10. CROWN LANDS LEGISLATION, 1901-1955

BRIEF SUMMARY OF THE PRINCIPAL FEATURES

INTRODUCTION: CROWN LANDS LEGISLATION, 1899-1905: CONVERSION ACT, 1908: CROWN LANDS CONSOLIDATION ACT, 1913: ECONOMIC DEPRESSION: SOLDIER SETTLEMENT, 1916-1945: SOLDIER SETTLEMENT, 1941-1955.

INTRODUCTION

> "The whole of the numerous and elaborate provisions of the Acts for the alienation and occupation of Crown lands (in New South Wales) are examples of the legislation which has been necessary to meet the peculiar conditions and wants of the State. Nothing corresponding to the body of laws thereby created is found in English law . . . The provisions of the Crown Lands Act are a study in themselves, and the study is a particularly difficult one, as there has been a seemingly endless flow of legislation dealing with the subject as the outcome of frequent changes in policy following on changes of administration . . . The constant stream of legislation—approximately fifty Acts dealing with Crown lands since 1884, in addition to Closer Settlement, Returned Soldier Settlement and War Service Land Settlement Acts—has given rise to a bewildering multiplicity of tenures and interests—many of which exhibit only trifling differences in detail . . ."
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> (A. C. Millard)[127]

During the first seven years of the new century, the tonnage of vessels entered and cleared in the ports of New South Wales increased by more than 50 per cent; the value of exports doubled, while that of imports increased by one-third, and loan expenditure rose considerably. The first iron and steel works were constructed at Lithgow in 1907 and the value of manufactures rose spectacularly. New types of production were being opened up on all sides, the Australian economy in this way being enormously enriched and diversified. Similarly, in these first years of the new century, suitable farming lands were being sought and opened up so as to attract new settlers and the right types of immigrants. Since 1900, a consistent feature of government policy illustrated in the successive land laws has been the intention to foster closer settlement—by this being meant the establishment of a numerous bona-fide rural population on holdings sufficiently large to provide a comfortable family living, but not too large to be properly worked. The laws have in consequence been directed—as already noted in the case of the Closer Settlement Acts—to the breaking up of the large pastoral estates suitable for closer settlement and cultivation.

It is helpful to an understanding of the Crown Lands Consolidation Act, 1913, and allied Acts, in connection with the later legislation, to take account of the fact that different governments have entertained quite different ideas as to the most appropriate tenures to be granted in the disposal of the Crown estate, whilst in agreement as to the necessity for the subdivisions. Policy has fluctuated as between purchase (ultimately freehold) tenure on the one hand, and leasehold on the other, not only contributing to the multiplicity of tenures that exist

[127] *Real Property* (6th Edition, Sydney, N.S.W. Law Book Coy., 1948), pp. 5, 443, 438, 503.

to-day, but also resulting in various provisions for the conversion of one type of tenure into another. By way of example, it may be noted that the 1908 Act provided for leaseholders to convert to freehold. However, in 1912 a new government, with different ideas, reversed this process by favouring the leasehold as against the purchase tenure. (Crown lease and homestead farm, to take the place of the settlement lease and homestead selection tenure in respect of which conversion rights had been previously granted; providing also for conversion of conditional purchases to leasehold tenure, viz., homestead farm.) In 1917, a further reversal of policy in favour of the purchase tenure resulted in provision being made for conversion of Crown leases and homestead farms into conditional purchases. This process of change and counterchange has continued in the intervening years with extremely important consequences in particular instances, for example, in the case of conversion of leasehold to freehold tenures within the Murrumbidgee Irrigation Areas.

A further feature of the land laws to observe is the consideration that has had to be shown by the State to Crown tenants, selectors and small settlers, and even already well-established farmers and graziers, in particular periods of depression and economic distress occasioned by droughts, floods or other misfortunes.

These three threads of policy have a continuing interest. They are of fundamental historical importance, but at the same time they have, equally, a practical significance and application at the present day.

Some of the more important recent developments in this complicated field of land legislation include the following, with particular reference to the settlement of ex-servicemen:—

CROWN LANDS LEGISLATION, 1899-1905

1899.—*Advances to Settlers Act.*—The Advances to Settlers Act came into operation on 4th April, 1899, its intention being to provide assistance to settlers battling with protracted State-wide drought conditions, which had "reduced many old established farmers to such straits as to render it a matter of importance to be able to secure financial assistance at a low rate of interest".

Up to the end of 1901, 5,545 applications had been received for advances totalling £573,185. Of these, 3,023 were approved in the first year and the amount advanced £239,000 (£239,217 18s. 3d.).

One of the clauses in the Act specified that advances were conditional upon the prepayment of all outstanding debts due to the Crown. The Advances to Settlers Board was thus "instrumental in collecting for the Lands Department £6,301 4s. 2d. arrears of rent, instalments, etc., and for the Mines Department £44 16s. 3d. due in connection with advances of seed wheat".

A considerable number of applications had to be refused owing to informalities, but in addition to this, a "great many further applications were found ineligible owing to the restrictive provisions of the Act," necessitating a later amendment.[127A]

[127A] *Annual Reports, Department of Lands,* 1900, 1901.

1902.—*The Appraisement Act of* 1902 applied to conditional purchases, conditional leases and homestead selections, and was not limited to time. It extended the appraisement provisions introduced by the Act of 1899, following the continuation of the severe drought which was then at its peak. (This provision for periodic appraisement of rentals of the main Crown land tenures was repealed in 1931.)

1903.—In 1903 another Act was passed which made considerable amendments to the existing legislation. Except for the provisions of the 1895 Act, it was specifically enacted for the first time that selectors were limited to *home maintenance* areas when they applied for additional holdings. The capital value of the land also had to be appraised unless it was set apart at a notified value. The procedure was so cumbersome that it was abandoned two years later. The Act also extended the term of conditional leases and settlement leases to forty years—the old terms had been twenty-eight years. Any leases granted after 1st January, 1904, had a term of forty years, and the old lessees had the right to apply for an extension to forty years. If they did not apply, their leases ran out in twenty-eight years. (Conditional Leases taken up from 1st January, 1904, to 30th December, 1932, had a term, unless extended, of forty years. In 1924 an amending Act provided for the extension of term of conditional leases existing at 23rd December, 1924, on application, to sixty years. There was, however, no provision for the extension of term of leases taken up after that date beyond the term of forty years until the amending Act of 1932 was passed, which, subject to certain provisos, allowed the title conferred by a Conditional Lease taken up on or after 30th December, 1932, as a lease in perpetuity, and application may be made for extension of any fixed term lease to a lease in perpetuity.)

A concession was provided to those holders of conditional purchases who had been paying interest since 1861 by reducing the balance of purchase money under certain conditions to the extent of one-fifth of the interest paid. It also reduced the rate of interest on conditional purchases (where instalments were being paid) from 4 per cent to $2\frac{1}{2}$ per cent.

