SECTION 3

LAND SETTLEMENT AND THE ROLE OF THE SURVEYOR

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3.1 A Brief Overview -1801 to 1991

This Section on land settlement does not set out to provide any detailed analysis of the various Acts of Parliament and appurtenant regulations relating to land settlement over the last century and a half. Many of those are now obsolete in whole or in part, and a detailed analysis would serve no real practical purpose. The emphasis is more on the historical aspect of the role of the early explorers, administrators and surveyors, in the lead up to the first land settlement, from 1801 to 1837 and on a brief history of land settlement legislation from 1837 to 1991.

With a very few justifiable exceptions, legislative provisions for the alienation of Crown lands in Victoria have been based on the general premise that the disposal of the land should be the result of open public competition either at a Land Board hearing or at auction.

In the former case, except in the very early days of settlement when the first applicant at the Land Office after the land was advertised became the successful applicant, the land has normally been allocated to the most appropriate and suitably qualified applicant, subject to any appeal to the Minister by an aggrieved applicant. In the second case, that of auction, except in rare cases where the Minister may see fit to exercise power to annul the sale, the highest bidder is the successful one.

In the majority of cases, the alienation or reservation of Crown land usually requires a cadastral survey, although not necessarily prior to the disposal or reservation of the land. The purpose of such survey can be said to be threefold:

- To define the allotments on the ground for purposes of fencing and clearing where needed, and proper siting of other improvements.
- To provide information for the preparation of a diagram or other appropriate means of description, for the lease, licence. Crown grant or reservation gazettal.
- To establish reference marks or permanent marks, or both, as an aid to future reliable re-establishment of the boundaries.

With regard to the latter, it should be stated that in the early days of settlement, such marking was not implemented in a manner which would necessarily be long-lasting. Unfortunately, its implementation would have been limited in those early days to the use of reference trees, most of which later disappeared. One novel practice, of which there have been a few recorded examples, was the use of buried empty glass bottles as reference marks. It is assumed that some survey teams carried some such full bottles with them and that their use as buried reference marks, in their subsequent empty state, provided a long-lasting, tidy and economical method of disposal.

It was only in the twentieth century that the use of metal reference marks driven into the ground was adopted to any appreciable extent; and only with the advent of the Survey Co-ordination Act 1940, that permanent marks, in their various forms, came into use as a more permanent method of referencing of surveys.

From the very earliest days of settlement beginning in 1835 in the Port Phillip District of New South Wales, through to the period of Separation in 1851, when Victoria became a separate State, and for a century after that, there was a strong emphasis on alienation of Crown lands for settlement purposes.

At the same time, it should be stated that, particularly after the first 50 years of settlement, there was commendable emphasis on the need for reservation of Crown land for public purposes; and whilst it was not possible for the early surveyors and administrators to forecast all the reservation requirements for a century or more ahead, the foresight which they did exercise in those early days went a long way towards catering for that aspect of the public interest.

From about the middle of the twentieth century, there has been an ever-increasing trend towards the need for conservation of natural resources. This trend, together with the ever-increasing shortage of Crown land suitable for land settlement after more than a century of selective alienation, had the combined effect of severe curtailment of land settlement resulting from the alienation of Crown land.
Even after the end of World War 2 in 1945, with the demand for soldier settlement, much of the land used for that purpose came from the subdivision of large privately-owned estates and the balance from suitable areas of Crown land.

From that time onwards, land settlement, in the sense of development of Crown land from its virgin state, assumed relatively minor proportions by comparison with that of the preceding century.

In all of this development for land settlement, both government-employed and private practising contract surveyors played a major role, not only in the process of the marking of allotment boundaries on the ground, but also in the preliminary design and administrative work undertaken by government-employed District Surveyors. In this latter category, the title District Surveyor, later known as Divisional Surveyor, merges into the history of Victoria and appears on documents dating back to the middle of the nineteenth century. The titles District Surveyor and Divisional Surveyor were, in a sense, misnomers. In the early days of settlement, the District Surveyor would rarely effect boundary surveys himself, but, in addition to supervising a group of surveyors engaged on boundary definition and other types of surveys, he also performed the duties of Land Officer. In later days, the District Surveyor, or Divisional Surveyor, in addition to his management role in respect of surveyors and survey matters within his prescribed district, also played a major role in the inspection, reporting, design and valuation of Crown land for settlement and for reservation purposes, and he often served on Land Boards and local committees.

In the context of preliminary design, it must be admitted that, probably due to the shortage of surveyors for that aspect of the work, and because of the insistent demand for extensive areas of Crown land to be made available with minimal delays, there were many instances during the early days of settlement where there must have been a definite lack of adequate preliminary design. The outcome of this was the adoption, in these instances, of a north/south - east/west grid-iron subdivisional pattern with obvious disregard of topography, vegetation, soil type and other factors, resulting in inefficient land use, difficulty of road making and maintenance, and, worse still, especially in the Mallee country and other erosion-prone areas of the State, serious soil erosion problems.

Prior to Separation in 1851, the area now known as the State of Victoria was the Port Phillip District of New South Wales and was subject to Imperial acts and regulations administered by the New South Wales Colonial Government. The settlement of Port Phillip began in 1835 with the advent of unauthorised "squatters" whose occupation of Crown lands was greatly discouraged by the Colonial administration and the British Government until several years later when revenue producing legislation was enforced by the issue of licences on the recommendation of a Commissioner of Crown Lands.

The first sale of Crown land in Port Phillip was held on 1 June 1837 when allotments in Melbourne and Williamstown were auctioned by Robert Hoddle, Surveyor in Charge, who had earlier in the year surveyed those allotments under instructions from Governor Bourke.

The Port Phillip district of New South Wales became the self-governing Colony of Victoria on Separation in 1851, but the Government of Great Britain retained control of Crown lands until assent was given to the Constitution Act in 1855, following which the Surveyor-General was appointed as a non-elective member of the Victorian Legislative Council, and a member of the Executive Council. The Department of Public Lands, under the control of the Surveyor-General, Captain Andrew Clarke, appears to date as a Victorian Government department from these appointments near the end of 1855.

The first legislation by the Victorian Government for the purpose of regulating the sale and occupation of Crown lands was passed in 1860. The scope of the legislation concerning land settlement has been altered from time to time to meet changing conditions, and the duties of the Department of Public Lands, later known as the Department of Lands and Survey, then the Department of Crown Lands and Survey, grew with the development of the State.

