period the imposition and collection of Land Tax be reserved to the States. Notwithstanding these recommendations we have felt it our duty to report in some detail upon the present Commonwealth Land Tax Law and upon matters of principle affecting the construction and working of Land Tax Statutes generally.

632. We desire to emphasize, however, that the discussion on these matters is not intended to suggest in any way a departure from the opinions expressed in those recommendations, which have indeed been strengthened by the further consideration we have given to the subject.

633. **If the recommendations referred to in paragraph 631 be adopted and, among other changes, the imposition and collection of Land Tax be exclusively in the hands of the States, some of the suggestions in the succeeding Sections of this Report should, we submit, receive consideration by State Authorities.* If for any reason the adoption of those recommendations be deferred, the suggestions should, we submit, form the basis of an amendment of the Commonwealth Law.**

SECTION XXI.

SUGGESTED ELIMINATION OF "SECONDARY" TAXPAYER.

634. The Commonwealth Land Tax Assessment Act differs from the corresponding State Statutes in some important features, particularly in its imposition of tax upon land at progressive rates instead of at a flat rate, such as is adopted in the majority of the States. The consequent aggregation of interests in land for the purpose of taxation, the introduction into the Act of the scheme of "primary" and "secondary" taxpayers, the mode of assessment in the case of joint ownership, and other arbitrary provisions, lead to complexities which have been the subject of much complaint on the part of many witnesses. With regard especially to the provision relating to joint ownerships, an experienced solicitor in a communication to the Commission remarks:—

> "The result of importing a purely artificial system is seen in the extraordinarily difficult provisions and the great litigation that has ensued. So difficult are these provisions and the decisions thereon that there must be very few trained lawyers throughout Australia who have grappled with and understood them. I should think that there is no other such difficult set of provisions in any other Taxation Act, or, indeed, in any other modern Act in the world. (In the old days the same result followed wherever artificial systems of conveyancing or legal procedure were in existence. When these absurd systems were done away with, we arrived at the simplicity of the Torrens Real Property Acts and the comparative simplicity of Supreme Court procedure). The

* Some of the suggestions in the Report are based upon provisions of the Commonwealth Land Tax Assessment Act which are absent from the corresponding State Acts.

existence of these complicated clauses in the Federal Act—especially as it is a Taxation Act—causing worry and expense to so great a number of people, is itself a state of things that ought to be remedied."

635. In our opinion, it is very desirable that the present complex provisions of the Act should be superseded by a simpler system. Perhaps the greatest simplification possible as the result of the adoption of any one alteration of the Act would arise from confining taxation either to—

(*a*) legal ownership, or to
(*b*) equitable or beneficial ownership

of land or of interests in land, thus eliminating the " secondary " taxpayer.

636. We have given careful consideration to the desirability of selecting one or other of these criteria as the sole test of liability to taxation under the Commonwealth Land Tax Assessment Act. The adoption of either would have important results upon the revenue, and in either case modes of avoiding the incidence of the tax (some of which are available under the present law) would present themselves to taxpayers.

637. The legal ownership basis is open to the further objections that in some cases it may cause serious hardship, and that, in the numerous cases where legal ownership and beneficial ownership are not united in the same person, liability to taxation arises from a purely technical relation to the subject land.

638. **Equitable or Beneficial Ownership Basis Recommended.—We are unanimous in recommending the adoption of equitable or beneficial ownership of an estate or interest in land as the sole basis of liability to taxation,** for the following reasons :—

(1) It is **simple.** Its underlying principle is readily understood.
(2) It is a **natural** basis. It does not rest upon technical title, but upon beneficial interests.
(3) It is more **equitable** than either the dual scheme of the present Act or the legal ownership basis taken as the sole test of liability to taxation.
(4) It tends to prevent avoidance of the tax by means of technical expedients.

639. **A Company to be deemed Sole Beneficial Owner.**—An examination of the different classes of cases to which any such test of liability to taxation must be applied shows that there is at least one instance in which exceptional treatment is desirable—that is, the case of Companies. Consideration of the practical difficulties and complexities which would be inseparable from the method of taxing directly all beneficial interests of shareholders in Companies have led us to the conclusion that, while applying the principle of beneficial ownership as far as practicable, it will be found desirable to treat a Company owning land as the sole entity to be taxed in respect thereof, and not to regard the individual shareholder's proportion as constituting a taxable interest, either separately or in aggregation with other landed interests. In support of this view, it may be pointed out that its adoption will considerably shorten and simplify the present procedure on the part both of the Department and the taxpayer. The aggregation of all interests in land represented by shares held in Companies with other landed interests frequently involves a series of elaborate calculations, adding materially to administrative cost and often disclosing only a very trifling liability to tax or an absence of such liability.

640. According to statistics published in the Seventh Annual Report of the Commissioner of Taxation relating to the assessment of landed interests as at 30th June, 1918, the additional revenue due to the inclusion of share interests was in the case of resident taxpayers £11,156, and in the case of absentee taxpayers £1,079. The collection of this comparatively small amount probably involved a disproportionately heavy cost of administration, and certainly occasioned a considerable degree of trouble to the Companies and individuals affected.

641. The present Commonwealth Act taxes a Company on the aggregate unimproved value of its lands, and also requires each shareholder for the purpose of taxation to add his individual proportion of the Company's land to any other land which he possesses, and consequent thereto necessitates intricate calculations and adjustments for the avoidance of double taxation. The adoption of our suggestion to treat the Company as the only entity to be taxed in respect of its land would involve some revenue loss, but much less than the loss which would be entailed if the beneficial interests of shareholders were taxed, to the exclusion of the Company, which would be the legal (and assumed beneficial) owner. A Company owning lands of considerable aggregate value may consist of a large number of shareholders whose individual interests in respect of such land would not bring them within the taxable field. To this generalization there may be a few—it must be a very few—exceptions where, of the majority of the shareholders each owns individually more land and is subject to taxation at a higher rate than the Company. In most cases the revenue would suffer if, in the case of a Company, the taxation of the beneficial interests of shareholders displaced that of the legal interests of the Company, and if it be an object of the Act to break up all large aggregations of land, irrespective of whether such lands are owned by one person or by a partnership, or by a Company or other corporate body including many persons, that object would be partially defeated if lands owned by a Company were not taxable in its hands.

642. **Lessor and Lessee.**—Under the beneficial ownership basis, the separate interests of Lessor and Lessee would be determined. The Lessor's interest would be ascertained by deducting from the total unimproved value of the land the value of the Lessee's interest (if any). The Lessee's interest (if any) would be the difference between the rent payable and the ascertained economic rent, capitalized for the unexpired term of the Lease at the prescribed rate of interest. The difference so ascertained would be additive to the unimproved value of any other interest in land held by the Lessee, and, if the total of those interests exceeds £5,000 (the amount of exemption), the Lessee will be taxable on the excess.

643. **Trust Estates.**—In the case of Trust Estates in which the Trustees are now assessed and liable in respect of Land Tax as if beneficially entitled to the land, the beneficiaries only would be assessed and taxed in respect of their individual interests.

644. **Joint Owners.**—The application of the principle of beneficial ownership or interest seems to us to involve also a radical alteration of the Act in respect of the provisions relating to joint owners, which provisions have been among the most fruitful in litigation of all those embodied in the Statute. The term "Joint Owners" under the Definition Clause includes not only those who have a technical joint ownership, but also those who own land in common, whether as partners or otherwise, and persons who have a life or greater interest in shares of the income from the land. This definition is read as including shareholders in Companies. We have already given reasons (see paragraph 639) for the exceptional treatment of Companies. With regard to other forms of joint ownership, no practical difficulty would arise in the adoption of the beneficial ownership basis.

645. **Dual purposes of Act.**—The Parliamentary Debates at the inception of the Commonwealth Land Tax indicate that the taxation was not introduced wholly for revenue purposes, but was intended to effect the subdivision of large estates, and thereby, as was hoped, to increase settlement in country districts.

646. **Effect of Adoption of Beneficial Ownership Basis.**—The principle of taxing beneficial ownership or interests only, which we recommend, will, we recognise, have an effect both upon the revenue aspect of the Act and upon its operation as a means of promoting the subdivision of large estates.

647. With regard to **revenue,** we think the effect of the adoption of the principle will be to cause reduction ; but we are not in possession of adequate data for the compilation of an estimate of the extent of that reduction.

648. If the Commonwealth desires to maintain the revenue from Land Tax at the present level, it is obvious that any reduction in tax due to the adoption of an altered principle could be met by reducing the exemption, by increasing the rates, or by a combination of those two courses.

649. The practice of the Commonwealth Taxation Department is to require returns from all land owners possessing land of an unimproved value of not less than £3,000. If the exemption were reduced to that amount, at which point the progressive scale of rates would begin to operate, the effect would be, not only to bring into the field of taxation a large additional value, but to increase the amount of tax payable on all sums in excess of £5,000, the present exemption. This latter effect will be seen from the illustrative figures shown in the following table :—

Total Unimproved Value.	Tax with Present Exemption of £5,000.	Tax if Exemption Reduced to £3,000.
£	£ s. d.	£ s. d.
3,010	..	0 0 10
4,000	..	4 7 9
5,000	..	9 4 5
5,010	0 0 10	9 5 6
6,000	4 7 9	14 10 0
10,000	26 7 9	40 1 1
20,000	112 10 0	135 1 1
35,000	325 0 0	360 17 9
50,000	637 10 0	686 14 5
75,000	1,380 11 1	1,452 0 0
200,000	6,062 10 0	6,137 10 0

650. On the present scale of rates and with the present exemption, when the unimproved value reaches £80,000 (taxable value £75,000 in the case of a resident owner), the rate on the last £1 is 9d., and the average rate is 5d. If the owner is an absentee, as no exemption is allowed, the taxable value is the whole £80,000, the first £5,000 of which is taxed at a flat rate of 1d. in the £ and the balance at the progressive rate. In that case the rate on the last £1 is 10d., and the average rate is 5.6875d.

651. From the point of view of the "**breaking up**" effect of the Land Tax legislation, the adoption of the beneficial ownership basis, in comparison with the present Act, would probably lessen the pressure to some degree, but would not withdraw that pressure, as individual interests other than shareholding interests would still be aggregated. Compared with the beneficial ownership basis, the legal ownership basis might cause a greater reduction in revenue, as it appears to offer larger facilities for legal avoidance of the tax, but it would probably have a somewhat stronger influence in causing the subdivision of estates.

SECTION XXII.

SHOULD RATES BE PROGRESSIVE OR PROPORTIONAL?

652. There is one aspect of the rates question upon which some comment may be made, and that is as to whether rates should be progressive or proportional, *i.e.*, flat. The practice of the Australian States in this respect is not uniform. Four of the States impose a Land Tax at flat rates, while the other two have progressive rates. The rates in the several States are :—

New South Wales* ..	The rate is 1d. in the £1 on the unimproved value.
Victoria	The rate is ½d. in the £1 on the unimproved value ; minimum tax 2s. 6d.
Queensland.. ..	The rates are progressive, commencing at 1d. in the £1 where the taxable value is less than £500, and rising to 6d. where the value is £75,000 and over. Agricultural land of less value than £750 and "undeveloped" land are taxed at special rates.
South Australia ..	The rate is ½d. in the £1 on the unimproved value, but there is an additional charge of ½d. in the £1 upon all land the unimproved value of which exceeds £5,000.
Western Australia ..	The rate is 1d. in the £1 on the unimproved value.
Tasmania	The rate rises from 1d. in the £1 on the unimproved value up to £2,500, increasing by successive steps to 2½d. in the £1 at and above an unimproved value of £80,000.

653. Except in South Australia and Tasmania, certain amounts of unimproved value are exempted from taxation :—

New South Wales ..	The amount exempted is £240.
Victoria	The amount exempted is £250, but this exemption is on a diminishing scale for every £1 of value in excess of £250, so that when the value is £500 or over no exemption is allowed.
Queensland.. ..	The amount exempted is £300 ; but the exemption is not allowed to a company or an absentee.
Western Australia ..	The amount exempted is £50.

654. It will be seen that the balance of practice in Australia is in favour of land taxation at flat rates, also that in the States where a flat rate is levied the maximum amount of exemption is £250. The exemptions seem to be based on the **practical** view that the cost of collection may be greater than the tax where the unimproved value is small.

655. It may be assumed that, where progressive scales exist, the tax has been devised, not solely for revenue purposes, but in part to bring about subdivision of estates. If revenue is the only reason for imposing a tax upon land, then, in our opinion, the simpler method of a flat rate should be adopted. In this connexion it may be remarked that Land Tax is of the nature of a Capital Tax, and differs essentially from Income Tax, since it is levied independently of the existence or amount of any return from the land, and also from the fact that the value of the land owned is a much less reliable measure of ability to pay than is the amount of income. Where, however, the breaking up of estates is an important object of the tax, progression appears necessary, at east in a Commonwealth tax. In a State Land Tax it would be less necessary, because other means to produce the same effect are open to State Legislatures, which under the Constitution are not at present open to the Commonwealth Legislature.

656. Whether the Commonwealth progressive Land Tax has sufficiently achieved its purpose in causing the subdivision of estates is a question upon which we have not adequate evidence to justify expression of a positive opinion. In the opinion of certain witnesses who appeared before us, the subdivision of estates has been carried far enough. It was pointed out

* In New South Wales the State directly collects Land Tax from certain freeholds within the Western Division only, the general provisions of the State Land Tax Assessment Act being suspended in respect of lands situate within Shires or Municipalities in which tax is levied by the local authority upon the unimproved capital value of lands, and at a rate of not less than 1d. in the £1.

that there are numerous areas in Australia which at present can be profitably worked only in large blocks, and that enforced subdivision within those areas would have a detrimental rather than a beneficial effect on settlement. A New Zealand Committee which recently reported on the question of Land Taxation, expressed the opinion that in that Dominion, where a progressive Land Tax has been in operation since 1893, the breaking-up effect of the tax has been carried to the point at which further action would be injurious to the country, and it recommends a reversion to taxation at a flat rate.

657. Apart from the question of the desirability of causing the subdivision of large estates by the imposition of Land Tax at progressive rates, there is the question whether necessity exists for the continuance of a progressive tax in order to prevent the re-aggregation of land to a large extent in the hands of individuals. Where lands which are suitable for closer settlement have been subdivided and have become occupied by a farming community, there is in our opinion little danger that the cessation of progressive land taxation would result in the re-accumulation of large areas in the hands of individuals.

658. We have been officially informed that up to the 30th June, 1919, an aggregate unimproved value of approximately £77,250,000 had passed out of the taxable field. It is not suggested that this result is attributable wholly to the operation of the Land Tax. Other forces, *e.g.*, the tendency to division of lands when devolution occurs under wills and settlements and the inducement to sell in subdivision when good prices are obtainable, would be operative even if there were no Land Tax, although a progressive Land Tax adds impetus to such movements.

659. One effect of an alteration from a progressive scale of Land Tax to a proportional or flat rate would be to relieve taxpayers who are on the higher grades of the scale as to aggregate value. On the figures appearing in the Seventh Annual Report of the Commissioner of Taxation, it would seem that to produce by a flat rate, while maintaining the present exemption of £5,000, the same amount of revenue as that now raised through Land Tax, would require a rate of about 3½d. in the £. If the exemption were reduced to £3,000, a flat rate of about 2¾d. would produce about the same revenue. If a flat rate of 3½d. in the £ were adopted, taxpayers having land of a taxable unimproved value of less than £46,875 would pay more than they do at present, while upon unimproved values exceeding that sum the tax would be less. For example, a taxpayer whose land has a taxable unimproved value of £18,750 would pay 1½d. in the £ more than he now does, while a taxpayer whose land has a taxable unimproved value of £75,000 would pay 1½d. in the £ less than at present. The following Table gives further examples of the tax which would be payable on lands of certain unimproved values if flat rates were adopted in lieu of the present Commonwealth progressive scale. It will be noted also that the Table shows that a rate of 1d. in the £ upon unimproved values without any exemption would produce approximately the same revenue as is now raised by the progressive tax :—

LAND TAX PAYABLE BY RESIDENT OWNER.