1905.—In the Crown Lands (Amendment) Act of 1905 the provisions in regard to classification were amended. Until this time, original applications and additional applications could be made for the same land, but the additional had prior consideration. As they were limited to home maintenance areas, great delays often occurred before they were dealt with. A man who had applied for an "original" would not know for, perhaps, twelve months whether he had any chance of acquiring the land, owing to the condition that his application would have to stand over until the application for the "additional" had been considered. The 1905 Act altered this and provided that land could not be set apart so as to be available for originals and additionals at the same time.

In the case of the *Conditional Purchase Lease* introduced in this Act of 1905, the explanation is given in the words of the Minister for Lands of that day (Mr. Ashton) who stated:—

> "The principal reason why I have ventured to submit a proposal for a new tenure is this: When I was in the northern rivers country some months ago, looking at a good deal of the scrub country there which the

> Department of Lands and the Department of Works were then taking steps to make available for settlement, many representations were made to me, both by existing settlers and by persons who would like to take up land, if available, as to the great cost that would be incurred in rendering land of that character fit for cultivation and pasture, and it was pointed out that it was a very desirable thing that the initial payment in respect of land of that character should be reduced to the lowest possible limits. It was agreed that the suggestion I made would probably meet the case, that is, that the land might be held for a number of years as a lease at a low rental, instead of the person who took up the land being required to pay a heavy deposit at the outset, and paying substantial conditional purchase instalments for a series of years. When I came to think this out it occurred to me that it could be developed into a new tenure, which should have a general application to the taking up of land. We have to remember in connection with this that the best part of the Crown Lands have passed into private hands, and that the lands we are going to deal with in future will require considerably more expenditure for their proper treatment and development than much of the land that has been alienated by the Crown in the past. That establishes a necessity for more liberal treatment so far as initial payments are concerned by the people who secure the land."
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> (*Parliamentary Debates*, 1905.)

The Minister explained that his tenure was really "a modification of the Conditional Purchase system, in order to incorporate and introduce into that system what may be regarded as the best features of the leasing system". He said that the scheme was that land would be set apart on conditions very closely approximating to the manner in which land was set apart for Homestead Selection. The rent for the block would be at the rate of $2\frac{1}{2}$ per cent of the capital value. The Minister might notify what special conditions as to improvements, cultivation, preservation and planting of timber, etc., should be conditions of the lease. The lease was to be for forty years with provision for the rent to be appraised every ten years. A condition of ten years' residence attached to the lease, and at any time after confirmation the holder could apply to convert the same into a Conditional Purchase. (The right of conversion of Homestead Selections and Settlement Leases did not exist at this time.) The Minister, in answer to a series of questions, particularly as to whether the Homestead Selection had failed, so that a new tenure was necessary, said that the Conditional Purchase Lease was not so much an amendment of the Homestead Selection as of the Conditional Purchase, and he hoped that it would be very largely substituted for the Conditional Purchase system because it introduced into that system some of the best features of the leasing system. In comparing it with the Homestead Selection, which at that time carried a condition of perpetual residence, the Minister stated that he had no hesitation in saying that such a condition was "harassing in the highest degree".

Most of the lands of the rich Dorrigo Plateau were made available under the *Conditional Purchase Lease*. As in the case of homestead selections and settlement leases, no lands are now set aside for conditional purchase leases. Leases applied for before 30th December, 1932, had a term of fifty years. Leases applied for after that date are leases in perpetuity. Fifty-year leases may be extended to leases in perpetuity. The conversion provision has always been attached to the C.P.L., and the C.P.L. could be converted into conditional purchase and conditional lease.

CONVERSION ACT (1908)

1908.—Three years later (1908) what is generally referred to as the "Conversion Act" was passed, namely, the Crown Lands (Amendment) Act, 1908. This Act completely altered the complexion of the homestead selection and the settlement lease, and in effect nullified the intentions of the framers of the 1895 Act. From that time onwards, homestead selections and settlement leases were—subject to certain restrictions—convertible into conditional purchases or conditional purchases and conditional leases.

This Act, also, was the first legislation to introduce the vital principle of restricting the transfer of Crown holdings, so that under a system of Ministerial Consent, the transferee could not acquire, together with what he already held, more than a reasonable home maintenance area.[128] Original holdings taken up after the passing of this Act (since 1st February, 1909) were subject to this restriction on transfer. The

[128] *Home Maintenance Areas.*—The definition of a home maintenance area, *vide* Section 5 of the Crown Lands Consolidation Act is: "An area which, when used for the purpose for which it is reasonably fitted, would be sufficient for the maintenance in average seasons and circumstances of an average family."

This was amplified in Backhouse (11 L.V.R. 39) where the Judge stated that the guiding principle is to ascertain what area a man must have, which with his own labour and such additional labour as may be necessary and for which allowance is made, will give him a proper maintenance.

In various Sections of the Crown Lands Consolidation Act (1913), also, it will be found that a person is not under certain circumstances, allowed to acquire by application or by transfer an area which, with other lands that under the provisions of the Act are to be taken into account, would, in the opinion of the Local Land Board or the Minister, substantially exceed a home maintenance area.

The word "substantially" was not always included in each Section. Prior to its inclusion in Section 190, Judge Pike, *re O'Brien* 2 L.V.R. 128, considered and explained the distinction between Sections in which the words "exceed a home maintenance area are or are not preceded by the word 'substantially.'" He pointed out that there was a long series of decisions of the Land Appeal Court under the earlier state of the law, the result of which may be shortly stated to be this: that, in considering what is a home maintenance area, the Court should not act in a cheese-paring manner, but should give a reasonable and fair amount of land, so that there may be some allowance for the give and take that is absolutely necessary owing to the climatic conditions of New South Wales. A generous interpretation must be given to the words. (See also: *re Barber* 1 L.V.R. 67):—

> "What area of land should suffice for the maintenance of a home is a question which must be determined in accordance with such factors, among others, as locality, soil, rainfall, the means of communication with markets, etc., and therefore it is impossible to lay down any fixed principle for the ascertainment of that area; but the word 'home' denotes the maintenance, not of a bark hut or shanty, with sordid surroundings to match, but a reasonably comfortable place of residence, with the means and resources derived from the holding on which it is situated—not from any other avocation, not from any auxiliary business—sufficient to maintain a wife, and to bring up and educate the members of an average family so as to take their places as respectable members of the community. On the one hand, that area must not be enlarged to suit the personal requirements of any individual applicant, nor should it be curtailed in order to pack more settlers on the land than it can legitimately support in comfort: *re Bank of Australasia*, 11 L.C.C. 36; *Talbot v. Salmon*, 13 L.C.C. 123; *re Dawes*, 12 L.C.C. 230; *Hughes v. Hall*, 13 L.C.C. 27.

right to take up land under Volunteer Land Orders was restricted to three years from the time of the passing of the 1908 Act. Both these measures were intended to prevent the undue aggregation of estates.