In 1983, as a result of a re-structuring of government departments, there was an amalgamation of functions resulting a Department of Conservation, Forests and Lands being formed. The long standing Survey Branch of the Department of Crown Lands and Survey became the Division of Survey and Mapping under the control of the Surveyor-General within the new Department. In 1985 the Division was transferred as a complete entity to become part of the Department of Property and Services, then in 1991 it became part of the Ministry of Finance.

At the time of the first compilation of this Section (3.1) in 1989, a proposed new Lands Bill was intended to be available for public consideration and comment. Its aim was to have been to implement a
reform programme in the area of Crown land management and to provide a clear underlying philosophy that Crown land is a valuable asset to the community and should be managed in accordance with its key characteristics.

Such legislation, if eventually enacted, will mean that a number of existing Acts of Parliament can be repealed. These would include the Land Act 1958, Crown Land (Reserves) Act 1978, Forests Act 1958, Reference Areas Act 1978 and Victorian Public Offices Corporation Act 1974. In addition, many other Acts would require amendment. A separate Bill dealing with such consequential amendments would be necessary. Since 1989, no move along the lines of those then intended has eventuated.

A side effect of the modern conservation philosophy and of the separation of the Surveyor-General's Division of Survey and Mapping from the umbrella of the Department of Conservation, Forests and Lands will be that the surveyor's former major role in the area of land settlement will diminish, and be superseded to a large extent, by assumption of a leading role in the long-term maintenance of the cadastral fabric of the State, including Landata and the mapping function, and the provision of necessary support for high priority Government programmes.

3.2 Early Exploration and Surveying - 1801 to 1837

3.2 1 The First Attempts at Settlement

Land surveying has always closely followed exploration and settlement in the Colonies. The Port Phillip District of New South Wales was no exception, yet the settlement on the Yarra River where Melbourne now stands was not the first permanent settlement nor the first attempt to settle in the region. Victoria's survey history could easily have been very different had one of those earlier attempts taken root. Why they failed and why settlement was discouraged in the District over a period of thirty years prior to the Henty's first permanent settlement at Portland in 1834 is therefore important.

John Murray discovered Port Phillip Bay in November 1801. This discovery prompted Governor King in May 1802 to urge the British Government to form a settlement, largely to pre-empt a French occupation. A party was sent to investigate the area in January 1803. Surveyor-General Charles Grimes (1803-1809) was instructed to walk around and survey the shores of Port Phillip Bay where he discovered the Salt (Maribyrnong) and the Fresh Water (Yarra) Rivers, concluding the likely place for any future settlement to be on the latter river. With approval granted from England, Lieutenant-Colonel David Collins established a settlement of over three hundred convicts and some settlers at Sorrento, just inside the entrance to the bay in October 1803.

Although short of water at Sorrento, Collins was reluctant to relocate in Port Phillip Bay due to a number of incidents with the natives. Unimpressed with the region, he applied for and was granted permission to abandon the settlement. On 30 January 1804 he left Port Phillip for the Derwent River, in Van Diemen's Land, where Lieutenant John Bowen had formed a settlement. Thus ended the first attempt at permanent settlement in the Port Phillip District.

Contrary to earlier reports, the opinion of the Governor and officials after Collins' departure from Port Phillip was that there was not any suitable site for settlement in that region. John Oxley, having been sent by Governor King to investigate Western Port in 1804, condemned the area in a 1810 report:

"If Port Phillip was found bad, this port is certainly much worse and can never in any point of view be considered as a fit place for a settlement, if at any future time it should be judged advisable to have possession of a port on the north side of Bass's Strait". This view persisted for over twenty years, particularly with Oxley as Surveyor-General from 1812 to 1828, with virtually no further interest being shown in the area other than by the sealers.

Inland exploration was promoted by Macquarie who was Governor from 1810 to 1821. The Blue Mountains had been crossed and the Governor, believing the recently discovered Lachlan River flowed into the sea or an inland lake, sent Oxley in 1817 to trace its course. He reported that the party had "...demonstrated beyond the shadow of a doubt that no river whatever could fall into the sea between Cape Otway and Spencer's Gulf; at least none deriving their waters from the Eastern Coast, and that the country south of the parallel of 34 degrees and west of the meridian of 147 degrees 30 minutes east was uninhabitable and useless for all the purposes of civilised man".
Governor Brisbane (1821-1825), would have considered Oxley's reports when he declined to support the exploration of Hamilton Hume and William Hovell in 1824. Apart from sanctioning the journey the Government did nothing else to aid their proposed overland route from Lake George to Western Port. Departing on 17 October 1824, they discovered rich grazing land which was well wooded and watered. Despite the fact that they mistook Port Phillip Bay for Western Port, their discoveries were hailed by the Governor as being a great success for which they were each rewarded a grant of twelve hundred acres.

Having learnt of the discoveries of Hume and Hovell, Earl Bathurst, the Secretary of State for the Colonies feared that if the French had any serious intention of planting a colony on the unoccupied south coast they would select an area favoured by the explorers' reports. On 1 March 1826, Bathurst instructed the new Governor, Darling (1825-1831), to commence a settlement at Western Port. Accompanied by Hovell, a party of approximately fifty located at Settlement Point (near Corinella), in Western Port on 12 December 1826.

As a result of this settlement at Western Port, John Batman and J.T. Gellibrand, in 1827, petitioned the New South Wales Governor to allow them to form a pastoral settlement on the shores of Western Port. But a small strategic settlement was all that the Government required and the request was denied, it being policy to restrict the spread of free settlement at the time.

Meanwhile, Hovell had ascertained that it was Port Phillip Bay and not Western Port that Hume and he had visited, thereby making the rich pastoral land they had noted one hundred miles to the west. Due to the expense of maintaining the settlement and the passing of the French scare, the Settlement Point party was withdrawn in April 1828. Thus ended the second attempt to found a colony in the region.

Misled by reports regarding the quality of the land at the Swan River Settlement on the west coast of Australia where they had settled, the Henty family decided to move to Van Diemen's Land after two years of battling adverse conditions. Discovering that the free grants of land in the vicinity of Launceston had ceased, Edward Henty was sent by his father on a search of the mainland around Spencer Gulf for suitable land. Finally deciding on the land surrounding Portland Bay, the Henry's applied to the Secretary of State for the Colonies, for permission to purchase twenty thousand acres of land in the vicinity. Not waiting for a reply, a small party led by Edward Henty landed on 19 November 1834, at Portland Bay and thereby became the first permanent settlers in the Port Phillip District.