1.	2.	3.	4.	5.	
Total or Aggregate Amount of Unimproved Value of land.	Tax Payable.				Remarks.
	Under present Commonwealth Act.	At Flat Rate of 3½d. in the £ with £5,000 Exemption.	At Flat Rate of 2¾d. in the £ with £3,000 Exemption.	At Flat Rate of 1d. in the £ with no Exemption.	
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
1,000	..	..	..	4 3 4	The Tax in Column 2 is calculated upon the rates current prior to the imposition in 1918 of the Sur-Tax of 20 per cent. This Sur-Tax has now been repealed.
3,000	..	..	..	12 10 0	
3,010	..	..	0 2 4	12 10 10	
4,000	..	..	11 9 2	16 13 4	
5,000	..	..	22 18 4	20 16 8	
10,000	26 7 9	72 18 4	80 4 2	41 13 4	The present Commonwealth Revenue from Land Tax is about £2,200,000. A flat rate of 3½d. in the £ with the present exemption of **£5,000** or a flat rate of 2¾d. in the £ with an exemption of **£3,000,** or a flat rate of 1d. in the £ with no exemption, would produce about the same revenue as at present. The estimate of revenue at the rate of 1d. in the £ is based on an aggregate unimproved value of occupied lands in Australia of **£500,000,000.** (See Knibbs' "Private Wealth of Australia, 1915".)
11,727	38 1 9	98 2 1	**100 0 0**	48 17 3	
11,857	38 6 0	**100 0 0**	101 9 9	49 8 1	
A **14,683**	**61 3 8**	141 4 3	133 17 4	**61 3 7**	
18,817	**100 0 0**	201 9 11	181 4 9	78 8 1	
20,000	112 10 0	218 15 0	194 15 10	83 6 8	
24,000	159 7 9	277 1 8	240 12 6	**100 0 0**	
30,000	243 1 1	364 11 8	309 7 6	125 0 0	
40,000	418 1 1	510 8 4	423 19 2	166 13 4	
B **40,724**	**432 5 0**	520 19 6	**432 5 1**	169 13 8	
50,000	637 10 0	656 5 0	538 10 10	208 6 8	
C **51,875**	**683 11 11**	**683 11 11**	560 0 6	216 2 11	
60,000	901 7 9	802 1 8	653 2 6	250 0 0	The points where the tax reaches £100 at the respective rates are for comparative purposes only; similarly at points A, B, C, comparisons are made where the rates of Columns 3, 4, and 5 intersect those in existence. These comparisons are shown in black type.
70,000	1,209 14 9	947 18 4	767 14 2	291 13 4	
75,000	1,380 11 1	1,020 16 8	825 0 0	312 10 0	
100,000	2,312 10 0	1,385 8 4	1,111 9 2	416 13 4	

660. **In the practical solution of the question raised in this Section of our Report, three positions may arise.**

(1) The Commonwealth and the States may determine to adopt the recommendation we have already made as to the allocation between them of subjects of direct taxation. Under the scheme of "Harmonization" outlined in our Second Report, the States alone would impose Land Taxation, in which event we are of opinion that the tax should be levied at a flat rate. We have already indicated that the States have means other than those open to the Commonwealth by which they can foster closer land settlement within their borders. **Unless these means prove ineffective, we see no justification for the imposition of progressive rates in Land Tax.**

(2) The Commonwealth may determine to continue the imposition of Land Tax, with the present dual object of raising revenue and the further breaking up of large estates. **In such eventuality, as already indicated** (paragraph 655), **it would be necessary, in our opinion, to adopt a progressive scale of rates.**

(3) The Commonwealth may determine to continue the imposition of Land Tax for revenue purposes only, on the ground that no further legislative impetus to the subdivision of large estates by the Commonwealth is necessary. **In this event, it is our opinion that Land Tax should be levied on the basis of a flat rate.**

SECTION XXIII.

TAXATION OF LESSEES' ESTATES IN CROWN LEASEHOLDS.

661. Under the Land Tax Assessment Act, as passed in 1910, Lessees' interests in Crown Leaseholds were not included as taxable interests on land. The amendment of the Act in 1914 brought those interests within the scope of the taxing provisions, and assessments have been issued from year to year since that amendment became operative. The Commissioner of Taxation in his Seventh Annual Report states that the tax has remained outstanding under a verbal direction given by the Right Honorable W. A. Watt, P.C., when Commonwealth Treasurer, pending an investigation by a Royal Commission into the Taxation of Lessees' Estates in Crown Leaseholds. The Commissioner of Taxation has recently (August, 1922) informed us that the Treasurer's direction has not since been varied, and that the amount of tax outstanding in respect of Lessees' interests in Crown Leaseholds is now considerably in excess of £1,000,000. The Royal Commission referred to was appointed in December, 1918, with the following Terms of Reference :—

(a) To inquire into the incidence of that portion of the Commonwealth Law which imposes a tax upon the owners of leasehold estates in Crown Lands ;

(b) To report whether such tax has been arranged upon an equitable basis, having regard to the fact that freehold lands are subject to tax as provided by the Commonwealth Law ;

(c) To report whether some other method of taxation of leasehold estates in Crown Lands should be adopted, and, if so, what that should be ;

(d) To report generally upon such tax and its application.

662. Subject to certain changes in detail, **that Commission** (which consisted of three members) **recommended that in general the taxation of Crown Leaseholds should be continued.** This was the opinion of the majority, one member dissenting on the ground that the taxation of Crown Leaseholds is undesirable, in view of its reaction upon the policy of the States in relation to the occupation of Crown Lands.

663. The present Commission in its First Report (paragraph 178), referring to the matter, whilst stating that there are substantial grounds for not discriminating in taxation between interest in freeholds and interest in leaseholds, postponed fuller discussion of that issue until the question of Land Taxation as a whole could be dealt with. The arguments adduced before the Royal Commission on the Taxation of Crown Leaseholds have been to a large extent repeated with amplifications and added emphasis during the present inquiry.

664. **Statutory Basis of Land Valuation.**—Under the Commonwealth Land Tax Assessment Act, it is necessary to ascertain the freehold value of lands for the purposes of taxation. That value, when determined, becomes the foundation for computation of the taxable interest (if any) in the leasehold. The best evidence of freehold values is to be found in the records of sales of similar lands, if properly analyzed and due allowance made for forced sale or other special circumstances.

665. It was argued on behalf of Crown Leaseholders that, even after making all allowances for such matters as distance from market, defective means of transit, difficulty or excessive cost of removing stock in time of drought, extra cost of management owing to low carrying capacity of the country, diminution in value of stock due to comparative unsuitability of the land, &c., it is

practically impossible to determine freehold value, upon which rests the computation of the taxable interest in a leasehold. Indeed, some witnesses go so far as to say that Crown Leaseholds, apart from the live stock and improvements (if any) upon them, have no definite value at all. This contention appears to have arisen largely out of the practice followed in sales of pastoral leaseholds. Such sales are very commonly upon the " walk-in-walk-out " basis, the price being frequently expressed in a lump sum or in terms of the unit of sheep or cattle upon the holding, the improvements and the value of the lease being included in the lump sum or price per head. In these circumstances, the notion may have arisen in the minds of some pastoralists that these leases have no value capable of being stated in terms of freehold value. This is particularly the case with regard to cattle country, which is frequently held in immense areas on which the improvements effected are of small value, and in the event of a continued drought the owners often abandon the holdings. In some of the States, although the law does not specifically recognise any right to abandon with a consequent cessation of liability, there is a provision (for example, in New South Wales) under which the leases may be surrendered on giving twelve months' notice, and it appears that in other States the practice is not to demand rent after a voluntary surrender.

666. Another reason leading some pastoralists to regard the idea of freehold value as inapplicable to leasehold areas, particularly the more remote areas, is that much of the grazing country held under lease from the Crown would remain unoccupied if occupation were permissible only on terms of purchase.

667. Individual cases were cited in evidence in which it appeared that tax was being assessed upon Crown Leaseholds which, for certain reasons, perhaps of a transitory character, had practically no taxable value. That there is, however, in the aggregate, a large margin between the Crown rents paid and the economic rent, seems sufficiently demonstrable from :—

(1) The established policy of the States to encourage the occupation of State lands by charging low rentals ;

(2) The extent to which Crown lessees sell or sub-lease their leases, for the most part, presumably, with some advantage to themselves ; and

(3) The assessed and outstanding tax upon Lessees' interests in Crown Leaseholds throughout Australia. This amounts to over £1,000,000. This tax is still being assessed in many instances upon the Lessees' own valuations. Even if the Departmental valuations were liberally discounted, the figures would disclose a large aggregate taxable interest.

668. **Effect on State Policy.**—One of the three members of the 1919 Commission on Crown Leaseholds (dissenting from the opinion of the majority) expressed the opinion (as indicated in paragraph 662) that Crown Leaseholds should not be subject to Federal Land Taxation. This opinion was based on the general ground that taxation of such areas tends to react unfavorably upon the State policy of settling the remoter Crown Lands in a permanent manner. The dissenting member, who was the President of the Land Appeal Court, New South Wales, probably had in mind the special circumstances of what is known as the Western Division of that State. A succession of droughts about twenty years ago had led to very heavy losses, and the abandonment of large areas in that portion of the State seemed imminent. Following the report of a Royal Commission, the State Government constituted a statutory body known as the Western Lands Board, which has since administered the Crown Lands within the Western Division. The policy then instituted was, by low rentals, long terms of lease, and a liberalizing of conditions, to encourage the holding and re-stocking of that country.

669. **Separate Aggregation urged.**—One of the principal complaints made both to the 1919 Commission on Crown Leaseholds and to the present Commission was that the aggregation of interest in Crown Leaseholds with other interests in land, freehold or leasehold, causes hardship to landowners and incidentally affects adversely the State policy of settling Crown Lands under a leasehold tenure.

670. On these grounds a number of witnesses urged that for the purpose of land taxation interests in Crown Leaseholds and other interests in land should be separately aggregated, and that the statutory exemption of £5,000 should be allowed in both cases. This view was supported by the Commissioner of Taxation, but, in answer to questions by the present Commission, he stated that his opinion was based, not upon any principle of taxation, but only on the ground that the non-aggregation of Crown Leasehold interests with other interests would probably have some effect in encouraging the settlement of Crown Lands. The evidence given before us by State officials in the two States most interested in this question was to the effect that there is a large demand for the leasehold lands of the Crown, only the most inferior lands being comparatively neglected. In some cases lands come into the hands of the Crown either by resumption in

accordance with the terms of leases, or by abandonment. In such cases, fresh Lessees are often obtainable without much delay, owing to the existence of improvements which the incoming Lessee can secure at a cost much below the replacement cost.

671. **Revenue Effect.**—It was officially stated to this Commission that—

> "The estimated loss of revenue from Land Tax by separately assessing Lessees Estates in Crown Leaseholds from other lands of a taxpayer and allowing in each separate assessment a statutory exemption of £5,000 is £100,000."

672. **Anomalies Created.**—One of the difficulties in the way of the proposal to except Crown Leases from aggregation with other interests is that there are certain cases in which the adoption of such a course would create new anomalies and place neighbouring taxpayers in positions of relative inequity in respect of taxation. For example, immediately adjoining a Crown Leasehold, there may be a private leasehold area of country similar in size and carrying capacity to that of the Crown Leasehold, and it would obviously be an anomaly if the holder of the private leasehold were compelled to aggregate all his holdings, leasehold, and freehold, while the Crown Lessee were allowed to segregate his leases from his other land holdings for the purpose of determining the rate of tax to be paid.

673. The effect of this anomaly would be heightened in cases such as those stated to us by a witness of great experience in connexion with Crown Lands in New South Wales. This witness stated that, on one side of a river which forms part of the boundary of the Western Division, privately-owned lands have a rental value up to about 5s. per sheep-area ; while, on the opposite side of the river, within the Western Lands Division, the maximum rental chargeable under the Statute is 7d. per sheep-area. The Chairman of the Western Lands Board stated that within the Western Division about 1,000,000 acres are of quality similar to the privately-owned lands referred to—that is, are worth approximately 5s. per sheep-area.

674. After careful consideration of the question of the taxation of Lessees' interests in Crown Leaseholds, **we are unable to discover any principle of taxation upon which such interests should be relieved of Land Tax, if other interests in land are taxed.** We are, therefore, of opinion that the question of exempting Lessees' interests in Crown Leaseholds from taxation must be considered wholly from the point of view of policy as between the Commonwealth and the States.

675. **Segregation of Lessees' Interests.—We are also unable to recommend the assessment of Lessees' interests in Crown Leaseholds separately from other interests in land of a taxpayer and the allowance of the statutory exemption in both assessments.** Such a course would, as has been indicated, not only involve a heavy loss of revenue and create new anomalies, but would, in our opinion, be inconsistent with the general scheme of a progressive or graduated tax.

676. We may add in this connection that, in view of the evidence as to the demand for Crown Leaseholds (see paragraph 670), it does not appear that the imposition of the Commonwealth Land Tax upon Lessees' interests in such leases can be regarded as having had any sensibly adverse effect upon the States' policy of settling Crown Lands.

SECTION XXIV.

SHOULD THERE BE DIFFERENTIATION IN TAXATION BETWEEN URBAN AND RURAL LANDS?

677. In the Commonwealth Land Tax Assessment Act no distinction is made between city and country lands. The Act was clearly designed by its framers to discourage large individual aggregations of land. The reasons which may justify the "breaking up" of large country estates can scarcely be said to apply with equal potency in the case of city lands. The question naturally arose in the course of our inquiry as to whether, in the interests of the community as a whole, any good purpose is served by the "breaking up" of valuable city estates.

678. Evidence was submitted to the effect that, under the influence of the present Land Tax, city blocks of high value are being subdivided, with the inevitable result that in many instances, and particularly in the capital cities of the Commonwealth, buildings are being erected on narrow frontages, thus preventing the inclusion of those architectural and other features which should characterize buildings in the main thoroughfares of a modern city.

679. One Witness said :—

"The Act as passed only recognises as an evil large holdings. While it is true that on an average the small owner uses his land more effectively than the large owner, I deny that large holdings are necessarily an evil, and contend that subdivision in the case of valuable city properties is undesirable in the interests of the community and that in the same interests aggregation is desirable.

"From the economic point of view the building on a site consisting of only a narrow frontage is undesirable; too large a percentage of the space is necessarily used for main walls, passages, staircases, lift wells, sanitary conveniences and caretaker's quarters. Within reasonable limits, as to buildings on extremely valuable sites, the larger the site the more economical use will be made of it, the architect will find lighting and ventilation easier, and only such a proportion of floor space will be used for main walls, passages, staircases, lift wells, sanitary conveniences, caretaker's quarters as is reasonable. The public have a vital interest in no discouragement being given to the effective use of city properties; the more economically and effectively they are used the cheaper will the rents of shops and offices in the city tend to be."

680. A similar opinion was expressed by another witness, who in the course of his evidence said :—

"I understand that it has, of course, been regarded as an eminently desirable thing that the city should have fine imposing buildings; yet the tendency now in all the cities is for buildings to be put up on narrow frontages, and of course there is a large amount of space wasted in passages, lift wells, and so on. But that is done to avoid the payment of heavy taxes."

681. However much the tendency referred to by the two witnesses above quoted is attributable to the operation of a progressive Land Tax (and other factors certainly operate), **we do not consider it practicable to differentiate in Commonwealth Land Taxation between city and country lands.**

SECTION XXV.

DEFINITIONS AS TO VALUE.

682. **Improved Value.**—The definition in the Commonwealth Land Tax Assessment Act reads :—

"'Improved value,' in relation to land, means the capital sum which the fee-simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require."