1910.—This Act also gave to holders of non-residential conditional purchases the right to convert into residential conditional purchases.

The main provision of the Act passed in 1910 was to reduce the value of improvements required to be effected on conditional purchases where the unimproved value of the land was less than £1 per acre. The old provision making fencing compulsory had been amended, making it optional for the selector to fence his boundaries or improve his holding to the value of 6s. per acre in three years and 10s. per acre in five years. The 1910 Act, in effect, provided that if the land were valued at less than £1 per acre, the improvements to be effected need only be 30 per cent (in three years) and 50 per cent (in five years) of the capital value.

In 1910, with a change of government, there had come into power for the first time a Labour administration, pledged to *leasehold alienation* and diametrically opposed to freehold tenures.[129] The Act of 1912 which followed is of importance principally by reason of the new lease

"Acreage, in itself, is not the determining factor . . . While the improved value is an important factor, it would be wrong to base an estimate of a home maintenance area wholly on the value of the land. Cost of improvement must be considered . . . Home maintenance area cannot be assessed within 200 or 300 acres in grazing land; and 100 acres in agricultural land . . . It was held that an area which is 40 per cent in excess of a home maintenance area is substantially in excess thereof . . . An excess of 38 per cent was also held to be substantially in excess, but an area 16 per cent in excess was allowed . . . It is generally understood that an area 25 per cent in excess would not be considered substantially in excess of a home maintenance area, although this has not actually been stated by the Court . . . Collins states: 'We can sum up at this stage, in this way: Grazing land in the normal case that will carry 2,000 sheep constitues a home-maintenance area. Probably a piece of land more than 25 per cent in excess of this would substantially exceed a home maintenance area. No case has set down a fixed percentage, but as far as a percentage can be used it seems to be about 25. If there are any abnormalities in regard to the land the area will be increased and also the number of sheep to be carried on it.' . . .

"The cost of bringing the land up to a fully improved condition must be allowed for . . . The guiding principle in ascertaining a home maintenance area is that *average* seasons and circumstances have to be the foundation of the finding . . . Where there is a doubt whether the transferee has enough land, it is a safer policy that he should have somewhat too much, rather than somewhat too little . . . An error in connection with the question of home maintenance is safer, both in the interests of the State as well as the individual, when in excess than when in defect . . . Where the Court reports that the combined areas of land, when a case is made for an addition, would substantially exceed a home maintenance area, it is a matter of law, the duty of the Minister, unless he disagrees with that conclusion of fact, to refuse permission to give effect to such proposed transfer." (*Department of Lands*: *Unpublished references.*)

[129] One outcome of the industrial disturbances in the years immediately preceding 1891 was the formation of an organised "Labour Party" in politics, and from this time forward the influence of Labour has had a marked effect on the trend of legislation. Successful efforts to enter Parliament had, prior to 1891, been made by professed Labour candidates, but it was in this year that the first

tenures without right of conversion which it introduced, viz., *Homestead Farm* (a lease in perpetuity), *Suburban Holding* (also a lease in perpetuity), and *Crown Lease* (term, then forty-five years) and the provisions made for perpetual leases within Irrigation Areas. The *Lease in Perpetuity* has since become a settled and important feature in land policy, and the new tenures thus introduced are still the tenures used when Crown lands are being set aside for original holdings at the present time.

The Minister (Mr. Beeby) explained that he was introducing certain new tenures—"firstly, what are known as *Homestead Farms,* a proviso for a gradual living area to selectors much on the principle of the old homestead selections, with certain conditions in favour of the settler. These conditions are that the settler is to have the right of occupancy for five years without payment of the $2\frac{1}{2}$ per cent of the original capital value. He is to have certain other minor advantages not contained in the existing homestead selection. The tenure is a perpetual lease at the end of the five years' period. At the end of that period the occupant is to receive a grant to himself, his heirs and assigns for ever on the conditions of a homestead tenant, and to pay rent on the basis of $2\frac{1}{2}$ per cent . . . . A further proposal is *to amend the present tenure regarding settlement leases*—to alter the tenure to a slight extent in favour of the settler, and give him better security of tenure, and a longer lease, and certain minor advantages he does not have under the existing law". (It is to be noted that the proposal outlined by Mr. Beeby "to amend the present tenure regarding settlement leases" was really the introduction of a new tenure, which, though he did not refer to it as such, was designated a *"Crown lease"* in the Bill.)

It is apparent from the debate that took place in Parliament on the 1912 Bill that the Government of the day was setting out to re-establish land settlement on a leasehold basis similar to the position obtaining between 1895 and the Conversion Act of 1908. It is evident that the Government had been much impressed by the permanent nature of the settlement which had taken place under the Homestead Selection and Settlement Lease, and the following further passage, by way of interest, from Mr. Beeby's speech is quoted:—

> "Up to 1911, under the 1895 Act, the total area of land disposed of under homestead selection was 2,336,686 acres. As settlement leases—a form of tenure only for a fixed period and not in perpetuity—the total area granted was 7,782,728 acres. Roughly, about ten million acres were disposed of under those two forms of tenure. That particular class of settlement was the most successful form we ever had in this State. I say, without any fear of contradiction, that there was no body of settlers in this State who did

concerted action was taken by duly accredited representatives of an organised political Labour Party. At the general elections in June, 1891, the nominees of the party entered the political arena, pledged to the support of a platform of sixteen clauses, and secured 18 of the 52 seats in the metropolitan division, also polling heavily in several others. In the Parliament then elected, there were 35 Labour members out of 125, "while more than a dozen others were prepared to subscribe to their platform." However, it was not until 21st October, 1910, that a Labour Government was actually returned to office, this being the Government led by Mr. J. S. T. McGowen, which marked the culmination of twenty years' political campaigning and consummated the movement within the Labour Party to attain its objectives through Parliament. A few months earlier the party had also obtained its first working majority in the Federal Parliament.

better, and who pushed forward better the general progress of the community than the men who took up land under those particular forms of tenure. The ten million acres were occupied on the basis of a living area. The condition of perpetual residence was attached, and we had the general satisfaction of knowing that all lands taken up under those tenures were taken up for bona fide production and not speculation . . . In spite of the magnificent work accomplished under that Act, a measure was introduced to nullify it in 1908 . . . . In 1908, after ten million acres had been alienated under these forms of tenure, the Conversion Act was introduced . . . . As a result of the passing of the Conversion Act, giving the right to convert these particular holdings into freehold, we are steadily going back to the old days of land speculation so far as country lands are concerned . . . . We propose under the new measure *to re-establish the settlement lease in a new form* with this guarantee: that there will be no right to convert until within five years of the expiry of the lease. In the last five years, when the living area will perhaps be on an entirely different basis, a man will have the right to convert to a homestead farm . . . . A homestead farm contains these essential principles: Crown Lands may be made available by the Minister in living area blocks, to be taken up after survey on the basis of a perpetual lease. The rent for all time is to be 2½ per cent on the capital value—a determined and fixed basis of rental—so that the settler knows for all time exactly what his position is when he takes possession of the land. A special proviso is inserted under which a settler will pay no rent for the first five years, subject to the condition that he puts the rent which would otherwise go to the Crown into extra improvements on the land. In other words, we give to the settler a clear and definite opportunity of putting every penny of the capital he may have into improvements the day he goes on the land . . . . A tenure of this nature after all contains all the advantages and essence of a freehold, with the supreme advantage that the whole of the capital that a man now puts into the purchase of the land can be devoted to improvements. That is the central idea of the measure . . . . Passing to the next form of tenure it is proposed to amend—that is, the settlement lease, the main alterations are that the lease is to be for a period of 45 years".