The Hentys' initiative proved enough to compel Batman and his colleagues to form the Port Phillip Association. Their objective was to secure the large area of fertile grazing land, confirmed by Hume and Hovell, around Port Phillip Bay. Instead of merely squatting on the land, as the Hentys were doing, the Association planned to establish their right to possession by purchasing the land from the natives.

The Port Phillip Association soon came into conflict with other settlers who were also willing to try their luck on the mainland. John Helder Wedge, a prominent member of the Association and a surveyor, became concerned when he found John Pascoe Fawkner's party camped at the Yarra and could not convince them that they were trespassing on Association property.

Responding quickly to the developments at Port Phillip, Governor Bourke issued a proclamation which was published in the New South Wales Government Gazette of 2 and 9 September 1835, making clear the Government's position;

"...every treaty, bargain and contract with the aboriginal natives for the possession, title, or claims to the lands, lying and being within the limits of the Government of New South Wales..., was void and of no effect against the rights of the Crown, and that all persons found in possession of any such lands, without official licence or authority, would be considered trespassers, and be liable to be dealt with like other intruders upon the vacant Crown lands in New South Wales'.

Bourke's proclamation reflected official policy as the Governor was bound by orders to "discountenance every undertaking having a tendency to disperse the population of the Colony".

Realising the impracticalities of pursuing "intruders" in Crown waste lands. Governor Bourke on 10 October 1835 suggested to the Secretary of State, Gleneig, a shift in policy; a greater expense would be incurred in prosecuting and policing persons outside the bounds of settled control than would be had in administering them. Bourke believed it would "...be more desirable to impose reasonable conditions on Mr. Batman and his Association, than to insist on them abandoning their undertaking".
Bourke proposed that a Township be marked out at Port Phillip, and that town allotments and portions of the adjoining territory be sold. From the proceeds of such sales the costs of surveying and of the necessary civil establishment might be defrayed.

Once Governor Bourke's recommendation was approved, preparations moved quickly. Published in the Government Gazette of 14 September 1836, was the notice of the Government's intention to authorise the location of settlers at Port Phillip under the Crown Lands Regulations of New South Wales and that Captain William Lonsdale was to be appointed Police Magistrate for the District.

A survey of the land to be sold would be made, but until it had been completed, no applications for purchase would be entertained. Further, all lands occupied without a title from the New South Wales Government, unless required for public purposes, would be liable to be sold at public auction to the highest bidder.

Within a couple of weeks the District's first surveyors had arrived. These were Assistant Surveyor Robert Russell who was in charge, also Assistant Surveyors Fredrick Robert D'Arcy and William Wedge Darke, a nephew of John Helder Wedge.

3.2.2 Formation of Survey Policy

The Port Phillip District, from a surveying point of view appeared to have benefited greatly from the delay in opening the land to settlers. Much had been learnt by the New South Wales Survey Department in its almost 50 years up until 1836 not the least of which involved a review into the running of the Department by Commissioner Bigge in 1823. He was dismayed by the backlog of surveys which had mounted mostly through inadequate procedures to handle the alienation of land from the Crown.

The usual method of settlers obtaining land was one of the greatest factors in encouraging an "isolated" survey system. A settler would approach the government for a grant of land of an area selected by him. The number of acres granted would be placed against the settler's name and published in the Gazette. Such lands would be approximately charted on a map. When opportune, the Surveyor-General would notify the settlers in a particular district when a surveyor would be there to carry out a survey. When the time arrived, the surveyor would mark out as many farms as he could in the time available.

The problems were immense with this method. Isolated surveys emerged all over the Colony and with the best land always being selected, a contiguous survey system was impossible.

Bigge's Third Report in July 1823 recommended to Bathurst, Secretary of State for the Colonies, that a systematic survey of the Colony should be carried out. The land was to be divided into counties of about forty miles square. These were to be further divided into hundreds of ten miles square, which in turn were to consist of parishes of five miles square.

Natural boundaries such as rivers, streams and dividing ranges were to be used as the borders for these divisions where practicable. As the surveys progressed, areas were to be set aside for properly planned townships, roads and public reserves.

The survey and division of the territory into counties, hundreds and parishes was to be the Survey Department's first priority followed by the survey and measurement of grants to settlers, the formation of roads and erection of bridges and the superintendence of public buildings throughout the Colony.

The priorities as laid down by Bigge did not conform however, with those of Surveyor-General Oxley, who believed that the backlog of allocated, yet unsurveyed land must come first. It was not until 1828 that Deputy Surveyor-General Mitchell was ordered to undertake a general survey of the Colony.

The result did not satisfy Governor Darling for Mitchell did not attempt to connect to any grant boundaries, being content with topographic coverage only. Before Mitchell's "Map of the Nineteen Counties", as it was known, there were no other general maps of the Colony in existence and without such maps it was impossible to divide any region into counties, hundreds and parishes.

Whilst a general survey of current holdings was not forthcoming, at least regulations were developing to help redress some of the deficiencies in the system. On 19 August 1829, Governor Darling issued an order, the most important points being:
"Regulations for the Selection and Measurement of Land" (published for general information)

1. No grant is to include both sides of a water-course.
2. The general proportion of water frontage to the side lines is to be one to four.
3. The side lines, when not determined by natural features, must be either north and south or east and west.
4. Where there are no natural boundaries whatever, those of selection must be regulated by the Section Lines extending generally across the country.
5. If the selection does not adjoin land already granted, it will be necessary for the applicant to state the exact bearing and distance from some surveyed boundaries, or known remarkable objects, such as a hill, station, road, river or junction of two rivulets.

Persons failing to do this, will of course, subject themselves to the delay, uncertainty and risk of dispute, which is always occasioned by inaccurate or imperfect descriptions of the land applied for.
6. Additional grants must be selected adjoining the original grant, when land contiguous is vacant.
7. Grants of half a section (320 acres) and under, can only be selected in the neighbourhood of a Township or Village Reserve or on......more suitable tracts of land."

The major difficulties facing the surveyors of New South Wales were in respect of past surveys. By the mid 1830s they were well aware of the benefits of survey before selection and the pitfalls of an isolated survey system. Regulations had developed to provide them with a means to systematically tackle the alienation of the entire Colony. In fact when the Port Phillip District was opened an almost ideal situation existed in that there were no pre-existing surveys, there was to be no selection before survey, and the officers were given strict instructions designed to ensure that isolated surveys did not proliferate.