This definition which, in our opinion, is satisfactory, is practically identical with that of the Statutes of New South Wales, Victoria, and Queensland, although the Victorian Act contains a provision that the land should be regarded as unencumbered by any Lease, Mortgage, or other charge thereon, a condition which seems to be implied in the definition of the Commonwealth and the other two States named. In the Acts of South Australia, Western Australia, and Tasmania, the term is not specifically defined. In Western Australia the terms "Improved land" and "Improvements" are defined. The Western Australian definition of "Improvements" is in the nature of an enumeration of the improvements which are recognised. The Tasmanian definition of "Improvements" is more general in character, and includes improvements effected for the benefit of the land, though outside its boundaries, by the Crown or by any statutory public body, if the owner or occupier has made a direct contribution towards the cost of such improvements. The payment of rates and taxes is not deemed to be a contribution within the meaning of this definition.

683. The New Zealand *Valuation of Land Amendment Act* 1912 also contains a provision similar to that of the Tasmanian Act, which enables cognizance to be taken of improvements effected outside the subject land, if the owner has made a direct contribution towards the cost of the works. The question of including such a provision under the Commonwealth Act is discussed under the heading below, "Unimproved Value," paragraph 684.

684. **Unimproved Value.**—The definition in the Commonwealth Land Tax Assessemnt Act reads :—

"'Unimproved value', in relation to land, means the capital sum which the fee simple of the land might be expected to realize if offered for sale on such reasonable terms and conditions as a *bonâ fide* seller would require, assuming that the improvements, if any, thereon or appertaining thereto and made or acquired by the owner or his predecessor in title had not been made."

The definitions in the Acts of New South Wales and Queensland are the same as that of the Commonwealth, and there is little difference in effect between the Commonwealth definition and that of the Acts of Victoria, South Australia, and Western Australia, though in those States matter is added, either for the purpose of enumerating the improvements recognised or for other purposes of a local character.

685. It will be seen on reference to the Commonwealth definition that it specifies improvements (if any) upon the taxable land or "appertaining thereto." It is understood that in this form the definition excludes improvements not actually upon the taxable land. The exclusion of such improvements has been represented by a number of witnesses as harsh and unfair. It has been stated, for example, that a land-owner, whether as a contributor to the capital cost of works constructed by the Crown or a public body or otherwise, may expend money in improvements such as drainage, water channels, bore sinking, &c., which, though outside the taxable land, are as important to the working of that land as if situated within its boundaries. The New South Wales *Valuation of Land Act* 1916 contains a provision relating to this matter, which reads as follows :—

> "58 (2). For the purposes of this section on ascertaining the unimproved value of any land there shall be a reasonable deduction for profitable expenditure by the owner or occupier on visible and effective improvements (if any) which although not upon the land have been constructed for its drainage, for its protection from inundation, or otherwise for its more beneficial use."

As pointed out in paragraph 683, relating to improvements, the New Zealand Statute, as also that of Tasmania, is wide enough to allow of improvements effected outside the boundaries of the taxable land being taken into account.

In our opinion, it is reasonable that such improvements, when effected either wholly or in part as the result of direct expenditure or contribution of money by the land-owner or his predecessor in title (other than by payment of rates or similar charges) should be treated in the same way as improvements effected upon the land itself.

686. The difficulties which frequently arise in dealing with claims for deduction on account of non-structural improvements effected many years previously, led some witnesses to suggest a sharp limitation of the classes of improvements which should be recognised. For example, the Valuer-General of New South Wales was of opinion that "improvements" for the purposes of Land Tax Assessment should be limited to **improvements, structural or otherwise, effected by the owner** and still in existence, and **effective structural improvements constructed by the owner's predecessor** in title. The effect of this suggestion, if adopted, would be that, apart from improvements effected by the present owner, none but structural improvements would be recognised. It will be seen from paragraph 685 that **we do not endorse the limitation suggested.**

687. **Value of Improvements.**—The definition in the Commonwealth Land Tax Assessment Act reads :—

> "'Value of Improvements', in relation to land, means the added value which the improvements give to the land at the date of valuation irrespective of the cost of the improvements : Provided that the added value shall in no case exceed the amount that should reasonably be involved in bringing the unimproved value of the land to its improved value as at the date of assessment."

The Statutes of New South Wales, South Australia, and Western Australia do not define the term "Value of Improvements". The definition in the Queensland Statute is identical with that of the Commonwealth, and the definition in the Victorian Act is similar in effect, but it excepts vineyards, orchards, hop gardens, and lucerne pastures from the proviso that the added value shall in no case be deemed to exceed the cost of such improvements as at the date of assessment. The proviso to the Commonwealth definition has been the subject of criticism, and it has been contended that the Act should be amended by the repeal of that proviso, which was added to the Commonwealth Act in 1912. The Second Annual Report of the Commissioner of Land Tax, referring to the amendment which added the proviso in question, states :—

> "This amendment was considered necessary to place the interpretation clause relating to the value of improvements beyond misconception.
>
> "The alteration of the wording of the definition does not in any way vary the principle of the former definition, but it is probable that claims for excessive deductions as a result of improvements will be obviated by more clearly defining the legal position.
>
> "The amendment fixes as the maximum consideration the amount reasonably involved in bringing the land to its improved condition and value as at the date of assessment."

In our opinion, the limitation of added value effected by the proviso is reasonable and necessary.

688. It may be added that in New Zealand a similar limitation formed part of the definition of "Value of improvements" in the Valuation of Land Act until 1912, when it was repealed. The only explanation of that action which has come to our notice is in these terms :—

> "As this definition had the effect of increasing 'unimproved value' at the expense of 'improvements', it was . . . superseded."

This seems rather a statement of necessary effect than of reasons for the change.

689. By a coincidence, it was in the same year (1912) that the Commonwealth definition was amended by adding the proviso which imposes the limitation.

SECTION XXVI.

ESTABLISHMENT OF LAND VALUATION BUREAU.

690. Section 17 of the Commonwealth Land Tax Assessment Act reads :—

> "17.—(1.) The Commissioner may, if, as and when he thinks fit, make or cause to be made valuations of any land.
>
> "(2.) The Commissioner may obtain and use as valuations, or for the purpose of preparing valuations, any valuations made by or for any State or any authority constituted under a State."

691. Under the present system, the valuation of land for the purpose of Commonwealth Land Tax is effected by a staff of valuers directly supervised in each State by a Chief Valuer, but all ultimately responsible to the Commissioner of Taxation. Many witnesses were of opinion that a separation of the two functions of valuation and assessment is desirable. Two reasons were particularly urged in support of this opinion :—

(1) That "the Departmental interest is in every case to secure the greatest possible amount of revenue", and that the Valuer is therefore continually under the temptation to maintain or increase values beyond what he might otherwise consider reasonable.

(2) That a widespread belief exists that officers charged with the administration of the Taxation Act may interfere with the valuations for the purpose of increasing tax.

692. With regard to (1), certain cases were cited which had been decided in the Courts, and in which valuations made by the Department had been very considerably reduced. These were put forward in support of the argument that valuation should be independent of the administration of the Taxation Acts. On the other hand, one witness gave particulars of eleven New South Wales cases decided in the Supreme Court or the High Court, in which the values contended for by the taxpayers were increased by nearly 50 per cent., the values adopted by the Courts being within about 3 per cent. of the Departmental assessments.

693. As to (2), it was stated in the evidence of the Commissioner of Taxation that such interference does not in fact occur, and that, being charged with the general administration of the Act, he is bound to insure that valuations are carried out in accordance with the indications or express directions of the Act. Representations by taxpayers frequently lead to a reference back to the Valuer for further report upon some point as to which the taxpayer contends that insufficient attention has been given, or that a mistaken view has been taken. Sometimes these are simple questions of fact, *e.g.*, as to whether there are, say, 100 miles of fencing, as shown by the taxpayer, or 80, as shown by the report of the Valuer. More often the issue is one which does not admit of any purely arithmetical solution, but depends upon judgment, experience, and a capacity to determine the weight of evidence. The Commissioner stated that **in no case does he over-ride the final opinion of the official expert,** though it is understood that, within the small limits which are generally recognised as covering the probable margin of error, he may concede something to considerations urged by the taxpayer.

694. **Recommendations of the Crown Leaseholds Commission.**—The Royal Commission on the Taxation of Crown Leaseholds 1919 recommended the establishment of a "Valuing Branch" under the direction of a Valuer-General for the Commonwealth, the Commissioner of Taxation not to—

> "be entitled to vary the valuation or the scheme of valuation, excepting in so far as is necessary to secure conformity with the Law. He should be charged, however, as at present, with this latter responsibility, namely, the securing of conformity with the Law."

It may be remarked that, according to the evidence, the Commissioner limits his control over actual valuations to the securing of conformity with the Law.

695. **Valuation of Improvements.**—Differences of opinion between the taxpayer and the Department on questions of valuation most frequently turn upon estimation of the value of improvements, especially of non-structural improvements. The clearing of land is perhaps the most difficult and the most frequent instance. Such clearing may have been effected many years before the date of inspection and by a predecessor in title of the present owner. It may be impossible to ascertain the cost of the clearing and the necessary attempt to determine the present added value given to the land by that work frequently leads to differences of opinion between the taxpayer and the Department.

696. The New South Wales Valuer-General expressed the opinion that perhaps 90 per cent. of the discussions between the Valuer and the owner would be eliminated if the Act were amended to provide that all non-structural improvements should be left out of consideration. The Land Valuation Act of New South Wales (referred to in the next paragraph) limits the consideration of improvements (*e.g.*, drainage) which may benefit a particular piece of land, but which are **outside** its boundaries, to visible improvements, and the Valuer-General from his experience would desire to go further and limit the deduction made for the purpose of taxation to structural improvements only, except where the non-structural improvements had been effected by the present owner. He instanced the comparatively frequent case of two persons acquiring adjoining portions of land, one of which was originally timbered and the other plain. Assuming the present value of each portion to be the same, say £5 per acre, the owner in one case is allowed a deduction on account of the improvement of clearing, while the other is not, with the consequence that, for land of the same present value and productiveness, two adjoining owners pay different amounts of tax. Many other witnesses, however, were emphatically of the opinion that the exclusion of non-structural improvements would be unjust and would cause much hardship. **We concur in that opinion,** subject to the allowance on account of the improvements being confined to the limits prescribed by the proviso to the definition of "Value of improvements", section 3.

697. **New South Wales Valuation Act.**—In New South Wales an Act called the Valuation of Lands Act was passed in 1916, setting up a Department of Valuation under a Valuer-General, whose duty it is to effect a valuation of all the lands within the State.

698. It may be interpolated here that the State of New South Wales has at present a very small interest in the revenue aspect of land taxation, its Land Tax Assessment Act having been suspended as from the date when, on the passing of the *Local Government Act* 1907, the taxation of lands was handed over to local governing bodies. One exception from this general suspension exists within the Western Lands Division, where there is a small area of freehold still subject to the State Land Tax, from which a tax revenue of about £2,000 per annum is derived.

699. The Valuer-General is charged with the preparation of a Roll showing the unimproved, the improved, and the annual value of the whole of the privately-owned lands in the State, and so much of the Crown Lands as the Valuer-General deems advisable. The Statute provides that the Roll of the Valuer-General shall be the basis for all State and Local Government taxation, for rates collected by such bodies as the Water Supply and Sewerage Board, Fire Brigades Commissioner, &c., and for advances upon mortgage by the State Savings Bank Commissioners. The Act also expressly provides that the valuation on the Roll shall be the basis for compensation in the case of land resumed for any public purpose. The Roll is open for public inspection, and upon payment of a prescribed fee any person may obtain a copy of any valuation. Although the Act was passed in 1916, it was explained in evidence that circumstances arising out of the War had restricted the activities of the new Department, the staff of which, however, is now being gradually augmented. Up to the present, valuations have been completed of practically the whole of the Metropolitan Area and of a few Country Shires.

700. The Valuer-General stated that there is a difficulty in securing thoroughly capable Valuers. Wherever practicable, such Valuers are chosen from men having local experience, and the intention is to retain a Valuer in one district until the valuation is completed, and, if possible, after that date, when the Valuer's work would include all special revaluations and the permanent upkeep of the Roll. Any land-owner may on payment of the prescribed fee obtain a fresh valuation at any time.

701. **Practice in Other States.**—In Victoria about 90 per cent. of alienated land and all unalienated land having water frontage or road frontage has been valued for the purpose of Land Tax. In Queensland, South Australia, and Tasmania valuations have been made for that purpose, and in Western Australia such a valuation is now in progress.

702. **Use of Valuations by Local Authorities.**—In Victoria and Queensland, Land Tax valuations are used to a very small extent by local authorities. In South Australia, twelve out of thirty-four Municipal Corporations have adopted or framed their estimates upon the Land Tax

values. In Western Australia, Rates Boards and Municipalities make use of the values in some cases. We were informed that when the valuations are completed, legislation will be introduced to provide for their use by local authorities. In Tasmania, the Departmental values cannot strictly be considered to be adopted by local authorities, but the Act on which local assessment Rolls are prepared provides that in no case shall the annual value be fixed at less than 3 per cent. of the capital value as shown by the Roll in force under the *Land Valuation Act* 1909, which is the Roll used for State Land Tax purposes. The Departmental valuations are accessible to the public in Victoria, Queensland, South Australia, and Tasmania, without charge. In South Australia, on application by the public, copies of the official valuation are supplied at a charge of 4d. per folio of seventy-two words, and in Tasmania on demand at a fee of 1s. In South Australia and Tasmania it is said that the valuation registers are largely resorted to by the public, but we are informed that they are not much used by the public in the other States.

703. **South Australian Bill.**—On 16th August, 1921, a Bill was introduced into the South Australian Parliament, providing for the establishment of a Valuer-General's Department somewhat similar to the New South Wales Department. The Bill, however, was not passed.

704. **New Zealand Act.**—An Act similar in most respects to that of New South Wales with regard to valuation of lands has been in operation in New Zealand for about 25 years. The system upon which both the New Zealand and New South Wales Acts are founded—that is, the institution of a body controlling valuations for all purposes, and independent of Taxation Departments—was advocated by a number of witnesses. **The ostensible reasons for such advocacy** (see paragraph 691) **are, in our opinion, largely based upon a mistaken view of what actually occurs under Departmental control.**

705. **Valuation Bureaux.**—At the Premiers' Conference in 1916, and at a Conference of Taxation Officers in 1917, resolutions were passed to the effect that valuations should be conducted by one independent body. We have given careful consideration to the suggestion for the establishment of an independent Valuation Bureau, whose valuations would be available for use by both Commonwealth and State Authorities for purposes of Land Taxation, assessment of Probate Duties, resumption of land by the Crown, municipal rating, advances on Mortgage by Savings Banks, and for other purposes.

706. **We do not recommend the creation of such a Valuation Bureau by the Commonwealth.** The great majority of land holdings in Australia are of an unimproved value below the amount of the Commonwealth Land Tax exemption (£5,000), consequently, the Commonwealth has at present no direct interest in by far the greater number of valuations that would have to be made even if those of relatively small value which are included in Commonwealth taxpayers' returns for the purpose of aggregation be taken into account. Again, an important purpose for which the valuations of a Bureau would be used is that of municipal rating, which is remote from Commonwealth interest. We have been informed that for the purposes of the Estate Duty Assessment Act it is the practice of the Commonwealth to accept the State Departments' valuations of **personal** estate. This suggests that the Commonwealth might (subject to the conditions indicated in paragraph 712) accept the States' valuations of **real** estate for all purposes of taxation. Furthermore, if the recommendation we have already made as to the conditional retirement of the Commonwealth from the field of Land Taxation and Estate Duties be adopted, the creation and continuance of a Commonwealth Valuation Bureau of the nature contemplated would not be justified.