(*Parliamentary Debates*, 1912.)

After 1912, lands which would otherwise have been set apart for Homestead Selection were made available as Homestead Farm—that is, broadly, mixed farming lands; and for grazing lands the Settlement Lease tenure gave way to the Crown lease. For a long time now, no lands have been made available by the Department of Lands for either Original Homestead Selection or Original Settlement Lease, nor for Original Conditional Purchase Lease. Any new holdings of these tenures recorded in the books of the Department have been acquired either by way of additionals or by conversion from some other form of tenure.

In 1917—that is, five years after the creation of the Homestead Farm and the Crown lease—the legislature gave to holders of these two tenures a right of conversion into Conditional Purchase or Conditional Purchase and Conditional Lease, and all the main residential leaseholds were now convertible.

Sufficient has been said to indicate the reasons underlying the creation of these various tenures and to give some idea of their relationship one to the other. It is interesting to note and may be appropriately mentioned here, however, that the passage of amending legislation commencing with that of 1917 has all tended to eliminate the distinctive features of these leaseholds. All carry rights of conversion; the residence term is uniformly five years; the right to obtain a re-appraisement of the annual rent without regard to any percentage rate on capital value has been

granted and widely exercised; there are no provisions in any of the leases for periodic determinations of rent; and, lastly but not least, all of them are leases in perpetuity or the lessees have certain rights in that respect.

The *Suburban Holding* was a creation of the Crown Lands (Amendment) Act, 1912, and ever since its inception has been a lease in perpetuity. In introducing this Bill, the Minister (Mr. Beeby) in the course of his second-reading speech in Parliament gave the following explanation as to the reasons for his introducing a still further tenure, that of the Suburban Holding:—

> "Now I pass on to the next form of holding—that is, the Suburban Holding. It does not call for any very lengthy remarks from me, as the form of holding is very similar to a Homestead Farm. I think all sides of the House will agree that one of the serious difficulties with which country producers have to contend is in getting settled labor around the different towns. We hear a good deal about the difficulties of country producers owing to labor being nomadic, and owing to there being no inducements to mechanics and others who are required for the development of the district, to settle there. It is proposed to try to bring about settlement and to decentralise population from Sydney by offering to workmen around country towns the special inducements of a special form of tenure that is created for them, to be known as the Suburban Holding. Under this, land will be made available in different sized areas. There is no limit placed on the area; but presumably the area will be from 5 acres to 25 or 30 acres—a minimum of 5, and probably a maximum of about 30 acres. A man can acquire one of these holdings, but he can acquire only one. He can transfer that holding; but he cannot transfer to a man who has another. He must reside upon it, subject to certain fair reservations so far as residence is concerned; and he gets the land on the same basis—2½ per cent on the capital value, with a minimum of £1. That is to say, no man is to pay less than £1 a year for his block. That offers a man in the country who desires to settle, an inducement which he has not had under past laws. He can erect his home, and run a few horses or other stock, and there is offered to him practically, so far as the land is concerned, a home at a nominal rental".
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> (*Parliamentary Debates*, 1912.)

This, then, was what the Government had in mind in introducing the Suburban Holding. It was a lease in perpetuity, carrying a condition of perpetual residence. The annual rent was 2½ per cent of the capital value of the land, and provision was made for periodic determination by the Local Land Board of such capital value. At the end of five years and subject to the Land Board finding that the conditions had been complied with, a perpetual lease grant would issue to the holder.[130]

Here again, subsequent legislation has altered the position very materially and it is desirable to briefly note these changes. The term of residence is now 5 years; the rent is still 2½ per cent of the capital value of the land (the minimum has been reduced to five shillings) but during the first five years the holder may apply to have the rent of the holding appraised by the Land Board without regard to percentage

[130] *The Suburban Holding.*—This tenure was first introduced in 1912. It is strongly favoured by the present administration (1955) for disposal of purely residential land in both metropolitan and country suburban areas. Some thousands of blocks have been made available for this purpose since 1949. The tenure particularly lends itself to the case of persons with limited means who may desire to establish a home near a town and to run a horse and cow, grow their own vegetables, etc. The rent is generally small and the holder may apply to purchase the holding.

on capital value; the provision for the periodic review of capital value has been omitted from the law; and the holder may now (since 1917) apply to purchase the land leased.

CROWN LANDS CONSOLIDATION ACT, 1913[131]

1913.—The Crown Lands Consolidation Act (1913, No. 7) consolidated the provisions of all Crown Lands Acts—some 36 in number—passed since 1884. The need for consolidating these 36 separate enactments had been long felt. Interpretation of the Act was becoming difficult, and some rather scathing comments concerning them had been made in various courts. The way to this Consolidation Act was paved by the Amending and Declaratory Act passed in 1912. The Consolidation Act is the Act which constitutes the present code of land laws, and together with amendments, is known as the Crown Lands Consolidation Act, 1913.

Within Irrigation Areas the forms of tenure governing settlement, although provided for in the Crown Lands Consolidation Act, 1913, are administered by the Water Conservation and Irrigation Commission.

The leasehold tenures, listed in the order in which they are mentioned in the Crown Lands Consolidation Act, 1913, are Occupation Licences, Annual Leases, Leases under Improvement Conditions, Special Leases, Scrub Leases, Snow Leases, Inferior Land Leases, Residential Leases, Improvement Leases, Settlement Leases and Crown leases.[132] There are

[131] A statute consolidating other enactments is intended to consolidate only and in no way to alter the law. The form only of the repealed Act is altered, but the substance does not cease to be in force, the repeal and re-enactment occurring simultaneously. In case of doubt, the sections of the original Act and their titles and preambles—though these are not re-enacted—may be looked to in order to throw light on the meaning of the Consolidating Act. If the language of the Consolidating Act is clear and unambiguous, its meaning must be followed even though a change in law is introduced.