Notwithstanding those advantages, the Port Phillip District surveyors still had to decide on the technical approach they would employ given their limited numbers and the generally adverse conditions they faced. Bearing this in mind these surveyors still had several options available to them.

There were originally four alternatives:

1. To undertake limited triangulation from the outset, based on well marked stations, around centres of settlement prior to alienation, so that pastoral or farm lot surveys could have been connected to the framework.

This was certainly the most accurate form of survey, but also the slowest and most expensive. Captain Robert K. Dawson R.E., in his 1840 “Report on Surveying; Considered with Reference to New Zealand and Applicable to the Colonies generally” listed the difficulties to be found with this method of surveying:

- The clearing and levelling of the ground for the measurement of the base line;
- The most accurate measurement of the base line, and its reduction to the horizontal plane;
- An exploration of the country for the purpose of selecting stations, the positions of which are to be determined trigonometrically; and the erection of proper beacons at those stations;
- The observation of the angles at all the angular points, and the calculation of the sides of the triangle;
- The cutting of lines of sight, and measuring from station to station, including the reduction of the lines to the horizontal plane;
• Traverse measurements along the coast line, rivers, streams, and other natural lines of country; and connecting the traverses with the trigonometric points.

Dawson also remarked that whilst the trigonometric survey would determine the position of the parcel with precision, it must be considered as a separate operation to marking the parcels on the ground.

2. A system of geometric description of parcels supported by careful and durable marking, referred to a common datum for directions, i.e., determination of true meridian by astronomic observations.

The key to this option would have been careful and durable marking together with the use of the true meridian as datum for azimuth combining to provide for more reliable reconciliation of isolated surveys when eventually they are connected one to the other.

3. As in 2, but use of magnetic meridian for determination of directions.

The disadvantage of basing the surveys on the magnetic meridian was that local variation played a large part and individual instruments, would be likely to disagree with each other. Despite the less consistent datum for bearings, if good quality marking was employed then the prospect of reliable re-establishment would be greatly enhanced.

4. Geometric description combined with reference to natural features.

This "metes and bounds" approach was used in the Colonies in the very early days. However, whilst proving suitable for the English countryside, in Australia, there was a lack of sufficient density of suitable natural features to which the parcel could be referenced. Ensuring uniform and unambiguous implementation proved confusing and often required a diagram to "describe" the description.

All but option 1, which provides trigonometric control, support the "isolated survey system". But it has already been noted that the Port Phillip District was to be opened up to selection at a time when this method was to be discouraged. This meant that if triangulation was not a viable alternative, as Dawson had stated, then a separate approach was required.

Dawson's 1840 report went on to recommend a method which had been developing known as the "extended survey" or "running survey". Dawson at the time was the organiser of the tithe commutation surveys in England and Wales, having been seconded from the Royal Engineers in 1836.

The method encompassed many of the advantages of the earlier options but it was based on survey before selection and involved the extension of "sections" from a specific start point. A section was a square mile and a subdivision of a parish. The surveyors would select a starting point such that two lines may be measured from it, one in the direction of a meridian and the other at right angles to it, and should traverse the most open, level and accessible ground.

The first section was obviously the most crucial, and great care was needed in setting it out. The lines were to be determined by a theodolite and the distances measured precisely. Strong pickets would be driven into the ground every quarter of a mile. The theodolite would be moved one mile easterly to the south-eastern corner of the section from which the eastern boundary would be laid out. The northern boundary would then be laid out, providing a check on the overall accuracy of the section survey. Then, by connecting the intermediate marks placed at quarter mile intervals, the section of 640 acres could be split into portions.

The ability to subdivide into further smaller portions as the need arose is obvious. The cost per 640 acres of land is that of four miles of survey for the first section. As the section lines are permanently marked, and do not require re-survey, the cost reduces to less than two and a half miles of survey per 640 acres in a 5 mile square parish.

For irregular boundaries, such as those defined by a river frontage, Dawson recommended holding the framework of the sections but as the deflection of the river proved such as to not admit another full portion, that fraction became part of the adjacent portion. The allowance for roads was to be a later consideration as they are dependent upon the physical features of the country. Separate "section surveys" or "running surveys" could be implemented in isolation or be swung from a standard orientation, i.e., a meridian, to best make use of water frontage along rivers or to suit
narrow valleys. These isolated section surveys could be connected by a trigonometric survey at a later date.

The advantages of section surveys are speed, economy and accuracy. Dawson stated that their accuracy was second only to the trigonometric survey, but if the settler could be secure from loss or "...to assure to him the possession of, and clear title to, the full quantity of land he has paid for, it will be evident that the trigonometric operation may, at least, be deferred until ulterior objects call for it, and the Colony is better able to pay for it".

The sectional survey could in fact "secure the purchaser" from risk and in Dawson's opinion:
"...the actual setting out upon the ground (of) the limits of the sections for which a title is claimed; and any probable error which could arise in setting out those limits, if moderate care only were taken, would affect only in a trifling degree the contained quantities of land, and might be amply compensated to the settler by a percentage allowance on the sections, making them so much larger than the quantity guaranteed in the sale."

Although written four years after the first surveyors arrived at Port Phillip, the general procedures and benefits of a "running survey" were well known to the Survey Department and very attractive to a government keen on rapid settlement.

3.23 Formation of Survey Procedures for Port Phillip

Control of the daily running of the Department was often left to Deputy Surveyor-General Perry. He also found himself in charge due to Surveyor-General Mitchell's leave of absence or journeys of exploration. Perry supplied Russell with a set of general instructions concerning his duties in the Port Phillip District.

These instructions were very important as they formed the basis of the work performed in the region for the next fifteen years and began to outline the survey system Port Phillip was to adopt. They show the excellent foresight of our early administrators in planning for future development and sensible use of land, but they also show uncertainty in what methods the surveyors were to use in setting out their survey framework. The instructions included:

"Having received the Governor's command to make arrangements for the immediate employment of three officers of this Department in the survey of Port Phillip with a view to the location of that part of the Colony, I have to inform you that His Excellency has been pleased to approve of the nomination of you, (Russell) assisted by Mr. D'Arcy and Mr. Darke for that service, and to signify that your operations are to be based upon those to be conducted by the officers of His Majesty's sloop of war Rattlesnake, which sails for Port Phillip in the course of next week, with the officer appointed to the Magistracy of that place and a military establishment on board... I have therefore to request your attention to the following instructions for your guidance and that of the other members of this Department acting under your immediate direction:

First- You will furnish yourself with tracings from some ancient documents in the office which give an outline of the basin of Port Phillip and afford some data upon which an idea may be formed of the general character of the country upon its margin, and you will collect previously to your embarkation such further information as may be likely to assist you in your operations on the ground.