707. **Economy and Convenience.**—From the point of view of **economy,** the difference between the cost of valuations effected by State Bureaux or by a Commonwealth Bureau valuing lands for all purposes throughout Australia would perhaps not be very great, but, from the point of view of **convenience,** State organizations must be regarded as the more appropriate instrumentality. Figures submitted to the Conference of Taxation Commissioners showed that the number of valuations (of unimproved value) required for State taxation purposes by the States as compared with the number required for similar purposes by the Commonwealth was in the ratio of about eleven to one. Again, a Valuation Bureau which had no power to determine the very large number of valuations required for rating purposes by Municipal and other local governing bodies would be too limited in range to justify its separate and independent existence. The fact

that the source of all the powers exercised by local governing authorities is a State Parliament and that a State Parliament alone has power to compel acceptance by those authorities of any land valuations further supports the view that for practical reasons State Valuation Bureaux would be preferable to a Bureau created by the Commonwealth.

On the whole, in our opinion, there is adequate ground for endorsing the views of those witnesses who urged that State Bureaux in preference to a Commonwealth Bureau should be entrusted with the duty of making valuations of land for taxation and all other public purposes of the Commonwealth and the States.

We therefore recommend that there be created under State Statute in each State a Land Valuation Bureau entirely separate and distinct from any Taxation Department, whose sole function would be the valuation of the occupied lands within the States.

708. **We are further of opinion that the Commonwealth,** in the exercise of the power already conferred upon the Commissioner under Section 17 (2) of the Commonwealth Land Tax Assessment Act, **should adopt the values of the several State Land Valuation Departments** for the purposes of Commonwealth Land Taxation.

709. Such a proposal is in harmony with the resolution passed by the Premiers' Conference held in December, 1916, which is as follows :—

> "That this Conference reaffirms the desirability of uniform valuation for Commonwealth and State purposes being adopted as early as practicable, and that the necessary legislative or administrative steps in that direction be taken by the States."

710. The proposal found further indorsement by the 1917 Conference of Taxation Officers. In a memorandum submitted to that Conference, the present Commonwealth Commissioner of Taxation wrote :—

> "It is clear that the public affected by land valuations for purposes of Land Tax are anxious to have one valuation for both Commonwealth and State."

Mr. E. J. Sievers (the New South Wales Valuer-General) addressed the Conference in the following terms :—

> "I cannot bring myself to believe, as the result of the discussion at this Conference, that it is possible for anybody but the States interested to economically and satisfactorily prepare a valuation Roll of the lands of the Commonwealth, showing the improved, unimproved, and annual value.
>
> "I cannot urge too strongly the necessity for the Valuation Bureau contemplated by the Premiers' Conference being a purely Valuation Department, coloured by no ulterior object of tax, resumption, or duty of any kind. This aspect would be fatal to its success.
>
> "I see no possible method of divided responsibility, *i.e.*, the State accepting the Federal valuation of lands of £5,000 unimproved capital value and upwards, and the States doing the balance—the objection is too obvious to need explanation—if, for one reason only, two staffs are traversing the same country, the one picking out small holders, the other 'big men'".

711. These authoritative opinions encourage the expectation that, in view of—

(1) the very generally expressed desire that the duty of valuing land should be entrusted to some statutory body other than the Taxation Department, and

(2) the decreased aggregate administrative cost which the proposal ensures,

the several State Parliaments will consent to pass the necessary legislation constituting in each State a Land Valuation Department.

712. In our opinion, in order to render the valuations of the several State Land Valuation Departments acceptable to the Commonwealth as the basis for Commonwealth Land Taxation, each State Act should embody common definitions of "Improved value," "Unimproved value," and "Value of improvements." To ensure practical uniformity in method, it would also be necessary for each to adopt common rules and formulæ for the guidance of Valuers. **Such united action** on the part of the States, together with suitable agreement between each State and the Commonwealth as to division of cost, **would, in our opinion, not only remove any serious objection to the scheme by the Commonwealth, but would result in greatly diminished cost to both Commonwealth and States, and remove one of the most fruitful sources of friction between taxpayers and the Taxation Departments, both Commonwealth and State.**

713. We do not regard it as essential that any Valuation Bureau whose valuations are to be used for purposes of Commonwealth Land Taxation should be under Commonwealth control, provided that the valuations used are made under common definitions and common rules, and that the Valuers employed are, as they would be, under one responsible control in each State. If the Commonwealth Taxation Department adopts the valuations of the State Departments, it would be desirable that periodical conferences be held between the several Valuers-General and other responsible officers. At such conferences difficulties would be discussed, and common action, where deemed necessary, agreed upon. This should, in our opinion, result in a high degree of uniformity of method throughout the Commonwealth.

713A. Statements made by the Commonwealth Commissioner of Taxation in his Memorandum to the Conference of Taxation Commissoiners, 1917, seem to indicate that he did not foresee serious difficulties in this connection. After discussing the then existing financial difficulties to the States in undertaking valuations for all public purposes, either Commonwealth or State, Mr. Ewing went on :—

> "If the States did this work, and the Commonwealth desired to use the valuations, the Commonwealth and the State Valuers-General in the State could scrutinize the valuations to see that the valuers had done their work in accordance with the law. If the Commonwealth did the work for the State, similar conferences would enable the State to be satisfied that the work had been properly done. Under this scheme the Commonwealth would have a Valuer-General who would see that Commonwealth valuations in all States were kept on the strictest uniform lines. This is done, in a measure, at present by conferences of Commonwealth officials."

714. **We recommend—**

(1) **That each State Parliament pass the necessary legislation constituting a Land Valuation Department or Bureau whose valuations shall be used for purposes of Land Taxation, Probate Duty, and such other purposes as may be prescribed.** (The valuations might also be used for purposes of resumption of land by the Crown, Municipal rating, advances by Savings Banks, and for use by trustees and private persons).

(2) **That in each State Act constituting the State Land Valuation Bureau there shall be embodied common definitions of "Improved value," "Unimproved value," and "Value of improvements"** (see paragraph 712).

(3) **That, in order to ensure uniformity in practice, the several State Valuation Authorities agree upon the adoption of common rules for the guidance of Valuers.**

(4) **That for all public purposes in which land valuation is required, the Commonwealth accept the valuations of the several State Land Valuation Bureaux so constituted.**

715. **In our opinion, these recommendations, if given effect—**

(1) Will meet the widely held and not unreasonable desire for the entire separation of Land Valuation from the administration of Land Tax Statutes.

(2) Will effect by a suitable division of cost between the Commonwealth and various State authorities substantial economy by preventing the present costly duplication.

(3) Will not create a difficulty in the matter of the transfer at any time of Land Taxation from the Commonwealth to the States.

SECTION XXVII.

BOARD OF APPEAL.

716. The evidence submitted on the question of the appointment of a Board of Appeal under the Land Tax Assessemnt Act disclosed as great unanimity of opinion in support of the proposal as that manifested in relation to the establishment of a similar Tribunal under the Income Tax Assessment Act. We are satisfied that the reasons justifying the constitution of the Income Tax Appeal Board are equally cogent with respect to the appointment of a Board of Appeal under the Land Tax Assessment Act.

717. Under Section 44 of the Land Tax Assessment Act a taxpayer may appeal against any assessment by the Commissioner to the High Court, the Supreme Court, or a County or District Court of a State, or such other Court as is specified in that behalf by proclamation, on the ground that he is not liable for the tax or any part thereof, or that the assessment is excessive. There is a natural unwillingness on the part of many taxpayers to incur the delay, trouble, expense and publicity of legal proceedings against the Taxation Department. In the administration of so technical and complex a measure as the Land Tax Assessment Act, many grounds of dispute between the taxpayer and the Department must inevitably arise. **We are of opinion that if taxpayers were given access to an independent Tribunal (having a simple and inexpensive procedure) for the settlement of these disputes, it would do much to allay the existing irritation and discontent on the part of taxpayers.**

718. The following extracts from our First Report in respect of the Board of Appeal under the Income Tax Assessment Act are quoted as being equally appropriate to a Board of Appeal under the Land Tax Assessment Act :—

> "151. The Commission approves of the view generally expressed by witnesses on the subject, that the Board's decisions as to matters of fact should be final."
>
> "152. It is considered that it should be the duty of the Commissioner to forward an objection to his decision to the Board when requested to do so by any dissatisfied taxpayer within 30 days of the receipt by him of such request."
>
> "153. The parties should have the right to appear before the Board in person, or by representative."
>
> "154. With a view to discouraging appeals to the Board on unimportant issues or on frivolous or unreasonable grounds, it is suggested that the appellant should be required to deposit a prescribed fee at the time of lodging an appeal. In the event of the Board considering the appeal frivolous or unreasonable, the Board shall have the power to order the forfeiture of the whole or part of the fee."

719. We are also of opinion that the functions now exercised by the official Board commonly referred to as the Relief Board constituted under Section 66 of the Land Tax Assessment Act should be exercised by the Board of Appeal. For specific recommendation hereon, see section of the Report headed " Relief Board " (page 199).

720. It may be pointed out that, if effect be given to our recommendation that a Land Valuation Bureau be established by each State (see paragraph 707), there is little doubt that each State Act constituting such a Bureau will provide for the creation of a Valuation Court or other Tribunal for the purpose of dealing with appeals against valuations made under the Act, to that extent replacing any Appeal Board appointed under the Land Tax Assessment Act, though appeals on all other matters arising out of assessments would still be within the jurisdiction of the Appeal Board.

721. **We therefore recommend**—

(1) That the existing Taxation Appeal Board appointed under the Income Tax Assessment Act and any subsequent or additional Board of Appeal similarly appointed be empowered to hear and adjudicate in matters of appeal under the Land Tax Assessment Act.

(2) That it shall be competent for the Board of Appeal to adjudicate (in respect of Land Taxation) upon matters which involve questions either of law or of fact; that in respect of questions of fact the Board's decision shall be final, but that in respect of questions of law an appeal should lie from the Board to the High Court or to the Supreme Court of a State.

(3) That in those instances in which (prior to the constitution of the Board of Appeal)—

(1) notice of appeal to a Court has been given in accordance with Section 44 of the Act, but the case has not come on for hearing;

(2) objection against assessment has been lodged, but no decision has been given by the Commissioner,

the Act should provide that taxpayers shall have the option of transferring their appeal or objection, as the case may be, to the Appeal Board.

SECTION XXVIII.

RELIEF BOARD.

722. In recommending in our First Report the appointment of a Board of Appeal under the Income Tax Assessment Act, we also recommended that the functions now exercised by the official Board, commonly referred to as the Relief Board, constituted under Section 64 of the Act cited, should be exercised by the Board of Appeal. That recommendation was based upon a considerable volume of evidence. A Board consisting of the same members as the Relief Board under the Income Tax Assessment Act, is constituted for the same purposes under a similar section (Section 66) of the Land Tax Assessment Act, and the evidence given in connexion with that Act was even more emphatically in favour of the change recommended in paragraph 162 of our First Report, which reads:—

> "Another function which, in the opinion of the Commission, should be intrusted to the Board is that of deciding the extent of remission of taxation (if any) which should be granted to an applicant under the relief Section 64. That section constitutes, as the Board to deal with such cases, the Commissioner, the Secretary to the Treasury, and the Comptroller-General of Customs. No imputations were made against the fairness and capacity of the existing Board, but there were numerous and strong expressions of a desire on the part of the public that applications under Section 64 should be decided by a Board, the members of which are independent of Commonwealth Departments. Three specific complaints were made against the present arrangement, namely—first, that long delays are too frequent; second, that, from the absorbing nature of their other duties, the public officers now forming the Board under the section cannot afford to give the time requisite to deal promptly and effectively with the cases arising; and, third (this was given great emphasis), that taxpayers have no right of appearance before the Board. As to delays, a number of specific instances were submitted to the Commission, and, although the Department showed in a general reply that these are sometimes due to the taxpayer's failure to supply information promptly, there was clearly a considerable residue of cases in which the taxpayer was not the cause of delay."

723. **We recommend that the Board of Appeal** (see paragraph 721) **be also given the powers now exercised by the Relief Board constituted under Section 66 of the Land Tax Assessment Act.**

SECTION XXIX.

OFFICE ORDERS.

724. In our Third Report, pages 170-1, we drew attention to the fact that the numerous Office Orders relating to the Commonwealth Income Tax Assessment Act had not yet been codified and made available to taxpayers, and we recommended the publication of those Orders for the benefit of the public at the earliest possible moment. The reasons which justify the public issue of the Office Orders in the case of the Commonwealth Income Tax Assessment Act apply with equal force to the publication of Office Orders issued under the Land Tax Assessment Act. A large number of these Orders have been made available to the Commission, and were of considerable assistance to us in our detailed study of the Act. Our examination of them confirms the view expressed by a number of witnesses, that the publication of the Orders would be in the public

interest. Many of the Orders, as supplied to us, contain the names of the taxpayers upon whose cases the Orders were based. These names should, in our opinion, be deleted before publication of the Orders. Our recommendations (paragraph 590, Third Report) in respect of Income Tax Office Orders, appear to us appropriate also in respect of the Orders issued under the Land Tax Assessment Act.

725. **We therefore recommend, in respect of the Orders issued and to be issued under the Land Tax Assessment Act :—**

(1) That the existing body of Office Orders affecting the general practice of the Department be published at the earliest possible moment, and be offered for sale to the public at a moderate cost.

(2) That all such Office Orders subsequently issued be made accessible to taxpayers as soon as issued.

(3) That, with a view to securing wide publicity, the daily press in each capital city be furnished with copies of all such Office Orders as soon as issued.

(4) That all such Office Orders be purchasable at each Commonwealth Taxation Office at a moderate cost.

(5) That facilities be provided free of charge at each Commonwealth Taxation Office for the perusal by taxpayers of all such Office Orders as are operative.

(6) That all such Office Orders be made to apply to all assessments affected thereby relating to the current year of assessment.

(7) That, when the volume of Office Orders is published, a public notification be made that within twelve months from the date of publication (or such further period as the Commissioner may allow) any taxpayer may apply for an alteration of his assessment for any previous year, where the application is based upon an Office Order the contents of which were not available to the taxpayer at the time of the original assessment.

(8) That, to meet cases where a claim for refund of tax would be apparently sustainable under any Office Order which has been cancelled before the publication of the volume of Orders, for twelve months after the publication of that volume, such cancelled Orders shall be available for perusal by taxpayers at the Taxation Office in each capital city, and that during that period taxpayers shall have the same right of application for alteration of their assessment for any previous year arising out of the provisions of any such Order as they would have in respect of published (current) Orders.

SECTION XXX.

COMMENTS ON VARIOUS SECTIONS OF THE COMMONWEALTH LAND TAX ASSESSMENT ACT.

Section 3.—(Definition Section.)

726. **"Absentee."**—The treatment of an absentee less favorably than a resident for the purpose of taxation is a common feature in Taxation Laws. The method of marking the distinction varies in different Statutes—for example, in the New Zealand Land Tax Act 1917, an additional rate of 50 per cent. is imposed upon absentees ; a similar percentage increase is imposed under the Western Australian Act ; in South Australia the additional percentage is 20 per cent. ; in Queensland no specific percentage is added, but, if the unimproved value of an absentee's interest exceeds £300, no exemption is allowed. **The Commonwealth Act,** Section 11, which, in the case of a resident, prescribes an exemption of **£5,000, allows no exemption in the case of an absentee.** Some differences of opinion have been expressed as to the necessity or desirability of taxing absentees' interests in land at a higher rate than those of residents. While there is something to be said in favour of relieving absentees of this additional taxation on the ground that the investment of their capital in Australia is beneficial to the country, **in our opinion, the maintenance of some distinction in taxation between an absentee and a resident is justified** on the general ground that a resident is of greater importance and value to the country than an absentee investor. Whether the differentiation should be effectuated by adding a percentage to the rate of tax, or by reduction or removal of the exemption, or by both, is a question to which we have given consideration, and, **in our opinion, the balance of advantage lies with the method adopted by the Commonwealth Statute.**

727. The tax charged under the Land Tax Act of 1914* on the unimproved value of all the land owned by an absentee is, for so much of the value as does not exceed £5,000 (at which point the taxation of residents begins), at a flat rate of **1d.** per £. Above £5,000 the rate on the first £ is 2·1/18750d., and there is a uniform increase of 1/18750d. on each additional £ of value up to **£80,000,** upon the excess of which a flat rate of **10d.** in the £ is payable.