[132] The Scrub Leases, Inferior Land Leases and Improvement Leases are generally referred to as "long term leases." Extensive areas were granted under these leases which were subject to a large number of conditions, particularly in regard to improvements to be effected, such as fencing, clearing, destruction of noxious growth, and also to the Crown's right to withdraw land for settlement after the lease had been in existence for a certain period or on construction of a railway line within a specified distance. Lessees were given certain rights in improvements effected on lands withdrawn for settlement. The maximum term of Scrub Leases, Inferior Land Leases and Improvement Leases was fixed at 28 years, but in 1930, provision was made for extension to a term of 40 years under certain conditions when the land was infested with prickly pear. The holder of these leases in certain circumstances may convert up to a home maintenance area into a Homestead Selection.

Scrub Leases could be declared for "any Crown lands—wholly or partly covered by scrub or noxious undergrowth"; Snow Leases for "Crown land usually covered with snow for a part of each year and unfit for continuous use or occupation"; Inferior Land Leases for "Crown lands which in consequence of being of inferior character or in an isolated position have not been held under any tenure, or having been held have been abandoned, or are only held under annual lease"; Improvement Leases for "Crown lands which, by reason of inferior quality, heavy timber, scrub, noxious animals, undergrowth, marshes, swamps or other similar cause, are not suitable for settlement until improved."

also Prickly-pear Leases which are granted under the provisions of the Prickly-pear Act, 1924 and leases to the Commonwealth granted under the Commonwealth Lands Acquisition Act, 1906-1936 (now repealed).[133]

Section 38 of the 1913 Act determines the class of Crown lands which is available for *ordinary* Conditional Purchase and Conditional Lease at £1 per acre. Briefly, all Crown land is available, with the exception of lands:—

(*a*) within a population area, special area, classified area, irrigation area or classification reserve;

(*b*) within the Western Division;

(*c*) set apart as a site for a city, town or village or as suburban lands, or reserved for village purposes;

(*d*) reserved from sale or dedicated, reserved or set apart for any public purpose;

(*e*) reserved from sale generally or reserved from conditional sale specifically, including land so reserved within a proclaimed gold field;

(*f*) the subject of an application for a conditional purchase or conditional lease, except where such application has been withdrawn, refused or modified;

(*g*) under lease or lawful occupation for mining purposes, or covered by an application for lease under the Mining Act;

(*h*) under any lease not being an annual lease or occupation licence.

The maximum area which may be selected, excepting in special or classified areas, either as conditional purchase, a series of conditional purchases or a series of conditional purchases and conditional leases, is 1,280 acres in the Eastern Division and 2,560 acres in the Central Division. Again, the area of any individual conditional purchase or conditional lease must not be less than 40 acres.

Section 59, however, provides that the Minister may by notification in the *Gazette,* set apart Crown lands in the Eastern, Central and Western Divisions as special areas for conditional purchase. The area notified may be not less than 40 acres, and not more than 320 acres in the Eastern Division or 640 acres in the Central or Western Division. Lands within the boundaries of cities, towns or villages may be included in the notification.

1916.—Two further leases in perpetuity were brought into being as a result of the passing of an amending Crown Lands Act in 1916, namely the Week-end Lease and Town Lands Lease. (The Act merely refers

[133] All Prickly-pear leases granted under the Act of 1901 have expired. Leases are now granted by the Minister on the recommendation of the Prickly-pear Destruction Commissioner under the Prickly-pear Act, 1924 for areas not exceeding 5,000 acres and for terms not exceeding 50 years, subject to a right to apply for extension of term to a lease in perpetuity. Lessees are required to destroy the pear and also comply with other conditions as may be laid down. A lessee may apply for conversion of so much of his lease as does not substantially exceed a home maintenance area, into a Conditional Purchase or leasehold tenure. The converted holding is not subject to a condition of residence.

to "Leases of Town Lands", but the name "Town Lands Lease", is generally adopted for convenience.) As at 30th June, 1955, there were 501 Week-end Leases in existence, but only 133 Town Lands Leases.

In outlining to Parliament the proposed new *Week-end Lease* tenure, the Minister for Lands of that day (Mr. Ashford) said:—

> "I propose to initiate the system of week-end leases in connection with a considerable area in the Blue Mountains and other areas near large centres of population. The leases will be granted under the perpetual lease tenure on a 2½ per cent basis, with re-valuation at the end of 25 years, and each succeeding 20 years, and no residence conditions. The holders of the leases will be required to effect improvements on their lands to a certain amount. This proposal is made to meet the convenience of people in congested centres of population, like Sydney and Newcastle, who will be given the opportunity to acquire areas where they can enjoy the benefits of fresh air. The holdings will be restricted to a maximum of 60 acres each. While the area may appear to be rather large, that maximum is fixed so as to fit in with the conditions existing in certain localities, but I anticipate that there will be very few holdings of over 5 or 10 acres each. As these holdings will only be taken up for health reasons, and improvements to a certain value have to be effected within a specified term of years, it is proposed to give the right to transfer, but no value can be paid for blocks which are transferred, except the value of the improvements. That will stop any land speculation, and the areas will be retained for the benefit of those who desire to take them up for health reasons".
>
> (*Parliamentary Debates*, 1916.)

Paragraph 483c of the "General Directions to Land Board Officers" adds to what has already been said regarding the new tenure by stating that it was not intended to apply to Town lands, but that its primary object was "to provide blocks in suitable localities affording persons the opportunity (at week-ends or on other convenient occasions) of enjoying a change of residence, surroundings, or scenery, or to obtain climatic or other health-recuperating conditions, or for any purposes of a like nature, such, for instance, as sea-bathing, fishing, boating, gardening, visiting the mountains or other attractive or healthy places of resort, generally within easy or reasonable reach of centres of population; the facilities of access or transport thereto being factors in consideration of the method of disposal". (It might be noted by way of interest that the first Week-end Lease Area set apart (*Gazette*, 1st September, 1916) comprised about fifty blocks near the Village of Lawson on the Blue Mountains.)

Comparing the tenure as it exists to-day with what it was in 1916, it is to be observed that the annual rent is still 2½ per cent. of the capital value of the land (minimum £1) but that the provision for periodic determination of the capital value has disappeared, also that provision now exists (inserted in the law in 1917), whereby the holder may apply to purchase the land comprised in his lease. Land has to be specially set apart for disposal by way of Week-end Lease. Although this form of tenure was for many years in disuse, it is again being used (1955) to dispose of land in some seaside districts, and to some extent replaces the Special Lease for the purpose of "week-end residence".

As to the *Town Lands Lease,* Mr. Ashford informed Parliament that it was intended by this means to carry out the leasehold policy of the Government to a still greater degree by extending it to town lands, particularly new town lands. He said:—

> "Previously town lands have been put up by auction, and they will still be offered by auction or by tender, but only under leasehold tenure. . . . All those hon. members who are aware of the high rentals which are charged to-day will realise that in course of time the unearned increment in connection with these town lands will represent a very appreciable return to the State. The effect of the new policy will be to put a stop to speculation in town lands which has tended to bring about high rentals throughout the State. In the case of new towns the residents will not be burdened with high rents and will have ample opportunities presented for acquiring homes of their own. I intend to apply the same principle to lands that may be made available in old towns".