Secondly- The direction of the first great parallel to the meridian of Parramatta being established by the officers of His Majesty's sloop of war Rattlesnake and some points about the mouth of the harbour of Port Phillip in the course of next week, with the officer appointed to the Magistracy of that place and a military establishment on board... I have therefore to request your attention to the following instructions for your guidance and that of the other members of this Department acting under your immediate direction:

Thirdly- The survey and tracing of the shores of the great basin being completed, you will trace up the banks of the river which empties itself on the northern side of the harbour and upon which some grazing establishments have been formed extending to a considerable distance above its mouth.

In tracing this river you will note its breadth and depth at the mouth and at several points above the extent to which it is navigable and to which it is affected by the tide, the nature of its banks and bed at several points, the rapidity of its current, the height to which the permanent water flows, and that to which it rises in time of flood. Similar remarks as far as they apply to lesser streams.
Fourthly- In the course of your work upon the river above alluded to you will observe what lands are occupied, and furnish the Police Magistrate with the names of the occupants and the extent of their occupation, in order that a record may be made of the licences that will be granted to them.

Fifthly- You will next proceed to trace the other rivers and creeks on the west side of the harbour; entering into all details mentioned in the third article of these instructions, and collecting on your way the requisite information respecting any establishment that you may find on their banks.

Sixthly- When all rivers and watercourses terminating in the basin of Port Phillip shall have been traced, you will commence marking a series of section lines, taking the meridian established by the officers of His Majesty's sloop of war, and a perpendicular thereto at the point of their observatory, as your lines of departure, and as these lines must form the foundation of an extended survey, you will use the utmost care in running your parallels, verifying your ground measurements by trigonometric observations, taking the latitudes, and calculating the longitudes from the newly established meridian of such points as may appear of importance to future operations.

Seventhly- As soon as a sufficient number of section lines shall have been traced and the necessary information obtained upon all the particulars above specified, you may commence describing the features on the ground by tracing the principal ranges in the usual manner, taking intersections to the principal points in your survey and measuring such bases of verification as the nature of your equipment will permit.

In laying down upon your plan the features of the country, you will be careful to show as accurately as possible the different degrees of inclination and every peculiarity which the face of the country presents.

Eighthly- Every plan must be accompanied by a written report, the most convenient form of which in a new country is that of a Journal, giving in separate columns, date, state of the atmosphere, state of the barometer and thermometer at three separate observations wherever practicable, the angles of every great triangle observed, and the calculation of the sides, the distance measured with the chain and their magnetic bearings, observing wherever the variation may differ from that of the new observatory...

The scale upon which your work is to be laid down is two inches to the mile. The resident Police Magistrate will be furnished with a copy of these instructions, and as carrying them into effect will partly devolve upon the members of this Department acting under you, I have to request that you will make them acquainted with their tenor."

Of particular importance for the future surveys of the District was the sixth instruction to Russell. The interest there lies in the sectional surveys being clearly made dependent upon a meridian established by H.M.S. Rattlesnake's officers. The direction "of the first great parallel to the meridian of Parramatta", demonstrates Perry's intention that the sections be orientated towards true north, upon a line parallel to the meridian laid by the Government's Astronomer, Rumker in 1828, at Parramatta.

As Dawson mentioned in his report, the orientation of the section lines which form the extended survey was not important but by using true north it follows that valuable checks could be performed by astronomic observations at points distant from the original meridian. Perry did note the opportunity to make astronomic observations in correspondence to Governor Bourke in which he explained his survey policies. But surprisingly, in 1836, he directed against any such actions. "The minor details of the survey must be left with the officer who is to be responsible for its accuracy, and I have carefully abstained from directing his attention to any celestial observations further than what may be necessary for the latitudes of some of his principal points..."

Only five days after Perry issued the set of general instructions to Russell he sent additional instructions which rescinded a crucial aspect of the previous orders.

"With reference to the article of instructions above-mentioned, wherein you are directed to mark section lines as meridian lines and perpendicular thereto, some doubt has arisen whether this arrangement may not be attended with inconvenience, inasmuch as it may lead to questions respecting the variation at each particular section. I have therefore to request that you will consider that part of your instructions rescinded and will substitute magnetic bearings, taking care however in your work of verification to make as many observations for the variations as may seem expedient."
Perry’s new found concern over variation problems clearly points to uncertainty on the behalf of the Survey Department as to which procedures to implement and also a major difference with Dawson's method for carrying out the extended survey. Obviously Perry envisaged the survey work being undertaken with the circumferentor. Dawson on the other hand, states quite clearly that the accuracy of the survey he recommends is dependent upon the use of the theodolite.

The change to a magnetic datum promoted the use of the circumferentor and reflected the attitude of the day amongst the field surveyors that the theodolite was slow and cumbersome, requiring a clear line of sight between pegs, and in the Australian bush this was often impossible. Whether Dawson would have insisted upon the use of theodolites knowing the difficulties posed by our vegetation is unclear. He was never to visit the Colonies, and his whole argument for an extended survey is based upon the accuracy obtained with their use.

3.2.4 A Slow Start to the Port Phillip Survey

Robert Russell, Surveyor in Charge, was delayed from starting his survey of Port Phillip Bay because the party’s horses and stores were to arrive on a later ship. The voyage from Sydney encountered rough weather and took nineteen days. Although this was not unusual, only nine days supply of feed for the horses was shipped and consequently the horses arrived in very poor condition.

Russell reported his difficulties to Perry on 25 November 1836, nearly two months after his arrival. He stated that he was beginning a plan of the settlement in order to fill up the time caused by not being able to use the horses for surveying the coast.

It was almost a month later that Russell ordered Darke to begin surveying the shoreline between Point Gellibrand and the mouth of the Werribee River. D'Arcy was to survey the section from the mouth of the Werribee River to the Western entrance of the Bay (Point Lonsdale).

On 28 February 1837, Russell reported to Perry:

"The many and serious delays to which I have been subjected being now in a great measure removed, I make no doubt but that the first paragraph of the instructions I have had the honour to receive from you in your letter (10 September 1836), will very speedily be completed."

Up to the end of February 1837, the Port Phillip surveyors had completed the following:

Russell - a traverse to Little River to connect Darke's and D'Arcy's surveys, a total of 5 miles.
Darke - Point Gellibrand to Werribee, Hobson's River, part of the coast along the eastern shores of Port Phillip and a section of the Yarra River, a total of 62.5 miles.
D'Arcy - Werribee to Point Lonsdale, a total of 93 miles. Russell and Darke - a plan of the settlement.