* The *Amending Land Tax Act* of 1918 imposed an additional Land Tax equal to 20 per centum of the tax payable under the 1914 Act ; but this provision has recently been repealed.

728. The effect of the present exemption in favour of the resident taxpayer is that the absentee pays **1d.** more than the resident taxpayer for every £ of unimproved value.

729. The following table shows the differences in tax between an absentee and a resident at various points of unimproved value :—

Unimproved Value.	Tax Payable.		Increase of Tax Payable by an Absentee as Compared with that Payable by a Resident.	
	By Resident.	By Absentee.	Amount of Increase.	Percentage of Increase.
	£ s. d.	£ s. d.	£ s. d.	
£6,000	4 7 9	29 7 9	25 0 0	573·66
£10,000	26 7 9	68 1 1	41 13 4	158·05
£25,000	172 4 5	276 7 9	104 3 4	60·77
£50,000	637 10 0	845 16 8	208 6 8	32·68
£80,000	1,562 10 0	1,895 16 8	333 6 8	21·33
£100,000	2,312 10 0	2,729 3 4	416 13 4	18·02
£200,000	6,062 10 0	6,895 16 8	833 6 8	13·73

All increases of tax shown in the above table represent 1d. in the £ on the total unimproved value.

730. **Companies not deemed Absentees.**—The Act at present provides (Section 39 (4)) that :

> " A company shall in no case be deemed to be an absentee, but any of the shareholders who are absentees shall be separately assessed and liable as absentees."

If our proposal in respect of Companies be adopted, viz., that a Company be deemed the beneficial owner and sole taxable entity in respect of its lands (see paragraph 639) and the present differentiation between resident and absentee taxpayers be maintained, as we suggest it should (see paragraph 726), **we consider that Companies to the extent to which they may be equitably regarded as being absentees should be taxed as such.** If, for example, one-fifth of a Company's shares are held by absentees, then in respect of the same proportion—one-fifth—of the unimproved value of its land the Company should be deemed to be an absentee and be taxed at the absentee rate.

731. In giving effect to our suggestion, no difficulty would arise in the case of a Company all of whose shareholders are either residents or absentees. A Company owning land of an unimproved value of **£80,000,** all of whose shares are held by residents of Australia or a Territory under the authority of the Commonwealth, would pay on **£75,000** (taxable value)—

£75,000 at 5d. (average of progressive rates), £1,562 10s.

A Company owning land of the same unimproved value, all of whose shareholders are absentees, would pay on **£80,000** (no exemption being allowed)—

£5,000 at 1d. (flat rate)	£20 16 8
£75,000 at 6d. (average of progressive rates) ..	1,875 0 0
Total	£1,895 16 8

732. The following examples will illustrate the proposed method of taxation of a Company having both resident and absentee shareholders :—

In " A " Company 50 per cent., in " B " Company 90 per cent., and in " C " Company 20 per cent. of the shares are held by absentees, and each company owns land of the unimproved value of £80,000. The tax may be calculated thus—

	£ s. d.	£ s. d.
" A " Company, if taxed as resident, would pay (as shown above)	1,562 10 0	
50 per cent. of its shares being held by absentees, additional tax would be chargeable on 50 per cent. of the unimproved value of its land, *i.e.*, on £40,000, at 1d. per £1	166 13 4	1,729 3 4
" B " Company, if taxed as resident, would pay ..	1,562 10 0	
90 per cent. of its shares being held by absentees, additional tax would be chargeable on 90 per cent. of the unimproved value of its land, *i.e.*, on £72,000, at 1d. per £1	300 0 0	1,862 10 0
" C " Company, if taxed as resident, would pay ..	1,562 10 0	
20 per cent. of its shares being held by absentees, additional tax would be chargeable on 20 per cent. of the unimproved value of its land, *i.e.*, on £16,000, at 1d. per £1	66 13 4	1,629 3 4

733. **We recommend that, to the extent to which shares in a Company owning land are held by absentee shareholders, as at the 30th June of each financial year, the Company be chargeable with tax at the rate applicable to an absentee.**

734. If for any reason it be found inadvisable to adopt this recommendation, as, for example, because of the cost or difficulty of administration, **we are of opinion that, as an alternative, a Company registered outside Australia should be deemed to be an absentee** and be chargeable with tax at the rate applicable to an absentee.

735. **"Owner."**—If the recommendation made in this Report as to the adoption of "beneficial ownership" as the test of liability to taxation be adopted, the present definition of "owner" will require modification. Some change will probably be necessary also in the definition of the term "joint owners."

736. **"Improved value," "Unimproved value," "Value of improvements."** For comments on the definitions of these terms see "Definitions as to value," page 192.

737. **Secrecy.**—Under the *Income Tax Assessment Act* 1915-18 provision is made for a declaration of secrecy by every officer before entering upon his duties or exercising any power under the Act. Witnesses commented unfavourably upon the absence of any such provision from the Land Tax Assessment Act. In the event of the establishment of independent Valuation Bureaux the value of separate parcels of land would be available for public information. To such disclosure of the official valuation only of separate parcels of land no objection can reasonably be offered; but we consider that stringent precautions should be taken to prevent the leakage from the Taxation Department of information, either as to the aggregate land holdings of a taxpayer or other matters affecting his financial position. Provision should be made for the communication of official information to State Taxation Authorities who are authorized by legislation to reciprocate.

738. **With the exception indicated, it is in our opinion desirable that taxpayers' affairs with regard to Land Tax be treated confidentially,** as in the case of Income Tax, and **we recommend that the Land Tax Assessment Act be amended accordingly.**

739. **Exemption.—Section 11 (2) (b)** reads:—

> "(2.) The taxable value of all the land owned by a person is . . .
>
> (*b*) in the case of an owner not being an absentee—the balance of the total sum of the unimproved value of each parcel of the land, after deducting the sum of Five thousand pounds."

740. In a case which came before the High Court in 1911 (Bailey *v.* Federal Commissioner of Land Tax, 13 C.L.R., 302) it was held that a taxpayer who owns several parcels of land is not entitled to a deduction of **£5,000** from the value of each parcel, but to one deduction of **£5,000** from the sum of the values of the several parcels. Some witnesses complained of the obscurity of the wording of this Sub-section, and

741. **We recommend that consideration be given to this complaint,** with a view to the substitution of wording likely to be more generally understood by taxpayers.

742. **Amount of Exemption.**—The amount of the exemption specified in this Sub-section, **£5,000,** was referred to by a number of witnesses. Some, while preferring the total abolition of Land Tax, contended that, while land is taxed, there should be no exemption, or that a small exemption only should be allowed, that exemption to be fixed at the point at which it becomes profitable to collect the tax. Others were of opinion that, in case any amendment of the Act for the purpose of maintaining or adding to the revenue from Land Tax be needed, the means to be employed should be the reduction of the present exemption to say **£3,000.** So long as the Commonwealth and States are both imposing Land Tax, a high Commonwealth exemption such as the present is of importance to the States as leaving exclusively to them the considerable percentage of the total unimproved value in each separate ownership which lies below the sum of **£5,000.** We have been unable to ascertain any special reasons for fixing the amount of **£5,000,** except apparently a general idea that it is only when a greater sum than this is represented by one ownership that any national significance attaches to the fact, or that the possession of land up to that amount is regarded as reasonably necessary to insure a living to the owner. On principle, it would seem that, if revenue only be the object of a Land Taxation Act, there is no case for providing any exemption at all, though in a Federation such as that of Australia there may be a case for leaving some part of the taxable field exclusively to the States. On a general view of the question, the Commission has already recommended in its Second Report (paragraphs 249-50), that, subject to certain reciprocal action, the imposition and collection of Land Tax should be wholly a State function.

743. If, however, **no reciprocal arrangement be found practicable at present and** the Commonwealth continues the imposition and collection of Land Tax on a graduated scale of rates, **we are of opinion that the present exemption should be retained** for the reasons :—

(1) That to diminish the exemption would reduce that part of the taxable field at present exclusively occupied by the States.

(2) That with a graduated scale of rates the effect of diminishing the exemption would be to shift some of the burden from the large land-owner to the relatively small land-owner.

744. **Section 12** reads :—

" Land Tax shall be charged on land as owned at noon on the thirtieth day of June immediately preceding the financial year in and for which the tax is levied :

" Provided that an owner of the land who, before the thirtieth day of September, One thousand nine hundred and ten, has sold or agreed to sell or conveyed part of the land or has sold or agreed to sell or conveyed all the land to different persons, shall, if the Commissioner is satisfied that the sale agreement or conveyance was *bonâ fide* and not for the purpose of evading the payment of land tax, be separately assessed for the year ending on the thirtieth day of June, One thousand nine hundred and eleven, in respect of the land so sold or agreed to be sold or conveyed to any one person, and be charged with land tax in respect of that land as if it were the only land owned by him."

745. **We recommend** a minor alteration in this Section by substituting the word "midnight" for the word " noon." There seems no special reason why a change of ownership actually occurring at any hour on the 30th June should not be recognised as occurring in the tax year closing on that day. The suggested alteration was recommended by the Conference of Taxation Officers 1917. It would bring the Act into line with the *Queensland Land Tax Assessment Act* 1915, Section 12.

746. The operation of the proviso to Section 12 is exhausted, and the proviso might therefore be repealed.

747. **Section 13.**—This Section enumerates the lands which are wholly exempted from taxation under the Act. We have carefully considered each clause of the Section, and are in general agreement that the Section should be retained. We are of opinion, however, that Sub-clause (*d*), which exempts :—

> " all land owned by any building society registered as a building society under any Act or State Act, not being land of which the society has become owner by foreclosure of a mortgage."

lacks justification. We have endeavoured, but without success, to ascertain the reason for the inclusion of land owned by a building society as a subject for exemption from taxation.

748. **We recommend** that Clause (*d*) of Section 13 be repealed.

749. **Section 15,** which deals with the **furnishing of returns by taxpayers,** will need consequential alteration if our recommendation with regard to Section 12, that is, the substitution of the word " midnight " for the word " noon ", be adopted.

750. The Commissioner of Taxation in his Seventh Annual Report points out that the Act does not at present give the Commissioner power to call upon a person who is not a taxpayer to make a return of the land owned by him. Such a power is given in relation to the Income Tax Assessment Act. We agree with the Commissioner's opinion that a provision conferring that power should form part of the Land Tax Assessment Act, and

751. **We recommend** that the Act be amended accordingly.

752. **Section 17.**—This Section deals with valuations, as to which see " Establishment of Land Valuation Bureau," page 194.

753. **Section 20.**—In his Seventh Annual Report, the Commissioner of Taxation pointed out that the Act, while making provision for the **issue of an amended assessment,** makes no provision as to the time within which the increased tax due on the amended assessment is to be paid. The present practice is to allow sixty days for such payment, and

754. **We recommend** that the Act be amended to provide for the payment being made within that period.

755. **Section 21 (1)** reads :—

" 21.—(1.) Where the Commissioner has assessed any person upon the return sent in by him, without making or obtaining any independent valuation, the Commissioner, so soon thereafter as is conveniently practicable, but not after the expiration of two years from the date of the assessment, if from valuations made or obtained by him, or other information in his possession, he finds that the assessment ought to have been for a greater amount, may alter the assessment accordingly, as from the date when the assessment was made."

756. A difficulty in administration has been found to arise under this Sub-section which has been stated to us by the Commissioner of Taxation in the following terms :—

> " Whilst the Department has extensive powers to enable it to arrive at proper valuations, it is limited by the law to a period of two years from the date of making an assessment on owners' values, within which the Department may apply an official valuation which would have the effect of causing an owner to pay additional tax.
>
> " This provision operates to cause unnecessary expenditure in administration. For example, if an owner has adhered to his own value in each annual return furnished by him, notwithstanding that the Department has applied an official and higher valuation to the assessment in any year in the interim, and notwithstanding that the land-owner may have tacitly accepted the official valuation, the Department could not apply its official valuation to a later year without depriving itself of the right to further increase the assessed valuation for that later year if evidence of sales indicated a higher value. In such cases the Department must consider, before making an assessment for the later year, whether or not a further examination of the values in the ownership might result in a further increase in the valuation. If an increase is indicated, but not demonstrated at the time, it would be necessary for the Department to make its preliminary assessment for that later year upon the owner's values as declared to in his return, notwithstanding that he has tacitly accepted the former official valuation.
>
> This necessity of the Law produces confusion to both the Department and the taxpayer. There is thus full justification for amendment of Section 21 (1.) of the Land Tax Assessment Act, so as to provide that, if the Department make an original assessment upon its official valuation, which has been explicitly or tacitly accepted by an owner, it should be deemed for the purposes of the Section to have assessed the person under the return sent in by him, without making or obtaining any independent valuation."

The Commissioner has explained to us that the difficulty chiefly arises where several parcels of land, perhaps situated in different States, are included in one return, and the Department has not had an opportunity of making an official valuation of **all** the parcels. In our opinion, the Department should in such cases have a period of two years within which to revise the assessment in respect of those parcels originally assessed on owners' values, and

757. **We recommend** that the Act be amended accordingly.

758. Where the assessment is made wholly on owners' values, the Act now gives the Department two years within which an amended assessment may be issued.

759. Where in respect of any parcels the assessment is based upon an official valuation, no right of re-assessment is required in respect of the year to which the assessment applies, except by way of correction of ascertained errors.

760. **Section 23** reads :—

> 23.—(1.) The production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—
>
> (*a*) be conclusive evidence of the due making of the assessment ; and
>
> (*b*) be conclusive evidence that the amount and all the particulars of the assessment are correct, except in proceedings on appeal against the assessment, when it shall be *prima facie* evidence only.
>
> (2.) The production of any document under the hand of the Commissioner, purporting to be a copy of or extract from any return or assessment, shall for all purposes be sufficient evidence of the matter therein set forth, without producing the original.

761. In his Seventh Annual Report, and in evidence before us, the Commissioner pointed out that :—

> " Under the Act as it now stands, it is necessary to produce the assessment made when proceedings are taken for recovery of tax, and any other documents or extracts required to be produced must be certified to by the Commissioner.
>
> It is considered that a copy of a Notice of Assessment certified by either the Commissioner, the Assistant Commissioner, or Deputy Commissioner, and documents or extracts similarly certified would be sufficient. It is also necessary, in order to cut out unnecessary work, delay and expense caused by the present state of the Law.
>
> This will bring the Act into line with the Income Tax Assessment Act."

We concur in the Commissioner's opinion as to this Section, and

762. **We recommend** that the Section be amended to give effect to that view.

763. **Life Tenants.—Section 25** reads :—

"25.—(1.) The owner of any freehold estate less than the fee-simple (other than an estate of freehold arising by virtue of a lease for life under a lease or an agreement for a lease) shall be deemed to be the owner of the fee-simple, to the exclusion of any person entitled in reversion or remainder :

Provided that, for the purpose of the assessment of a legal tenant for life of land, without power to sell, under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, the unimproved value of the land shall be calculated upon the basis of the rent which he obtains for the land, or which, if he let the land, he ought reasonably to be able to obtain ; so that the unimproved value of the land shall be taken to be equal to the unimproved value of land owned in fee-simple which would produce the same rent; and for the purpose of this section rent, in the case of improved land, means so much of the whole rent as bears to the whole rent the porportion which the unimproved value of the land bears to the improved value.