The scheme of the Town Lands Lease was that the Minister might lease Crown lands within the boundaries of any town by public auction or by tender, and the amount bid at auction or offered by an accepted tender would be the capital value upon which the annual rent, at the rate of 2½ per cent, was based for the first period of twenty years of the lease. For each succeeding period of twenty years the capital value had to be determined by the Local Land Board. The title was a lease in perpetuity, and there was no condition of residence. A lease could not exceed half an acre.

1917.—In 1917 an amending Crown Lands or Conversion Act gave to holders of Homestead Farms and Crown Leases the right to convert to freehold, and to holders of Suburban Holdings, Week-end Leases and Town Lands Leases, the right to purchase. (In 1931 the provisions of the law for the periodic determination of the capital value of these leases were repealed.)

1921.—*The Land and Valuation Court Act of* 1921 (1921, No. 10) abolished the Land Appeal Court which had hitherto consisted of three commissioners, and transferred its powers to a single judge with the status of a Supreme Court Judge.

The Land and Valuation Court has jurisdiction to hear and determine not only appeals and references under the Crown Lands Consolidation Act, but matters arising under many other Acts, including the Closer Settlement Acts, Returned Soldiers' Settlement Act, Pastures Protection Act, Public Roads Act, Prickly-pear Act, Water Act, Western Lands Act, Irrigation Act, Local Government Act, Liquor Act and Landlord and Tenant Act.[134]

[134] So far as appeals under the Crown Lands Acts are concerned, the Land Appeal Court, as far back as 1894 (4 L.C.C. p. 181), laid it down that the Court would "not disturb the finding of a Land Board unless it is shown that the finding is demonstrably wrong, or such as intelligent, reasonable men should not have come to". And in 1927 (6 L.V.R. p. 4) his Honour Mr. Justice Pike, in the course of his judgment, said that before he could sustain an appeal he must come to the conclusion that on the evidence as a whole the Land Board's decision was wrong. The Court from the earliest times has appreciated the advantage which a Land Board has of "seeing the applicant". In a case in 1892 (2 L.C.C. page 5) the President of the Land Appeal Court commented on the fact that the Board "had the advantage of seeing the appellant and hearing all the evidence". On another occasion (13 L.C.C. page 7), the Court said: "We have to have very good reasons for disturbing a Board's finding. This Board

1924.—The Crown Lands and Closer Settlement (Amendment) Act, 1924 provided inter alia for the setting apart of land specifically for discharged soldiers or sons of deceased discharged soldiers, share farmers, immigrants, holders of Hawkesbury Agricultural College diplomas, sons of farmers, and others.

ECONOMIC DEPRESSION

The depression years around 1930 marked a difficult period in land administration and the first of much special legislation of an unprecedented character. At that time Lands Department thought and energy were devoted to the relief and stabilisation of the thousands of landholders who were suffering the adverse effects of a world economic crisis.

1931-1932.—In order to give relief to settlers, remedial measures were passed in 1931 and 1932. By that time many thousands of settlers were in financial difficulties and, through circumstances beyond their control, were unable to meet their commitments to the Crown. In fact, they had already accumulated considerable arrears without any immediate prospects of being able to liquidate them.

The Crown Lands (Amendment) Act, 1931, inter alia, in effect, subject to home maintenance limitations, permitted the holders of various tenures to apply for a fresh appraisement of their holdings, even though appraisements had previously been obtained. It was required that values had to be determined as at the date of the application for appraisement and that the productive capacity of the land should be taken into consideration. Almost all eligible landholders in the main residential tenure categories took advantage of the provisions of this 1931 Act, and obtained fresh valuations of their holdings at the relatively low levels which obtained during the depression period.[135]

The Government, during 1932, approved of action being taken to postpone accumulated arrears of Crown dues to the end of the term of the purchase, free of interest, and so relieve the settler of any anxiety regarding his burden of debt. In the case of leases, it was decided to "fund" those amounts over fairly lengthy periods according

has chosen to consider the evidence of the witness unreliable. They had the witness before them and we have not." In yet another instance, it was stated (23 L.C.C. 9): "The Board had the advantage of seeing the demeanour of the witness." (*Department of Lands: Unpublished references.*)

[135] In the 1931 Amendment it was provided that the Local Land Board, in making such appraisements, should have regard to the productive capacity of the land under fair average seasons, prices and conditions. The Land and Valuation Court has held, *re Carter,* 11 L.V.R. 28, that capitalisation of nett profits is not the method required to be adopted in the appraisement of capital values of Crown holdings. A Local Land Board is required to have regard to carrying capacity, timber, distance from rail, necessary improvements and all other factors which bear on the productive capacity of the particular holding under fair average seasons, prices and values. The Court has also held that the capitalisation of the proceeds of land after the deduction of hypothetical outgoings should not be relied on as against evidence of sales of comparable lands in the vicinity (*re Cox and others,* 12 L.V.R. 66). (*Department of Lands: Unpublished references.*)

to the term of the lease, also free of interest. Later (Act No. 66 of 1941), provision was made in the law whereby settlers could have these postponed and funded debts waived. In 1932 also there was a reduction of interest rates on Crown debts to 4 per cent where they exceeded that figure and a reduction of 22½ per cent in rents and interest rates for three years, later extended to, in all, fifteen years. A total or partial remission of rents and interest was also provided where the Crown tenant had been adversely affected by flood, fire, drought, storm or tempest; and probably, most important of all, a right to certain lessees to obtain leases in perpetuity where formerly there had been a tenure for a term of years only.

SOLDIER SETTLEMENT, 1916-1945

During the 1914-18 war, the necessity for making provision for the settlement of soldiers on the land after their return became manifest, and the Returned Soldiers' Settlement Act of 1916, assented to on 19th April, 1916, and amending Acts of 1917 and 1919, were passed, designed to establish returned soldiers on the land.

There is a distinction to be drawn between pre-1914 closer settlement and the closer settlement which followed the 1914-1918 war and which was almost wholly concerned with the repatriation of soldiers. Soldier settlement introduced many features which were foreign to pre-war settlement, and which account for most of the losses incurred and the settlement failures. For example:—

> "Farms were allotted to soldier settlers who had little, if any, previous experience or who possessed little aptitude, while many were lacking in ambition to make a success of their undertaking. Some were physically unfit to engage in the normal operations associated with their farm. Many were, in addition, handicapped at the outset by the lack of initial capital, notwithstanding the advances made to them under the Returned Soldiers' Settlement Act. Moreover there was little, if any, competition, and thus very little choice of selection. All these features mitigated against success in some degree or other. In addition, past Governments are not entirely free from blame, and insufficiency of area, high values, and, in some cases, unsuitable lands, have contributed their quota."
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> (Hon. J. M. Tully, *Parliamentary Debates*, 31st March, 1943.)