Governor Bourke was extremely disappointed with the reports from Port Phillip. Considering that Russell was given an outline of Port Phillip Bay, the only new or significant work done in five months was a plan of the settlement and a few miles of creek traverse.

Bourke had decided to visit the settlement early in 1837 and had planned to take the Surveyor-General, Thomas Mitchell with him to advise on survey matters. Mitchell had returned from his explorations of the interior but had proceeded to London to have his journals published.

Earlier, in November 1836, Surveyor Robert Hoddle, due to his poor health, was permitted to return to Sydney from surveying the Hunter River. At forty-two years of age, Hoddle was one of the Department's most experienced surveyors and in January 1837 he applied to take command at Port Phillip as he thought the cooler climate may improve his health. At the time his request was refused but Bourke's increasing displeasure at the state of affairs at Port Phillip, Hoddle's availability and Mitchell's leave of absence combined to afford Bourke a solution. Hoddle would accompany the Governor to Port Phillip and be personally briefed prior to taking charge of all survey operations.

On the 3 March 1837, the Governor landed at Point Gellibrand. The following extract from the diary of Governor Bourke is of interest:
"The shore of the Bay near Point Gellibrand must undoubtedly be occupied tho' from want of water it may not become the site of a large town. I thought therefore it would be advantageous to mark out some allotments which might be offered for sale immediately. Went on shore with Surveyor Hoddle and marked the direction of the principal lines for Quays and Buildings. Directed him to have the whole peninsula surveyed immediately and pointed out the parts which I wished to be reserved for Government purposes."

The following day the Governor proceeded along the Yarra River to the settlement. Bourke's diary records:

"In the afternoon rode over the ground adjacent to the Huts with Surveyor Hoddle and traced the general outline of a Township upon a beautiful and convenient site."

On 7 March 1837, Bourke directed the town to be laid out, naming the site Melbourne.

Robert Hoddle, having gathered his belongings and equipment in Sydney, returned to Port Phillip on 20 May 1837 to take permanent charge of survey operations. The Governor's visit had legitimised the settlement, starting a small boom, and Hoddle was keen for the survey work not to dawdle under his supervision. The first sale of lands in the district was to be on 1 June 1837, of town lots in Melbourne and Williamstown. The results from the sale of town allotments came as a pleasant surprise to the Government, and helped to hasten the survey work. Hoddle, in a letter to James White of the Australian Company on 4 July 1837, expressed surprise at the wealth in Port Phillip:

"I did not think there was so much money in the settlement. I am afraid the land near the town will fetch high prices, which would prevent me settling here. A person told me he would give 25 shillings per acre for 1000 acres within 10 miles of the settlement. The fact is, some of the Van Diemen's Land people are richer than is generally believed."

Governor Bourke had suggested to Hoddle that the sections to be marked for sale should be on both sides of the Yarra commencing at the Government reserve west of Batman's Hill. Batman's Hill thus became the starting point for the first section of the extended survey.

On 10 June 1837, Hoddle measured one mile north from Batman's Hill (Figure 1). From this point Hoddle proceeded one mile west then south to the Yarra. From the second point (one mile north of Batman's Hill) he proceeded east for two miles then south to the Yarra. This marked the limits of the Government Reserve and formed the basis for the extended survey of the District. The northern boundary of the reserve is now Victoria Parade and the eastern boundary is Hoddle Street.

Figure 1. The first sections marked in the Port Phillip District (based upon Sydney plan J2, 1844).

Referring to Dawson's report, it is surprising to note that the careful measurement of the first section, which provides the basis of the extended survey, and with which Perry had also insisted the "utmost care" be taken, had its starting point on the top of a hill and its northwest corner in the salt lake.
The first section to be marked outside of the Town Reserve was from the northeast corner of the Reserve (presently Victoria Parade and Hoddle Street), one mile east, then south to the Yarra (Figure 1).

This proved to be the extent of the running survey for the time being. For the next two months Hoddle proceeded to survey according to Perry’s instructions which required him to trace the course of the Yarra. This fitted in with Perry's request that he send in:

"...plans and descriptions for advertisement of such sections and allotments as it may appear desirable to dispose of in the first instance".

Hoddle sensibly combined the exploration of the river with marking of allotments as he considered this country the most desirable and likely place for immediate settlement.

### 3.2.5 Instructions for Laying Out the Parishes

The success of the land sales in Melbourne prompted the Colonial Secretary to order periodical sales of lands and town allotments in Port Phillip. More detailed arrangements were called for to support these sales and on the 31 July 1837, Perry requested Hoddle to concentrate on the preparation of parish plans. Some confusion had set in as to what procedures were to be used. Hoddle had to forfeit his work on the Yarra and Perry spelt out exactly what he required. Perry's instructions were to be read in conjunction with his earlier correspondence to Russell of 10 and 15 September 1836:

"I have to acknowledge the receipt of your letter of 1 July 1837, from which I gather that you have been marking sections of land for 60 miles or more up the Yarra River, that you are still proceeding with that River, and that you intend forwarding plans as soon as you have a complete District surveyed.

As I have just been informed by a letter from the Colonial Secretary dated the 10th instant, No.37/444 that it is the intention of the Government to hold forthwith periodical sales of lands and town allotments at Port Phillip, it becomes necessary that more detailed arrangements should be entered on, than are mentioned in my instructions No.37/223, a desultory marking of sections up a long extent of river being far too general for the purpose of proceeding with the sales.

Had I imagined that you would commence so soon upon the marking of section lines, or that the Government had determined to have periodic sales, I should have instructed you more fully at an earlier date, but I have now to request that without losing sight of the general tenor of my instructions to yourself and Mr. Russell, you will prepare and transmit to me plans for parishes in the directions pointed out to you by the Governor while at Port Phillip, observing that each parish is to comprise as nearly as may be, an area of 25 square miles, and to be described by a clear and well defined natural boundary line even at the sacrifice of regularity in the dimensions, provided that no parish shall in any case exceed or fall short of the dimensions before prescribed to the extent of more than one third fraction.

It has been customary to make permanent water courses the boundaries of parishes, probably because they usually form the boundaries of farms on one side, but to give each parish its stream would appear to be a more convenient arrangement, as it would admit of the towns being astride of the streams. You will however in performing this part of your duty be guided by circumstances, taking care however to avoid doubt and uncertainty in the proposed boundaries of each.