(2.) In this section " tenant for life " includes—

(*a*) a tenant for the life of another ;

(*b*) a tenant for his own or any other life whose estate is liable to cease in any event during that life ; "

764. This Section was the subject of criticism by several witnesses, including the Commissioner of Taxation. Unofficial witnesses contended that the provision of the Section is inequitable seeing that a tenant for life is assessed as if he were the absolute owner. In the first year of the Commonwealth Land Tax, life tenants were taxed upon the basis of capitalization of the rent received (or which should have been received) for the expectation of life of the life tenant. Great administrative difficulties were experienced in connection with this provision, and the only suitable solution appeared to be the amendment of the Act to its present form, which throws the whole responsibility for payment of tax upon the life tenant, to the exclusion of any person entitled in reversion or remainder. The suggestion that this fails in equity is based upon the view that a tenant for life has not the whole interest in the land, and that the interest of, say, a remainder-man may be not only an ascertainable, but also a saleable asset. **For the practical purposes of administration of the Land Tax Assessment Act, however, we consider that the difficulties attaching to any attempt to relieve the tenant for life of his present liability to tax with a view to transferring such liability to the remainder-man or reversioner are so great as to preclude us from recommending any amendment of the Act for that purpose.**

765. The proviso to Section 25 was altered in 1911 by confining it to the assessment of a **legal** tenant for life. This, however, has itself created an anomaly for which there appears to be no justification. The Commissioner of Taxation has put the case to us in these words :—

> " A distinct anomaly exists in the more favorable treatment by the Act of legal life tenants of land without power to sell as compared with equitable life tenants when the interest of the former has arisen under a settlement made before 1st July, 1910, or under the will of a testator who died before that date. Such a legal life tenant is assessed on the capital value of the annual rental of the land for his expectation of life, whilst the equitable life tenant is assessed on the full unimproved value of the land proportionate to his interest. It is submitted that there is no substantial ground for this discrimination."

This statement deals clearly with the point of discrimination between one class of life tenant and another. The broader question of the unequal incidence of the proviso is stated in a memorandum written in 1915 by the then Commissioner of Taxation, Mr. G. A. McKay, and quoted in evidence by the present Commissioner :—

> " The proposed elimination of the proviso which confers the benefit upon legal life tenants is suggested because there is no valid reason for the benefit, particularly as it discriminates between legal and equitable life tenants. Equitable life tenants as a rule have less control over land than legal life tenants, and yet they are assessed on the full unimproved value of the land, whereas legal life tenants are assessable on a lower value than the unimproved value, *i.e.*, on the capital value of the rent of the land for the period of their life. There is no good reason why either legal or equitable life tenants of land should receive preferential treatment over the ordinary owner. There has been very great difficulty experienced in administration in determining whether a life tenant is a legal or equitable life tenant."

The present Commissioner of Taxation, Mr. R. Ewing, informs us that he concurs in the opinion expressed by his predecessor that the proviso to Section 25 should be repealed.

766. **We recommend the repeal of the proviso.**

767. **Section 26** reads :—

"26. The holder of land under a purchase or a right of purchase from the Crown upon conditions, under the laws of a State relating to the alienation or disposition of Crown lands, shall be deemed to be the owner of the land if all the conditions other than the payment of purchase money have been fulfilled, but not otherwise.

768. In the case of Osborne *v.* The Commonwealth (12 C.L.R., 341), Griffith, *C.J.*, said :—

"Section 26 deals with the holders of land with a right of purchase from the Crown, a form of tenure well known in Australia, and particularly in New South Wales. A person who holds a certificate of fulfilment of the conditions has a marketable title practically equivalent to a grant in fee, subject to payment of the balance of the purchase money. He is substantially the owner, and Section 26 says that he is to be deemed to be the owner for the purpose of the Act, just as is a mortgagor."

769. It may be observed that the great majority of holders of lands under the tenures dealt with by Section 26 hold less than £5,000 of unimproved values, and consequently would not be taxable. Where, however, the holders would otherwise be taxpayers the Section affords provisional exemption in respect of such lands until the holders reach the position in which they are entitled to a Crown Grant on payment of the balance of the purchase money.

770. The provisional exemption thus allowed may have been based on two grounds—First, that it avoids interference with the settlement policy of the States, and second, that as a matter of practice it would be difficult or impossible to determine the amount of the holder's interest in the land, while there are unfulfilled conditions of residence and improvement.

771. The existence of the Section in its present form is not, in our opinion, inconsistent with the basis of beneficial ownership, which we recommend.

772. **Section 27** reads :—

"27.—(1.) The owner of a leasehold estate in land, under a lease made or agreed to be made after the commencement of this Act, not being a lease made in pursuance of an agreement made before the commencement of this Act, shall be deemed (though not to the exclusion of the liability of any other person) to be the owner of land of an unimproved value equal to the unimproved value of his estate :

Provided that where the owner of a leasehold estate has, within five years previously, been the owner of a freehold estate in the land he shall be assessed and liable to land tax as if he were the owner of the fee-simple.

(2.) He shall be entitled to deduct from the tax payable by him in respect of the unimproved value of his estate an amount equal to the sum of—

(*a*) the amount which bears the same proportion to the tax payable in respect of the land by the owner of any freehold estate as the unimproved value of the leasehold estate bears to the unimproved value of the land, and

(*b*) the amount which bears the same proportion to the tax payable in respect of the unimproved value of any precedent leasehold estate as the unimproved value of the leasehold estate bears to the unimproved value of the precedent leasehold estate.

(3.) Notwithstanding anything in this section, where the owner of the fee simple is exempt under section thirteen or forty-one of this Act from taxation in respect of the land, or the lease is a lease from the Crown, a lessee of the land shall be assessed and liable for land tax as if the lease were made before the commencement of this Act and not otherwise.

(4.) For the purposes of this section—

(*a*) the unimproved value of a leasehold estate means the present value of the annual value of the land calculated for the unexpired period of the lease at four and a half per centum, according to calculations based on the prescribed tables for the calculation of values ;

(*b*) the annual value of land means four and a half per centum of the unimproved value of the land :

Provided that the Commissioner may from time to time, if he thinks fit, alter the rate per centum upon which the calculations in this section are based ; and

(*c*) the owner of a leasehold estate includes the lessee of land for life under a lease or agreement for a lease."

773. This Section, which deals with leases entered into **after** the commencement of the Act, has been the subject of much criticism during our inquiry. It has specially been contrasted unfavorably with Section 28, dealing with leases made **before** the commencement of the Act, as the lessee coming under Section 27 is taxed at a higher rate than he would be if the lease had come under Section 28, and there is also the anomalous position that the rebate of tax allowable to the lessee on account of the tax payable by the lessor is dependent upon whether the lessor is not taxable, or, if he is taxable, upon the rate of the lessor's tax. The first point, that is, the difference in tax to a lessee according to whether he comes under Section 27 or Section 28, was illustrated to us by a witness thus :—

	Section 27.		Section 28.
Unimproved value of land leased	£10,000	..	£10,000
4½ per cent.	450	..	450
Rent reserved, £300 (not allowed as a deduction under Section 27)	..	..	300
	£450	Difference	£150

Unexpired term of lease, 5 years.
Multiplier, as per prescribed table, 4·488.
Lessee's estate, Section 27—£450 × 4·488 = £2,019.
Lessee's estate, Section 28—£150 × 4·488 = £673.

If the rent reserved under the lease in above cases had been **£450,** the Lessee's estate under Section 27 would still be **£2,019,** but under Section 28 it would be nil.

In our opinion the method of valuation of a lessees' interest embodied in Section 28 is the only one consistent with sound principle and **we recommend its adoption to the exclusion of the arbitrary method of Section 27.**

774. With regard to the second point, the Commissioner of Taxation supplied us with some illustrations of the anomaly that the tax of the lessee under Section 27 is relatively great or small according as the lessor's rate of tax is greater or less than the lessee's rate of tax. The Commissioner expressed the opinion that an amendment of the Act, which would remove this anomaly, would expose the revenue to loss, owing to the opportunity it would give for avoidance of tax by entering into fictitious leases. **We are of opinion that the present anomaly should be removed.** This removal would follow the adoption of beneficial ownership as the sole measure of liability to taxation.

775. **Proviso to Section 27 (1.)** (para. 772).—It can hardly be contended that this proviso bears the impress of equity, since it strikes at transactions entered into in good faith and for valid reasons equally with those the sole purpose of which is avoidance of tax, and which may be subject to some secret arrangement the effect of which would be to leave the control of the whole estate in a transferror, as if he had never executed the transfer. In a manner which, though simple for the purpose of administration, is perfectly arbitrary, the proviso places liability for Land Tax as owner upon a person who may for years have ceased to be an owner for every purpose, legal and beneficial. A case which arose under the Commonwealth Income Tax Assessment Act, and which deals with the principle underlying this part of Section 27 of the Land Tax Assessment Act (Deputy Federal Commissioner of Taxation, Appellant, and Thomas Purcell, Respondent, 29 C.L.R., 464), may be referred to. In that case, the owner of certain pastoral properties executed a Declaration of Trust in favour of himself, his wife and his daughter, apportioning the income of the properties in equal shares between the three persons named. It was claimed by the Commissioner of Taxation that the Declaration of Trust was invalid as against the claim for Income Tax. In the course of judgments in the case, the judgment of Griffith, *C.J.*, in Waterhouse *v.* Deputy Federal Commissioner of Land Tax (17 C.L.R., 665) was quoted thus :—

> " It is hardly necessary to point out that a *bonâ fide* alienation of land for the purpose of escaping liability to taxation incident to its ownership is not an evasion of Land Tax."

In the joint judgment of Gavan Duffy and Starke, *J.J.*, it was stated :—

> " The Commissioner insisted that the declaration, if in form it created a trust, was in fact a mere sham—a device whereby property belonging to the settlor is made to appear to belong in equity to some one else in order to escape taxation. Undoubtedly, if the Commissioner could establish this position, the respondent would be assessable as the absolute owner pursuant to Section 10 of the Act, and not merely as a trustee. The question is one of fact. The Chief Justice found that the declaration was not a sham, and that the respondent did in fact intend by the document to benefit his wife and daughter, although he had present in his mind, and was to some extent influenced by the fact, that the disposition would reduce the burden of taxation. The learned counsel for the Commissioner stressed this latter part of the finding, but the right of every man to dispose of his property, if he can, in a way which will relieve him of taxation, and for that purpose, has been recognised by the highest authority (Simms *v.* Registrar of Probates (1900), A.C. 333). . . . The Commissioner next contended that, even if the declaration evidenced a real, genuine, and valid transaction, yet it was struck by Section 53 of the *Income Tax Assessment Act* 1915–16.* If the argument be sound, the assessment is of course unimpeachable. It is therefore essential to consider the true construction of Section 53. The Section, as the Chief Justice says, does not prohibit the disposition of property. Its office is to avoid contracts, &c., which place the incidence of the tax or the burden of tax upon some person or body other than the person or body contemplated by the Act. If a person actually disposed of income-producing property to another so as to reduce the burden of taxation, the Act contemplates that the new owner should pay the tax. The incidence of the tax and the burden of the tax fall precisely as the Act intends, namely, upon the new owner. But any agreement which directly or indirectly throws the burden of the tax upon a person who is not liable to pay it, is within the ambit of Section 53. It follows, from what we have said, that there is no contravention of Section 53 in the present case."

---

* Section 53 (Income Tax Assessment Act).—" Every contract, agreement or arrangement made or entered into, in writing or verbal, whether before or after the commencement of this Act, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly—

(*a*) altering the incidence of any income tax ; or
(*b*) relieving any person from liability to pay any income tax or make any return ; or
(*c*) defeating, evading or avoiding any duty or liability imposed on any person by this Act ; or
(*d*) preventing the operation of this Act in any respect ;

be absolutely void, but without prejudice to its validity in any other respect or for any other purpose."

The case of Simms *v.* Registrar of Probates was a decision of the Privy Council upon an appeal from the Supreme Court of South Australia. In the course of the judgment of the Privy Council it was said :—

> " It does not appear to their Lordships that an examination of the decisions in which the word " evade " has been the subject of comment leads to any tangible result. Everybody agrees that the word is capable of being used in two senses : one which suggests underhand dealing, and another which means nothing more than the intentional avoidance of something disagreeable. . . If the thing which constitutes evasion is some contrivance between two or more persons, that is a substantial subject of inquiry with easily-defined limits. The question whether an apparent transfer is also a real one is a question which occurs not very rarely, and on which the evidence of actual dealings by the parties can usually be brought to bear. But if we are to dive into the motives of a person acting by himself, and to find out whether a desire to avoid a tax, which probably everybody thinks desirable *per se*, was when he gave away property, a dominant motive with him, or a substantial motive, or a minor motive, or any motive at all, that is an inquiry of a vague and indefinite kind."

776. It has been suggested that an equitable amendment of the proviso under discussion would be to add such words as :—

> " unless the Commissioner is satisfied that the transaction was not effected primarily for the purpose of avoiding Land Tax."

but for the reasons just quoted from the judgment of the Privy Council, we are of opinion that the inquiry that the Commissioner would be compelled to make in such a case would be what the Privy Council calls " an inquiry of a vague and indefinite kind," and one which is hardly likely to be satisfactory. In our opinion it would be better to leave the question to be decided by proof that the transfer is in effect a real one, independently of whether the motive or one of the motives for the transfer is avoidance of tax. In cases of the kind there is always a degree of protection to the revenue afforded by the " general reluctance of mankind to part with their property to others," and, **in our opinion, subject to inquiry, where deemed necessary, into the reality of the transaction, there should be no attempt to assess a person to Land Tax (as in the proviso) as if he were the owner of the fee-simple in cases where he has actually divested himself of his ownership —that is, the principle of beneficial ownership should have full sway and the Revenue authorities should be satisfied with inquiries, where considered necessary, into the reality of transfers of property, without attempting to make liability to tax depend upon difficult and unsatisfactory inquiries into motive.**

777. An ambiguity in the proviso to Section 27 (1.) has been pointed out by the Commissioner of Taxation in his Seventh Annual Report. If the opinion just enunciated with regard to this proviso be given effect, there would be no need for action with regard to that ambiguity. The Commissioner points out that the expression in the proviso " five years previously " may mean either five years previous to the date of assessment or five years previous to the date of the lease, and suggests that the word " previously " in the proviso be omitted and that there be inserted the words " previous to the date when he became lessee of the land."

778. **If the proviso is to be retained, the amendments suggested by the Commissioner to remedy the ambiguity should in our opinion be enacted,** except that the period of five years should be shortened to three years.

779. While we have discussed this section at some length, **we must point out that the adoption of the scheme we recommend, that is, to base taxation solely upon the possession of a beneficial interest in land, would remove the necessity for the section.**

780. **Section 28** reads :—

" 28.—(1.) The owner of a freehold estate in land who or whose predecessor in title has before the commencement of this Act entered into an agreement to make or granted a lease of the land shall, for the purpose of his assessment under this Act, be entitled, during the currency of the lease, to have the unimproved value (if any) of the lease deducted from the unimproved value of the land.

(2.) The owner of a leasehold estate in land, under a lease made or agreed to be made before the commencement of this Act, shall be deemed to be, in respect of the land, the owner of land of an unimproved value equal to the unimproved value (if any) of his estate ; but if he has, before the commencement of this Act, entered into an agreement to make or granted a lease of the land, he shall be entitled, during the currency of that lease, to have the unimproved value (if any) of that lease deducted from the unimproved value of his estate :

Provided that where the owner of the leasehold estate has, within three years before the commencement of this Act, been the owner of a freehold estate in the land, he shall be assessed and liable to land tax as if his leasehold estate had been under a lease made after the commencement of this Act.

(3.) For the purposes of this section—

(*a*) the unimproved value of a lease or leasehold estate in land means the value of the amount (if any) by which four and a half per centum of the unimproved value of land exceeds the annual rent reserved by the lease, calculated for the unexpired period of the lease at four and a half per centum, according to the calculations based on the prescribed tables for the calculation of values:

Provided that the Commissioner may from time to time, if he thinks fit, alter the rate per centum upon which the calculations in this section are based:

(*b*) rent, in the case of a lease of improved land, means so much of the whole rent as bears to the whole rent the proportion which the unimproved value of the land at the date of the lease bore to the improved value:

Provided that, where onerous conditions for constructing buildings, works, or other improvements upon the land, or expending money thereon, are imposed upon the lessee, or where any fine, premium, or fore-gift, or consideration in the nature of fine, premium, or fore-gift, is payable by the lessee, the Commissioner may assess the amount (if any) which ought, for the purposes of this section, to be added to the value of the rent in respect thereof, and the value of the rent shall be deemed to be increased by that amount accordingly;

(*c*) the owner of a leasehold estate includes the lessee of land for life under a lease or an agreement for a lease."