1916.—Under the original 1916 Act, lands for the soldiers were acquired in various ways. Some were from expired or acquired long term leases, or ordinary Crown lands and were made available under the Crown Lands Act. Others were acquired by direct purchase; by resumption under Section 197 of the Crown Lands Act; or by acquisition under the Closer Settlement Acts. These were disposed of either as Soldiers' Group Purchases under Section 4B of the Returned Soldiers' Settlement Act of 1916, or as Settlement Purchases under the Closer Settlement Act. In addition, the provisions of the Closer Settlement Promotion Act, 1910, and the Closer Settlement Amendment Act, 1914, were extended by Section 4C of the Returned Soldiers' Settlement Act to cover an application by one or more discharged soldiers. These latter holdings became either Settlement Purchases or where Crown tenures were involved, were taken under their existing tenure subject to a Closer Settlement charge. No payment of deposit or stamp duty was required from the discharged soldiers.

The Act further made provision for advances to be made to discharged soldiers with respect to any land which they might own, lease, or occupy as a share farmer, for the purpose of—

(*a*) erection of buildings, clearing, fencing, draining, water supply, grazing and general improvement of the land;

(*b*) purchase of implements, stock and plant; and

(*c*) purchase of seed, fertilizer, etc.

The total amount of the advance was limited to £625 and the advance was made repayable at a rate of interest starting at $3\frac{1}{2}$ per cent and increasing by $\frac{1}{2}$ per cent to the maximum amount of 5 per cent. The "C" class was made repayable within twelve months, "B" class within about five years and the "A" class within about ten years, although at a later date these periods were extended.

In the larger group settlements a block was set apart as a demonstration block and a manager was attached thereto for general advice and assistance to the settlement. In practically every case in due course these demonstration blocks were allotted to the respective managers, their functions as administrative and demonstration blocks having been largely fulfilled.

Owing to the high interest rate at which loan moneys were being borrowed at the time of the acquisition of the majority of these lands, it became necessary to charge high interest rates for repayment of instalments, the maximum being a $6\frac{1}{2}$ per cent instalment which included $5\frac{1}{2}$ per cent interest.

For a few years after the war, prices of primary products remained high, wheat at one stage reaching 7s. 6d. per bushel and butter 2s. 6d. per lb., but before long a slump in prices took place. As a result of this slump and the high instalments payable, the settlers' financial problems soon became very involved and their arrears heavy. Drastic action became necessary and in 1925 provision was made for reappraisement of all soldiers' holdings not already covered, and for a revision of soldiers' indebtedness, the latter under Section 21 of the Returned Solders' Settlement Act, 1916. As a result of revision, large amounts of interest were written off, while capital values and consequent instalments were considerably reduced. In 1928 Soldiers' Settlement Loans were amalgamated with the Closer Settlement Fund.

1932.—With the onset of the depression, the soldier settlers suffered with the rest of community, and again it became necessary to provide relief. In 1932, the *Farmers' Relief Act* was passed, providing for Stay Orders protecting the settlers' holdings from seizure for debts. The same year saw also the *Reduction of Interest Act,* reducing all interest rates to a maximum of 4 per cent. Provision was also made for waiver of rents and interest, following on a Land Board report, in the event of drought, fire, flood, storm or tempest. *Reappraisement Acts,* which provided for all holdings, extended to 1935 the time within which to lodge applications. Interest debts which had accumulated up to 1932 were postponed free of interest to the end of the time for repayment, while rents were similarly "funded" as a general concession. Returned soldiers shared in these concessions with ordinary settlers, no special provision being considered necessary at this stage.

During this period, orchard settlements at Young, Kentucky and Batlow had been going through a precarious time. These had been settled mainly by way of Group Purchases, the settlers being given sustenance allowances while the orchards were brought into a productive condition. Marketing debts had also been incurred and it was not until about 1930 that these holders were finally confirmed in their blocks. Very small payments had resulted from these particular settlements, and by 1940 it became obvious that some drastic relief was necessary. By the 1941 Crown Lands Amendment Act provision was made for waiver of postponed interest debts in certain cases, and funded rent or interest. By Government policy, waiver of the postponement was limited to civilians who had held their blocks prior to 31st December, 1932, who could have their postponed interest at that date waived. In the case of a returned soldier in a similar position the postponed debt up to 31st December, 1937, could be waived.

In 1943 the Closer Settlement Amendment (Conversion) Act was passed, to commence from 6th March, 1944, allowing holders of Settlement Purchases and Group Purchases to convert to perpetual lease at a rental of $2\frac{1}{2}$ per cent on the lesser of either the amount required to complete the purchase or the improved market value of the property less the amount advanced for "A" class advances. The new leases were respectively termed *Settlement Purchase Leases* and *Group Purchase Leases*. Many holders were relieved in this way of the heavy debt which had accumulated on their purchase tenures and their annual commitment to the Crown was substantially reduced. The time allowed for conversion expired on 30th June, 1951.

By a further amendment in 1945 the Young and Kentucky orchardists were allowed to amalgamate their Returned Soldiers' Settlement debts with their land debts and pay $2\frac{1}{2}$ per cent on the total, which was limited to not more than the improved fair market value of the property.

SOLDIER SETTLEMENT, 1941-1955

1941.—The War Service Land Settlement Act, 1941, and amending Acts deal with the settlement on the land of ex-servicemen of the 1939-45 war, and provide, *inter alia,* for the setting apart exclusively in their interests of Crown land or of land acquired under the Closer Settlement Acts or under the Murrumbidgee Irrigation Act, 1910, and the War Service Land Settlement Agreement Act, 1945.

A formal agreement between the Commonwealth and State Governments covering a scheme of land settlement for ex-servicemen was signed by the Prime Minister and the Premiers on 28th November, 1945. The Agreement was ratified by the New South Wales Parliament by the "War Service Land Settlement Agreement Act, 1945". Federal Parliament also passed a ratifying Act. Clause II (I) (*b*) of the Agreement laid down that the State should acquire land for the scheme at a value not exceeding that ruling on the tenth day of February, 1942. This provision was carried into the acquisition and resumption sections of the Closer Settlement Acts (State) under which land was being

acquired or resumed. In 1948, with Commonwealth consent, the State legislation was amended, in view of the rising land market, to permit payment of prices exceeding the February, 1942, value by 15 per cent where owners agreed to acquisition.

The Commonwealth ratifying legislation was declared invalid by the High Court on 21st December, 1949, in its judgment on the "Jeir" case. The Court held that the Commonwealth Act was "legislation with respect to the acquisition of property upon terms which were not just" —i.e. *ultra vires* Section 51 (xxxi) of the Federal Constitution. This judgment made the State ratifying legislation and any parts of State closer settlement legislation that purported to implement the Agreement inoperative. (*P. J. Magennis Pty. Ltd. v. Commonwealth and ors.*: 80 C.L.R. 382.)