Having in pursuance of the above instructions determined the boundaries of a parish, you will be guided by the following particulars.

1st. Every parish is to be divided into sections of a square mile each, or into portions with frontage on the sea, lakes, rivers or roads as has been the practice heretofore in the allotting of lands for sale in this Colony. One uniform system of marks being adopted for the sections.

2nd. All lands the quality or location of which may render them desirable for small locations, are to be divided into half, or quarter, or half quarter sections, or even smaller portions, according to their proximity to places which may be viewed for and considered eligible for towns, and you will be at liberty in such situations, to vary the lines from their direction towards the cardinal points, to regulate the frontages, and make roads of communication as may appear desirable. One uniform system of marks being adopted for each of the respective portions.
3rd. In every parish, you will make at least one reserve for a town or village, observing that the areas of lands so reserved should be about half a section for a village, and a whole section or more for a town, and you will moreover be careful to reserve all tracts or pieces of land that may appear to be required for public purposes, and you will likewise make reserves for public roads, or other natural communications either by land or water, or for any other purpose of public convenience, utility, health or enjoyment, and particularly as resting places for cattle where water is to be had.

4th. As often as it may appear desirable to the Government to make arrangements for the laying out of any town or village, and you have received instructions on that head, you will make reserves for the sites of churches, schools or parsonage houses, or as places for the interment of the dead, or as places to be set apart for promoting the health of the inhabitants, or as sites for quays, or landing places on the sea coast, or in the neighbourhood of navigable streams.

5th. You will assign to each parish a name, founded on the native appellation of any hill or place therein.

6th. You will number each lot which you may set out for sale in each parish, whether section, portion or smaller quantity, from "one" onwards commencing at the south-west corner, as was done on the surveys of the Counties of Roxburgh and Bathurst, and at Hunter's River.

7th. You will prepare separate plans of each parish numbered and named as required by the above articles, 5 and 6.

8th. You will attach to each plan of a parish a tabular schedule, showing the numbers and areas of each lot with a blank column to be filled up with the names of the purchasers.

9th. You will attach to each parish another tabular schedule, referring to and describing the marks that have been made on the ground at the corners of each lot, so as to show the natural and artificial marks on the lines bounding each lot, they being such as local circumstances and the peculiarities of the land will admit, and you will likewise attach to this schedule some account of the quality of lot of land, so that individuals on inspecting your maps may arrive at some knowledge of the land and of the marks by which it has been distinguished on the ground.

10th. You will show on your map plans in red the length of each line, and write on them as has been your practice heretofore, a description of the quality of the land.

11th. You will prepare separate and distinct written descriptions such as will serve for deeds of grant of each portion that you shall allot for sale, setting forth the number and area of the said section, portion or allotment, which descriptions are to accompany each separate plan of a parish as required by article 7, and should be preceded by a written description of the parish in order that the boundaries thereof may if necessary be proclaimed.

12th. You will be careful to preserve to each portion, section or allotment a road or right of way to the nearest river or main road, it being desirable that every portion of land sold by the Crown should have a distinct right of way.

13th. As soon as the plans and descriptions above alluded to are prepared, you will transmit them to me, in order that the originals or copies thereof as may appear most expedient may be forwarded to the Government for advertisement for sale, provided they should be approved of.

14th. Although the great distance of the Port Phillip settlement from Sydney, and the difficulty of communication, has rendered it imperative on me to throw into your hands the whole responsibility of their arrangements as final until you have been apprised of my approval thereof, and should any circumstance of extreme difficulty arise, you will submit the particulars of such difficulty for my consideration. I rely however on your experience in the field, on your industry and application, and on your sense of duty to the head of your Department to carry these my instructions most carefully and fully into effect.

By your letter of 1st July 1837, I am informed that you have already marked out portions for sale on the Yarra River to the extent of 15 000 acres, and that you have marked and numbered the corners. This may in some measure interfere with the marking of parishes; as however that arrangement is indispensable, in order to fit more determinately the situations of portions of land, than could be done by any series of numbers extending along 60 or more miles of a river, what you have done must be made subordinate to the arrangements herein set forth.
You will preserve copies of all plans and descriptions etc., that you may forward to this office, in order that the fullest information may be afforded by you to all persons who may refer to you relative to the state of the lands that may be open for sale, and should the sales take place in Sydney, you will be immediately apprised of the names of the purchasers and of the lots purchased, the particulars of which you will insert on your own maps and documents, so as to render the references in your branch of the Department complete.”

With the receipt of these instructions, the duties of the Port Phillip surveyors were clear and were to remain largely unchanged for the next 15 years. Perry had refrained from defining a limit for the expansion of the extended survey but in correspondence to Governor Bourke, he felt it "... in all probability may comprise about 1000 square miles".

Bourke had directed the surveyors north and west of Melbourne and within a short time surveys were extending rapidly according to instructions.

These instructions, carefully detailed, represented the best approach to cadastral surveying known to the New South Wales Survey Department of the day. Based on the systematic survey method of extending section lines it eliminated the isolated survey which had characterised previous efforts.

3.2.6 Plans of the Primary Cadastre

Today, 1989, the cadastral pattern of Victoria embraces 37 counties, 2005 parishes and 908 townships. Of these, 89 parishes and 4 townships do not have plans as there have not yet been any Crown subdivision surveys to justify the preparation of a plan. These are mostly located in Gippsland, north-east Victoria and the Big Desert area.

3.3 Land Settlement Legislation -1837 to 1988

3.3.1 Settlement in the Port Phillip District

The alienation of Crown land in Victoria commenced on 1 June 1837 under Imperial Acts and Orders in Council applicable to the Australian Colonies, by which the land was exposed to public competition at auction, the minimum upset price for country land being at first twelve shillings per acre, subsequently raised, in 1840, to one pound per acre. The first sale was of town lots at Melbourne and Williamstown and the first country land sold was in the parish of Will-will-rook, north of Melbourne, on 12 September 1838.

Under this system, the land was acquired at once in fee simple, on payment of the purchase money. Under special Orders in Council, nine blocks, each of 5120 acres, and one block of 31 375 acres were disposed of in the 1840s without competition at one pound per acre.

Provision was made in the Orders in Council for pastoral occupation of Crown lands, and, in 1847, authority was given for pastoral tenants, known as squatters, to obtain the freehold of their homestead areas, up to 640 acres, under Pre-emptive Right, at a valuation and without competition. Practically the whole of the accessible and productive unsold land in the territory of the Port Phillip District of New South Wales, as it was then known, was held as pastoral runs.