781. The proviso to sub-section (2.) is in our opinion objectionable and should be eliminated. Where it operates it measures the unimproved value of a lessee's estate by an arbitrary method which, as indicated in paragraph 773, should in our opinion be removed from the Act.

782. The general scheme of Section 28 is not inconsistent with the principle of beneficial ownership, which we recommend as the basis of taxation. The principal criticism of the Section by witnesses turned upon the question of "onerous conditions" in the proviso to Sub-section (3.) (*b*). In a case arising under this sub-section, it was held by the High Court that:—

> "A covenant in a lease of Crown land for mining purposes requiring the lessees during the term of the lease to employ in the construction of works or in mining operations on or under the land a number of able and competent workmen and miners, was an onerous condition for expending money upon the land." (The Coal Cliff Collieries Ltd. *v.* Federal Commissioner of Land Tax (1917) 24 C.L.R., 197.)

The Commissioner of Taxation informed us that insuperable difficulties were encountered in the attempt to compute the amount of deduction on account of the "onerous conditions" in this case, with the result that no deduction could be made. It has been suggested that "onerous conditions," for the purposes of the sub-section, should be defined as including all those conditions of a lease which involve any limitation in the use of the land by the lessee; but, **in our opinion, the term "onerous conditions" in Section 28 should be confined to obligations to do something by way of an improvement of the leased property,** which—

(1) will enure to the benefit of the landlord; or
(2) may be reasonably regarded as a substitute for rent, or may be reasonably converted into terms of rent; or
(3) will involve an expenditure on the part of the lessee, the effect of which will be to maintain or increase the capital improved value of the land.

We recommend amendment of the Act to secure that result.

783. We do not consider it inconsistent with that recommendation that rates and taxes attached by law to the ownership or possession of land and paid by the Lessee in relief of the Lessor and in accordance with a covenant in the Lease should be regarded as equivalent to rent and therefore, like rent, to be taken into account in fixing the unimproved value of the Lessee's interest. No deduction is at present allowed on this account, but

784. **We recommend** an amendment of the Act to allow such a deduction.

785. In Section 28, as in Section 27, 4½ per cent. of the unimproved value is the percentage prescribed for the purpose of determining the economic rent. Under Section 28 the **taxable interest** of a Lessee is the amount, if any, by which 4½ per centum of the unimproved value of the leased lands exceeds the annual rent reserved by the Lease. This amount is capitalized for the unexpired period of the Lease at 4½ per cent. It was contended by witnesses appearing before the Crown Leases Commission, and also before the present Commission, that to adopt 4½ per cent. as the factor of capitalization in this case puts the taxpayer at a disadvantage and is inconsistent with the facts of the average primary producer's position. It was stated that a Crown Leaseholder, for example, is entitled to expect a return of not less than 10 per cent. (some witnesses put the percentage much higher). The Commissioner of Taxation, in his evidence before the Crown Leases Commission, expressed the opinion that the rate for capitalization should be about 5½ per cent. but not exceeding 8 per cent. The effect of increasing the percentage used as the factor of capitalization is to decrease the taxable interest of the Lessee and consequently the Lessee's tax. The Crown Leases Commission, being of opinion that the 4½ per cent. basis is "inequitable," recommended that a basis of about 8 per cent. should be used.

786. The question can only arise when the rent payable by a Lessee is less than the economic rent. In that case the position is that the total estate or interest in the land is divided between the Lessor and the Lessee. It seems to us, therefore, that when the proportions of the total interest in the land respectively vested in the two parties and expressed in terms of rent are to be converted into their capital-value equivalents the same percentage-factor of capitalization should be used in each case ; otherwise the treatment of the matter will be determined by the introduction into the calculation of an inappropriate element, namely, that of tax-concession to the Lessee. The desire to make a tax-concession to the Lessee is intelligible, but it appears to us illogical to attempt to effect this result by applying different rates of capitalization to the two parts into which the total economic rent of a piece of land happens to be divided.

787. There are two further objections :—First, that if the Lessee's interest is to be capitalized according to the rate of the net profit which the Lessee expects to make as a result of carrying on business upon the land (and this is the basis put forward by the advocates of this course) the standard is varying and uncertain ; second, that the course proposed would give a tax-concession to the Lessee at the direct expense of the Lessor (where the Lessor is taxable) ; but this, we suggest, is contrary to sound principle. Exemptions and deductions from tax are legitimately made only at the expense of the whole body of taxpayers. By the course proposed, one person, the Lessee, would, improperly as we think, have his tax decreased at the direct expense of another person, the Lessor. It may be said that it is in respect of Crown Leases where the Lessor (the State) is exempt from tax that the proposal is made. That is true, but the method seems more manifestly inappropriate as a means of giving a tax-concession if it is proposed to be made only where there is a taxable Lessee but no taxable Lessor.

788. We have carefully considered all that has been advanced on this subject, and are unable to see any valid reason for recommending a factor of capitalization differing from the factor used as the percentage of unimproved value adopted for the purpose of determining the "economic rent." At present this is 4½ per cent. The evident intention is that the prescribed percentage shall have a close relation to the average return derivable from sound investments. **We do not recommend any change in that rate, for the reason that we have not received any evidence pointing definitely to the need for such a change and supplying us with reasons for adopting some other specific rate.** We consider, however, that any change in that percentage might reasonably be made from time to time upon the recommendation of the financial advisers of the Commonwealth.

789. **Section 29.**—This section as amended in 1914 contains the provisions under which the taxation of Lessees' interests in Crown Leaseholds is authorized. (For discussion upon that subject, see "Taxation of Lessees' Estates in Crown Leaseholds," page 189).

790. **Sections 31 and 32.**—These sections provide in effect that a Mortgagor shall be the taxpayer in respect of the land represented by the Mortgage, the Mortgagee only incurring liability for tax when in possession of the mortgaged land, and even then the Mortgagor is deemed to be the primary taxpayer, and the Mortgagee in possession the secondary taxpayer. The Mortgagee in possession is not liable for tax if his possession began before 1st July, 1910, nor in any case until a period of three years after he has entered into possession, except where the Mortgagor fails to pay the tax during that period, in which event payment by the Mortgagee is required, but that payment is deemed to be made by him on behalf of the Mortgagor. **Under the scheme we recommend of taxing beneficial interests in land, in our opinion, the mortgagor should, while his possession is uninterfered with, be regarded as the sole taxpayer. If, on the other hand, a Mortgagee enters into possession, he should, in our opinion, from the day upon which he takes possession, be deemed to be the sole taxpayer.**

791. **We recommend** amendment of the Act in accordance with that opinion.

792. **Section 33** reads :—

33.—(1.) Any person in whom land is vested as a trustee shall be assessed and liable in respect of land tax as if he were beneficially entitled to the land :

Provided that where he is the owner of different lands in severalty, in trust for different beneficial owners who are not for any reason liable to be jointly assessed, the tax so payable by him shall be separately assessed in respect of each of those lands :

Provided also that when a trustee is also the beneficial owner of other land, he shall be separately assessed for that land, and for the land of which he is a trustee, unless for any reason he is liable to be jointly assessed independently of this section.

* * * * * * * *

(2.) A trustee shall in no case be deemed to be an absentee ; but any of the beneficiaries who are absentees shall be separately assessed and liable as absentees.

This section will need amendment if the beneficial ownership basis for taxation be adopted, as recommended. In that case a trustee, who as such is now made liable to Land Tax as if he were beneficially entitled to the land, would be wholly relieved of that liability. If, however, a trustee were also a beneficiary, he would be liable as beneficiary to the extent of his beneficial interest, but not as trustee.

793. **Section 35.**—This section provides that the owner of an equitable estate or interest in land shall be assessed and liable in respect of Land Tax as if he were the legal owner of the estate or interest. A further provision is that, where there is an equitable interest, the owner of the legal estate shall be deemed to be the primary taxpayer and the owner of the equitable estate the secondary taxpayer. **This section will need amendment or may become unnecessary** if our recommendations with regard to the beneficial ownership basis of taxation (see paragraph 638) and with regard to Section 25 (see paragraphs 763–766) be adopted.

794. **Section 36** reads :—

36.—(1.) Land owned by a married woman for her sole and separate use shall be liable to assessment and taxation as if she were unmarried.

(2.) Where—

(*a*) a husband has directly or indirectly transferred land to or in trust for his wife, or

(*b*) a wife has directly or indirectly transferred land to or in trust for her husband,

(they not being judicially separated), the husband and wife shall, unless the Commissioner is satisfied that the transfer was not for the purpose of evading land tax, be deemed to be joint owners of all the land owned by either of them :

Provided that this sub-section shall not apply to settlements made before the thirtieth day of September, One thousand nine hundred and ten.

Sub-section (2.) of this section was declared by the High Court to be invalid—Waterhouse *v.* Deputy Federal Commissioner of Land Tax (South Australia (1914) 17 C.L.R. 665).

795. **In view of that decision, the sub-section should be repealed.**

796. **Section 37** reads :—

37.—(1.) Where, before or after the commencement of this Act, an agreement has been made for the sale of land, whether the agreement has been completed by conveyance or not—

(*a*) the buyer shall be deemed to be the owner of the land (though not to the exclusion of the liability of any other person) so soon as he has obtained possession of the land ; and

(*b*) the seller shall be deemed to remain the owner of the land (though not to the exclusion of the liability of any other person) until possession of the land has been delivered to the purchaser and at least fifteen per centum of the purchase money has been paid :

Provided that the Commissioner may exempt the seller from the provisions of this section, if he is satisfied that the agreement for sale has been made in good faith, and not for the purpose of evading the payment of land tax, and that the agreement is still in force ; as to all which matters the decision of the Commissioner shall be final and conclusive.

(2.) In estimating the amount of purchase money which has been paid, all money—

(*a*) owing by the purchaser to the seller, and secured by any mortgage or charge on the land ; or

(*b*) lent to the purchaser by the seller ; or

(*c*) owing by the purchaser to any other person, and directly or indirectly guaranteed by the seller,

shall be deemed to be unpaid purchase money.

(3.) When by virtue of this section the buyer and seller of any land are both liable for land tax in respect thereof the buyer shall be deemed to be the primary taxpayer, and the seller to be the secondary taxpayer ; and there shall be deducted from the tax payable by the seller in respect of the land such amount (if any) as is necessary to prevent double taxation.

797. During our inquiry this section has been criticised by witnesses as unnecessarily continuing for an undefined time the concurrent tax-liability of two persons, namely, the buyer and the seller, where an agreement has been made for the sale of land. It will be seen that, while the buyer is deemed to be the primary taxpayer, the seller is for taxation purposes deemed to remain the owner of the land (and secondary taxpayer) until possession has been given to the purchaser and at least 15 per cent. of the purchase money has been paid. The Commissioner is given discretion to exempt the seller from the provisions of the section under specified conditions, and his decision in the matter is made final and conclusive. It was urged upon the Commission that the delivery of possession by the seller should, as under the Queensland Act, be accepted as a sufficient test of the transfer of liability to taxation. It is stated that many transactions occur in which possession is given to the purchaser, although either no payment on account of the purchase money has been made, or, as in the more common case, a proportion of the purchase money less than the 15 per cent. prescribed by the Act has been paid.

798. **We recommend that the section be amended** to provide that where—

(1) possession of the land has been delivered to the purchaser, with the right to receive the rents and profits, and

(2) not less than 10 per cent. of the purchase money has been paid,

the purchaser should be treated as the owner, and the seller's liability to taxation should be deemed to have terminated.

799. In cases where the Commissioner declines to accept the contention of either of the parties that these conditions have been fulfilled, **we recommend** that the party aggrieved by such decision be entitled to appeal to the Board of Appeal (see paragraph 721). The evidence shows

the practice of the Department to be to release the seller from liability to tax if the buyer has obtained possession of the land and has paid some part of the purchase money, though it be less than 15 per cent. The Act apparently admits of the exercise of the discretion of the Commissioner in such a way as (in a proper case) to relieve the seller from liability to tax, even though no part of the purchase money had been paid. To meet exceptional cases, the provision conferring such discretion should in our opinion be retained.

800. Sub-section (3.) of the above section should disappear if our recommendation with regard to the beneficial ownership basis be adopted.

801. **Section 38** reads—

38.—(1.) Joint owners of land shall be assessed and liable for land tax in accordance with the provisions of this section.

(2.) Joint owners (except those of them whose interests are exempt from taxation under section thirteen or section forty-one of this Act) shall be jointly assessed and liable in respect of the land (exclusive of the interest of any joint owner so exempt) as if it were owned by a single person, without regard to their respective interests therein or to any deductions to which any of them may be entitled under this Act, and without taking into account any land owned by any one of them in severalty or as joint owner with any other person.

(3.) Each joint owner of land shall in addition be separately assessed and liable in respect of—

(*a*) his individual interest in the land (as if he were the owner of a part of the land in proportion to his interest), together with

(*b*) any other land owned by him in severalty, and

(*c*) his individual interests in any other land.

(4.) The joint owners in respect of their joint assessment shall be deemed to be the primary taxpayer, and each joint owner in respect of his separate assessment to be a secondary taxpayer; and from the tax payable in respect of his interest in the land, by each joint owner under the last preceding sub-section, there shall be deducted such amount (if any) as is necessary to prevent double taxation.

(5.) Joint owners shall in no case be deemed in respect of their joint assessment to be absentees; but any of them who is an absentee shall be separately assessed and liable, under this section, as an absentee.

(6.) This section shall not apply in the case of joint owners who have made partition of their interests since the thirtieth day of June, One thousand nine hundred and ten, and before the thirtieth day of September, One thousand nine hundred and ten.

(7.) Where, under a settlement made before the first day of July, One thousand nine hundred and ten, or under the will of a testator who died before that day, the beneficial interest in any land or in the income therefrom is for the time being shared among a number of persons, all of whom are relatives of the settlor or testator by blood, marriage, or adoption, in such a way that they are taxable as joint owners under this Act, then, for the purpose of their joint assessment as such joint owners, there may be deducted from the unimproved value of the land, instead of the sum of Five thousand pounds as provided by paragraph (*b*) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely :—

In respect of each of the joint owners who hold an original share in the land under the settlement or will—

(*a*) the sum of Five thousand pounds, or

(*b*) the sum which bears the same proportion to the unimproved value of the land, after deducting the value of any annuity under section thirty-four of this Act, as the share bears to the whole,

whichever is the less :

Provided that, where the same persons have a beneficial interest in land or in the income therefrom under more than one settlement or will or under a settlement and will, they shall be jointly assessed in respect of the whole of their interests under the settlements or wills or settlement and will, and there may be deducted in the joint assessment from the unimproved value of the land comprised in the joint assessment, instead of the sum of Five thousand pounds as provided by paragraph (*b*) of sub-section (2.) of section eleven of this Act, the aggregate of the following sums, namely :—

In respect of each of the joint owners who holds an original share in the land being jointly assessed—

(*a*) the total sum of Five thousand pounds, or

(*b*) the sum which bears the same proportion to the unimproved value of the land after deducting the value of any annuity under section thirty-four of this Act as the share bears to the whole,

whichever is the less.

(8.) In this section, "original share in the land" means the share of one of the persons specified in the settlement or will as entitled to the first life or greater interest thereunder in the land or the income therefrom, or to the first such interest in remainder after a life interest of the settlor or after a life interest of the wife or husband of the settlor or testator.

802. The term "joint owners" used in this section is defined thus by Section 3 :—

> "Joint owners" means persons who own land jointly or in common, whether as partners or otherwise, and includes persons who have a life or greater interest in shares of the income from the land."