State legislation was subsequently amended (by the War Service Land Settlement and Closer Settlement Act, 1950) to delete all references to the agreement and all previous acquisitions were validated at the same time. The soldier settlement scheme continued to be carried out completely under State legislation on an understanding that a new agreement would be made. In the meantime existing responsibilities under the old agreement continued under a "gentlemen's agreement". Negotiations with the Commonwealth on the new agreement were protracted and it was not till early 1955 that the agreements were finalised. In the meantime the State Government was faced by continually rising land prices and hampered by the fact that a long drawn out legal battle (the "Ghoolendaadi" case) made its resumption legislation temporarily ineffective.[136] This position was met by Cabinet approvals on each case, as it arose, for payment of negotiated prices well above the statutory

[136] *Ghoolendaadi.*—This case concerned the "Ghoolendaadi" estate in the Gunnedah Land District comprising an area of about 41,199 acres owned by Messrs. H. W., R. J., and R. A. Pye. The sequence of the protracted negotiations and litigation surrounding its acquisition for closer settlement are of some interest.

On 5th October, 1945, a proclamation was first issued over the property under Section 4 of the Closer Settlement (Amendment) Act, 1907. A claim for 3,631 acres by R. A. Pye was recognised, leaving 37,568 acres as the part required by the Crown. All attempts by the Closer Settlement Advisory Board to reach agreement with the owners as to value were unsuccessful, and on 9th May, 1950 (following the coming into force of the War Service Land Settlement and Closer Settlement Validation Act, on 3rd May, 1950), the compulsory resumption of the property at 1942 values was approved by resolution of both Houses of Parliament. On 10th July, 1950, Statements of Claims in Equity were lodged by the three owners seeking to restrain the Crown from proceeding with the resumption. This action was decided in favour of the Crown. On 1st September, 1950, the resumption of the property was gazetted. This action was followed by a series of further Court cases culminating in an appeal to the Privy Council which was again decided in favour of the Crown on 4th November, 1954.

Fresh Statements of Claim were then lodged by the Pye Bros. seeking a declaration that the resumption was invalid on a number of grounds which, broadly speaking, alleged defects in the Departmental procedures leading up to the Notice of Resumption. This also the Court found in the Crown's favour, and a further Privy Council appeal was projected involving additional protracted delays.

Finally, as a result of fresh negotiations, an agreement was reached in 1956 between the owners and the Crown for the purchase of the whole area of 37,568 acres at 1942 values plus 40 per cent, namely £296,281, as compared with £208,510 originally offered by the Crown.

limit of 1942 value plus 15 per cent. This was done on the understanding that validating legislation would be passed, as soon as the "Ghoolendaadi" litigation was finalised.

The new "agreement" reached in 1955, between Commonwealth and State Governments, provides for acquisition of land on a fair market value basis. (It is not a formal written document and is not covered by legislation.) The agreement does not alter the old basis of financial responsibilities or functions as between State and Commonwealth. It does, however, provide for allocation by the Commonwealth of special loan funds, over a three-year period commencing 1st July, 1955, on the basis of £1 for every £2 spent by the State on soldier settlement. These special loans (limited to £2 million in any one year) are repayable by the State over fifty-three years with interest at $3\frac{3}{4}$ per cent.

Towards the end of 1955, State Parliament passed the War Service Land Settlement and Closer Settlement (Amendment) Act, 1955. This Act deleted all references to 1942 values from land acquisition legislation and provided for payment of fair market value.

It is clear that the outstanding desire of all concerned in the Agreement of 1945 between State and Commonwealth was to obviate past mistakes in soldier settlement and to take every precaution to ensure for the future permanent and successful settlement. To those ends, Clause 3 of the 1945 Agreement provided for the following:—

(*a*) Settlement shall be undertaken only where economic prospects for the production concerned are reasonably sound, and the number of eligible persons to be settled shall be determined primarily by opportunities for settlement and not by the number of applicants.

(*b*) Applicants shall not be selected as settlers unless a competent authority is satisfied as to their eligibility, suitability and qualifications for settlement, and their experience of farm work.

(*c*) Holdings shall be sufficient in size to enable settlers to operate efficiently and to earn a reasonable labour income.

(*d*) An eligible person deemed suitable for settlement shall not be precluded from settlement by reason only of lack of capital, but a settler will be expected to invest in the holding such proportion of his own financial and other resources as is considered reasonable in the circumstances by the appropriate State authority.

(*e*) Adequate guidance and technical advice shall be made available to settlers through agricultural extension services.

Two methods of settlement were provided:

(i) Under the principal method (referred to as the "acquisition" or "ballot" method) the Crown, per medium of the machinery of the Closer Settlement Act, acquires suitable properties by purchase or resumption; subdivides the land into farms of adequate size; advertises the farms as available for application; and allots them to qualified servicemen by way of ballot conducted by the Local Land Board for the District.

(ii) Under the second method, one or more qualified servicemen may, with the consent of the owner of any private land, apply to the Minister *vide* the provisions of the Closer Settlement Act, to acquire such land at the price specified on the application. This is referred to as the "Promotion" method and, if the application is approved, the Crown thereupon purchases the property and, where necessary, effects subdivision into farms, and vests the title of the farm or farms in the applicant or applicants.

In New South Wales the tenure adopted is Closer Settlement Lease (lease in perpetuity), irrespective of whether the settler obtains his farm under the "ballot" or "promotion" method.

1948.—An increased demand for home sites resulted from the post-war housing shortage and the Crown Lands Consolidation Act, 1913, was amended by the War Service Land Settlement and Closer Settlement (Amendment) Act, 1948, to provide for Crown lands being made available under the Suburban Holding tenure for the purpose of erecting dwellings thereon. This enabled home-seekers to obtain a home site under lease in perpetuity at a low annual rent of $2\frac{1}{2}$ per cent of the value of the land, but if the holder preferred, he could apply to purchase the land leased at the notified value, instead of the value as at the date of application to purchase, as in the case of ordinary Suburban Holdings.

1950.—Under the War Service Land Settlement and Closer Settlement (Amendment) Act, 1950, the right to apply for conversion into Settlement Purchase Lease granted in 1943 was extended to the holders of Settlement Purchases the title to which commenced on or after 15th December, 1937 (but on a sightly different basis as to rent), and to the holders of certain Tender Purchases, some of which were formerly held as Settlement Purchases.

1952.—The Crown Lands (Special Leases) Amendment Act, 1952, enabled existing Special Leases for business and other declared purposes to be extended to leases in perpetuity and also provided for the granting of new Special Leases in perpetuity for such purposes.

1955.—The Crown Lands Amendment (Home Sites) Act, 1955, which came into force on 28th May, 1956, was designed to assist in the erection of homes, and to this end substituted a condition merely requiring the erection of a dwelling within twelve months, or such further period as the Minister may allow, on certain holdings, not exceeding one acre in area, and Suburban Holdings notified "for the erection of dwellings thereon," for the former condition which required the performance of personal residence for a period of five years. Further, on the erection of the dwelling the holding could be freed from transfer restrictions.

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