Perhaps the most numerous and important group of persons whose interests are governed by this section is that of shareholders in Companies. This long and complicated section, which has been the subject of much litigation, will practically disappear from the Act if our recommendation with regard to beneficial ownership as the basis for taxation be adopted. In the case of joint owners in the strict sense, that is, persons who have an undivided interest in land and are not tenants in common, **in our opinion the interest of each joint owner for the purpose of the Land Tax should be ascertained by dividing the total unimproved value of the land by the number of joint owners.**

803. Sub-section 7 of this section places joint beneficial owners in trust estates where the interest arose prior to the inception of the Act, 1st July, 1910, in an advantageous position in regard to the tax as compared with other joint owners. The Commissioner of Taxation informed us that—

> "It is understood that the provision was inserted because it was contended that joint beneficial owners under trust deeds could not sell the land and thus assist in breaking up big estates. There is, however, a way by which beneficial owners can obtain power to sell (consent of Court), so that no real reason exists for the discrimination between joint beneficial owners in trust estates and ordinary joint owners."

In our opinion, this discrimination cannot be fully justified, and we recommend the repeal of Sub-section 7.

804. **Section 38A** confers upon a specified class of persons a somewhat similar privilege to that conferred by Section 38 (7.). **In our opinion, this discrimination also cannot be fully justified, and we recommend the repeal of the section.**

805. With regard to recommendations for the repeal of Section 38 (7.) and Section 38A, it should be pointed out that if our recommendation (paragraph 638) of beneficial ownership as the sole test of tax-liability be adopted, the net combined effect of the recommendations will be not to diminish any exemption which can now be claimed under Section 38 (7.) or Section 38A, but, where the amount claimable under those sections is less than **£5,000**, to allow that sum to be claimed. It is important to note that what is now a privilege granted to restricted classes of joint owners would then become the right of all joint owners.

806. **Section 39** reads—

39.—(1.) All land owned by a company shall be deemed (though not to the exclusion of the liability of the company or of any other persons) to be owned by the shareholders of the company as joint owners, in the proportions of their interests in the paid-up capital of the company.

(2.) The provisions of section thirty-eight of this Act shall apply accordingly (but so that the assessment and liability of the company shall be in lieu of the joint assessment and liability under sub-section (2.) of that section), and the shareholders shall be separately assessed and liable, and entitled to deductions, in accordance with that section.

(3.) The term "shareholder," in this and the next following section includes all persons on whose behalf a share in the company is held by a trustee or by any other person.

(4.) A company shall in no case be deemed to be an absentee; but any of the shareholders who are absentees shall be separately assessed and liable as absentees.

(5.) A company shall be deemed to be the agent in the Commonwealth for the purposes of this Act for an absentee shareholder in respect of his interest in the company.

807. We have recommended above (paragraph 639) that for practical reasons Companies shall be treated in an exceptional manner—that is, by regarding a Company as beneficial owner and sole taxable entity. If that recommendation be approved, amendment of Section 39 will be required.

808. **Section 41** reads—

41.—(1.) Land owned by a Mutual Life Assurance Society (not being land of which the society is mortgagee in possession, or which the society has acquired under or by virtue of a mortgage) shall not be liable as against this society or its policy-holders, to assessment or taxation under this Act.

(2.) For the purposes of this section, a Mutual Life Assurance Society means any assurance society all the profits of which are divided among the policy-holders. In the case of a society which has shareholders who are entitled to receive a share of the profits of the society, a proportion of such land owned by the society, corresponding to the proportion of the total assurances of the society which is represented by its Australian policies, shall not be liable as against the society or its policy-holders to assessment or taxation under this Act.

809. Land owned by a Mutual Life Assurance Society is not exempt from Land Taxation under any of the State Acts. Its exemption under the Commonwealth Act is clearly a question of policy, perhaps based on the ground that the payment of life assurance premiums is a special form of thrift which, in the general interests of the community, it is desirable to encourage, not only by the exemption granted under the Income Tax Assessment Act of amounts up to **£50** paid as premiums on life policies, but by exempting from Land Tax the lands of such societies. Should it be decided to continue the exemption, there seems no reason why the section should not disappear and the provision form part of Section 13. **We are unable to see any justification for the exemption applying in any degree in the case of Proprietary Life Assurance Societies.**

810. **Section 42A** reads—

42A. Where land is occupied, controlled, or used by a person who is not the owner and there is no lease or agreement for a lease for a definite term in respect of the occupancy, control, or user of the land, the person occupying controlling, or using the land shall be deemed to be the lessee for life of the land and shall be assessable as provided in section twenty-seven of this Act:

Provided that the Commissioner may exempt the person occupying, controlling, or using the land from the provisions of this section, if he is satisfied that the arrangement is of a temporary nature, as to which matter the decision of the Commissioner shall be final and conclusive.

811. **Where land is occupied as contemplated by this section,** as the interest of the person occupying, controlling, or using the land is of so indefinite a nature, **in our opinion the whole liability for payment of tax should be imposed upon the actual owner of the land.** If this were likely to cause any hardship, it would be within the power of the owner to put an end to the occupation or to arrange for a lease in accordance with which the interests of the lessor and lessee would be separately estimated for purposes of taxation.

812. **Section 43** reads—

43. Where under this Act—

(*a*) any person is deemed to be the secondary taxpayer in respect of any land or interest; and

(*b*) it is provided that there shall be deducted from the tax payable by the secondary taxpayer, in respect of the land or interest, such amount (if any) as is necessary to prevent double taxation,

the amount of the deduction (if any) shall be the lesser of the following amounts:—

(*a*) the amount of tax payable in respect of the land or interest by the secondary taxpayer; or

(*b*) the aggregate of the amounts of tax (if any) payable in respect of the land or interest by the primary taxpayer and by any precedent secondary taxpayer:

Provided that the secondary taxpayer shall be assessed and liable in respect of the land or interest, notwithstanding that the primary taxpayer is exempt from taxation in respect of the land or interest, or that there is no primary taxpayer in respect of the land or interest.

813. If our recommendation with regard to the beneficial ownership basis be adopted, this section will become unnecessary. An important element in our consideration is the simplification of the Act by the abolition of the complex scheme of primary taxpayers and secondary taxpayers. The proviso to this section deals with cases where the primary taxpayer is exempt from taxation in respect of the land or interest or where there is no primary taxpayer in respect of such interest. There are instances, exemplified by Glenn's case (20 C.L.R. 490) in which land is vested in a trustee, but at a given time there is no person entitled in equity to an estate of freehold in possession of the land. In such cases, as was held by the High Court in the case cited, the trustee is entitled to the whole of the estate in possession, both legal and equitable, and under the beneficial ownership basis would therefore be the sole taxpayer.

814. **Section 44.**—This section contains provisions as to appeals to the High Court and other Courts. Attention is invited to the section of this Report headed "Board of Appeal" (page 198).

815. **Section 45** reads—

45.—(1.) The fact that an appeal is pending shall not in the meantime interfere with or affect the assessment appealed from; and land tax may be levied and recovered on the assessment as if no appeal were pending.

(2.) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as arrears.

816. The Land Tax Assessment Act, unlike the Income Tax Assessment Act, contains no provision for the lodging by a taxpayer of an objection to assessment, although the Regulations provide for that course. Under the Income Tax Assessment Act the lodging of an objection is the first step to be taken by a taxpayer who is dissatisfied with the Commissioner's assessment, and if the Commissioner, after consideration of an objection, disallows it, either wholly or in part, written notice of the decision is given to the taxpayer, who, if dissatisfied, may within 42 days request the Commissioner to treat his objection as an appeal and to forward it to a Court (named by the taxpayer) or to the Board of Appeal.

817. The insertion in the Land Tax Assessment Act of similar provisions will, we assume, follow the adoption of our recommendation under "Board of Appeal."

818. In the course of his evidence, the Commissioner of Taxation informed us that frequent representations had been made to him with regard to the harshness of a strict application of the section to the extent of compelling payment of the total tax assessed, although a *bonâ fide* appeal was pending. The Commissioner expressed the opinion that amendment of the Act might reasonably be made, to provide that, where the Commissioner is satisfied that the appeal is not frivolous, payment of the tax may be deferred until the decision of the appellate tribunal is given. The Commissioner went on to say that such a provision should not, in his opinion, be extended to mere objections to assessment by a taxpayer which are not followed up by an appeal to a Court or other prescribed tribunal, as the Department had had unfortunate experience in two States, where the office was flooded with objections by taxpayers which, in many cases, were not properly stated, and in a great number of instances were not followed by any further action on the part of the objectors.

819. **We recommend that it be provided that a taxpayer, when lodging an objection to assessment, should be required to pay tax upon the amount which he admits is taxable, or 75 per cent. of the tax assessed, whichever is the greater.**

820. If the Commissioner on consideration disallows the objection, and the taxpayer does not within the prescribed time exercise his right of requiring the objection to be treated as an appeal, the taxpayer should be required at once to pay the balance of the tax, with interest at a prescribed rate. If, however, the taxpayer requires the Commissioner to treat his objection as an appeal and forward it either to a Court or to the Board of Appeal, in our opinion the payment of the balance of the tax claimed should be allowed to await the decision of the Court or Board. If the tribunal determines any balance of tax to be payable, the taxpayer should be required to pay such balance within 30 days of notification of the decision of the tribunal and also to pay interest thereon at a prescribed rate.

821. **Extension of Time for Payment of Tax and Payment by Instalments.**—In his Seventh Annual Report, page 13, the Commissioner of Taxation pointed out that—

> "The Act as it now stands contains no direct provision empowering the Commissioner to extend the time for payment, or to allow the tax to be paid by instalments, though that power is assumed and used."

Such a power is conferred upon the Commissioner by the Income Tax Assessment Act, and

822. **We recommend an amendment of the Land Tax Assessment Act giving a similar power to the Commissioner under that Act.**

823. **Section 50** reads—

50. Every person who fails to pay the amount payable by him in respect of land tax before the expiration of thirty days after it has become due shall be liable by way of additional tax to a further amount of ten per centum on the amount of the tax:

Provided that the Commissioner may in any particular case, for reasons which in his discretion he thinks sufficient, remit the additional tax or any part thereof. The Commissioner shall furnish to the Treasurer annually, for presentation to Parliament, a report of all such remissions with a statement of the reasons therefor.

824. This section does not fix a time within which any additional tax imposed under its provisions shall be paid.

825. **We recommend** that any additional tax levied under this section be made payable on a date to be named in the notice, being not less than 30 days after service by post of notice to pay, and that, in the case of non-payment, penalty at the rate prescribed for non-payment of the original tax be levied. Where there is failure to pay tax within the prescribed time, the section provides a penalty of 10 per cent. **This, in our opinion, should be varied to correspond with our recommendation in the case of Income Tax,** as set out in paragraph 554 of our Third Report, which reads:—

> "In our opinion, a rate per cent. per annum should be prescribed in lieu of the present absolute 10 per cent., and **we recommend that the rate be 10 per cent. per annum.** In making this recommendation, we do not recommend any limitation upon the discretion now given to the Commissioner to remit the penalty or any part thereof."

826. **Refunds—Time within which Application may be made.**—The following is quoted from the Seventh Annual Report of the Commissioner of Taxation:—

> "It is desirable to bring the Act into line with the Income Tax Assessment Act on the question of refunds desired by the taxpayer.
>
> The Conference of Taxation Commissioners agreed that no refund should be made on a taxpayer's application unless it is made within three years after the payment of the tax. This proposal was incorporated in the Income Tax Assessment Act, and it is considered that a similar provision should be incorporated in the Land Tax Assessment Act. The reason for this decision was that the taxpayer should be able to discover an overpayment within three years of having made the payment, since he has only his own assessment to attend to."

827. **We recommend amendment of the Land Tax Assessment Act as indicated by the Commissioner, with an additional provision of the nature indicated in paragraph 546 of our Third Report,** which reads:—

> "The provision limiting the taxpayer's right to refund of tax upon alteration in his assessment due to an application made by him within three years after the payment of the tax should not be held to govern those cases in which such application is based upon a Departmental ruling not previously available to the taxpayer." (See also recommendation under "Office Orders," page 199.)

828. **Section 59** reads—

59. If within three years after any land tax has been paid it is discovered that too little in amount has been paid, the taxpayer liable for the tax shall forthwith pay the deficiency :

Provided that nothing in this section shall operate to limit or affect the liability of the taxpayer or any other person under section fifty-three of this Act.

829. **We recommend amendment of this section to allow the taxpayer 60 days within which to pay the amount originally short paid.**

830. **Section 65** reads—

65.—(1.) The Commissioner may by notice in writing require any person, whether a taxpayer or not, to attend and give evidence before him, or before any officer authorized by him in that behalf, concerning any land or assessment, and to produce all books documents and other papers whatever in his custody or under his control relating thereto.

(2.) The Commissioner may require the evidence to be given on oath, and either verbally or in writing, and for such purpose he, or the officer so authorized by him, may administer an oath.

(3.) The Regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

831. The Commissioner has pointed out to us that obstructive tactics have been adopted in several cases to prevent the Department obtaining information to be placed before the Court with a view to assisting it to arrive at a proper judgment of the value of land. Fuller powers to obtain information are necessary, and the Commissioner suggests that Section 65 (1.) be amended to read :—

1. The Commissioner may by notice in writing require any person whether a taxpayer or not

(*a*) to furnish him with such information as he may require ; and

(*b*) to attend and give evidence before him, or before any officer authorized by him in that behalf, concerning any land or assessment, and to produce all books, documents, and other papers whatever in his custody or under his control relating thereto."

We endorse the recommendation of the Commissioner in this respect. A consequential amendment of Sub-section (3.) will be necessary so that it shall apply also to persons affected by the proposed amendment of Sub-section (1.).

832. A consequential amendment will also be necessary in Section 68 (*a*) by inserting after the word " return " the words " or information."

833. **Section 66—Relief Section.**—For recommendation relating to this section see heading " Relief Board " (paragraph 723).

SECTION XXXI.

MIDLAND RAILWAY COMPANY OF WESTERN AUSTRALIA.

834. Oral evidence on behalf of the above Company, supplemented by a volume of documentary information, was submitted to the Commission. So far as the facts presented by the Company can be considered as being directly related to taxation, they centre round the Company's view that in the special circumstances of its case, Commonwealth Land Tax, and, to a less extent, State Land Tax, operate harshly. After an analytical examination of the documents submitted and careful consideration of the other evidence, **the Commission has come to the conclusion that its Terms of Reference do not empower it to make a direct recommendation upon the special claims submitted by the Company.**

835. The fact should be mentioned that representations on behalf of the settlers upon the Company's lands in Western Australia were also made to the Commission, but those representations may be regarded as indirect rather than direct—that is, they did not express any grievance of the settlers themselves in relation to Land Taxation, but suggested an amendment of the definition of " Unimproved value," which, in their opinion, would relieve the Company, and indirectly lead to an improvement of the position of the settlers. (For recommendation with regard to " unimproved value," see Section of this Report " Definitions as to Value," page 192.)

836. In order to prevent any misconception as to the relation of this Report to our Second Report, in which we dealt with the Harmonization of Commonwealth and State Taxation, we wish to invite attention to Section XX. (page 184 of the present Report), and to state explicitly what is there implied, namely, that some of the recommendations in this Report must be regarded as alternative only, since they will be rendered unnecessary if the recommendations of the Commission on "Harmonization" (Second Report, paragraphs 249–50), or those expressed in the Reservation of Mr. Commissioner Jolly on that subject, be given effect.

In concluding this, our Fourth Report,

We have the honour to be,

Your Excellency's most obedient Servants,

W. WARREN KERR (Chairman.)

JOHN JOLLY.

J. G. FARLEIGH.

W. T. MISSINGHAM.

JOHN THOMSON.

S. MILLS.

M. B. DUFFY.

S. E. JELLEY, Secretary.

Melbourne, 3rd November, 1922

Printed and Published for the GOVERNMENT of the COMMONWEALTH of AUSTRALIA by ALBERT J. MULLETT, Government Printer for the State of Victoria.