3.3.2 The New Colony of Victoria

The Colony of Victoria was established by Separation from New South Wales on 1 July 1851, and provision was made for the laws in force concerning the sale and occupation of Crown lands in New South Wales to continue in operation in Victoria until altered by its Legislature. It was not until 1860 that the Victorian Parliament passed the Colony's first legislation concerning disposal of Crown land - the Sale of Crown Lands Act which came into operation on 1 November of that year. This Act was known also as the "Nicholson Act" after William Nicholson, the Premier of the day.

In the meantime, the system of alienation by sale at auction, and pre-emptions by pastoral tenants of their homestead areas continued, and, by 1860, nearly 4.5 million acres, about 8% of the total area of the Colony (56 245 760 acres) had been alienated.
3.33 Sale of Crown Lands Act 1860

The "Nicholson Act" established a system by which an area of three million acres of country land was to be surveyed into allotments of not less than 80 acres or more than 640 acres each and proclaimed available for selection at one pound per acre. Where more than one application was simultaneously lodged for the selection of any one allotment, an auction was held, limited to the applicants. No person could within a year select more than 640 acres unless the additional area he desired to select had been open for selection for more than one year.

Each allotment was divided into two equal portions and the successful applicant was required to pay the full purchase money for both moieties immediately and obtain the freehold title, or he could elect to pay for one moiety and either surrender any rights to the other or obtain it as a leasehold. Provision was made for any lease to be forfeitable if the lessee did not effect improvements to the value of one pound per acre on the purchased moiety and reside either on that moiety or the leasehold moiety. The rent paid was credited to the purchase money which was fixed at the rate paid for the purchased moiety and the leasehold was converted to freehold on completion of payment of the purchase money.

Authority was given for sales by auction to be continued for the moieties of allotments not taken up by selectors and for lands specially set apart for sale by auction, at a minimum upset of one pound per acre.

3.3.4 Sale and Occupation of Crown Lands Act 1862

By 1862, after approximately 800 000 acres had been disposed of under the Sale of Crown Lands Act, the Legislature had become aware of weaknesses which allowed land to fall into the hands of the large landed proprietors instead of tenant farmers, farm labourers and the large numbers of persons who had been attracted to the Colony by the gold discoveries in the 1850s and who now, with the decline of the mining industry, and particularly the easily accessible alluvial workings, were turning to agricultural pursuits.

An amending Act, called the Sale and Occupation of Crown Lands Act, came into operation on 18 June 1862. This legislation, also known as the "Duffy Act", after Charles Gavan Duffy, the Minister of Lands of the day, repealed all prior legislation, including the Imperial Acts and Regulations applicable to the Colony. It substituted the principle of a ballot to decide priority between simultaneous applications for the same land, instead of a limited auction, and required selectors to improve their leasehold moieties by cultivating one-tenth of the area, or by erecting a habitable dwelling or enclosing the area with a substantial fence.

It was provided that ten million acres should be proclaimed as agricultural areas, of which four million were to be opened for selection within three months, and at least two million acres kept constantly open whilst any of the ten million acres remained undisposed of. The land so proclaimed was to be "as much as possible in defined and extensive districts and not in isolated or scattered portions" and surveyed into allotments not less than 40 acres or more than 640 acres in extent.

This Act also provided for the pastoral runs occupied by the squatters who had obtained some security of tenure by the Order in Council of 1847. In order to "unlock" the large areas involved, provision was made for existing pastoral occupation to be continued by annual licence on condition that the issue of a licence would not prevent the relevant area being made available for sale or leasing or otherwise dealt with. The annual licences were not to be renewed after 31 December 1870. New runs were to be offered at auction, and the bidder of the highest sum, as a premium above the upset rental, given a licence renewable for any period not exceeding fourteen years.

About 1 400 000 acres had been disposed of under this Act, when it was apparently realised that the desired result was not being achieved, and, in March 1865, a further Act was passed, called the Amending Land Act 1865.

3-3.5 Amending Land Act 1865

Known as the "Grant Act" after James Macpherson Grant, the then Minister of Lands, this Act abolished the system whereby affluent selectors could obtain the freehold of allotments by immediate payment of the purchase money (the leasing of one moiety being, as stated above,
optional). It substituted a full leasing system under which allotments, not less than 40 acres and not more than 640 acres in extent, could be selected but which could not be made freehold until after the expiration of three years and the effecting of improvements to a value of one pound per acre.

The freehold was obtained by exposing the land to public auction with a valuation of improvements, in favour of the lessee, added to the upset price of one pound per acre. However, if the lessee had resided for three years on the leasehold he could obtain the freehold without competition at a price of one pound per acre. It was still possible under this Act for a person to select an area of 640 acres each year, but provision was made designed to prevent selection by infants and agents.

Under this Act approximately 3 000 000 acres were taken up, but, due to forfeitures, only 1 500 000 acres matured into freehold titles.

All the sales, by auction or by selection, referred to under the Acts up to this time had been made in respect of land to which no objections to alienation had been raised in the interests of gold mining.

To meet the demands for occupation of land adjacent to gold fields, the 1865 Act authorized the issue of licences for residence or cultivation for areas up to 20 acres, and regulations were made which allowed a person to hold any number of these licences provided the total area did not exceed 160 acres. Eventually these licensees were given the right to convert their areas to freehold, provided no mining objections existed.

3.3.6 Land Act 1869

In 1869, a new and very comprehensive Land Act was passed. It established a system of licensing for a period of three years for allotments not exceeding 320 acres, during which period conditions regarding fencing, cultivation and residence were to be complied with. On satisfactory compliance with the conditions, the freehold could be claimed on payment of the balance of purchase money which was fixed at one pound per acre, or a lease for seven years could be issued over which period the balance was payable. A most important feature of this legislation was the abolition of the ballot system of obtaining priority for simultaneous applications and the institution of public hearings called Local Land Boards, at which applicants were required to submit evidence in support of their applications and the successful applicant was chosen by the Board for recommendation to the Minister of Lands, on the basis of merit.

Provision was made in the Regulations under this Act for the conduct of the proceedings of Local Land Boards and for appeals by dissatisfied applicants to the Minister.

Any person who had obtained by selection or pre-emptive right an area of 320 acres under previous Acts was debarred from selection under the new Act, as were persons who had previously selected and whose leases had been cancelled for evasion of any of the provisions of previous Acts. Also, once a person had selected 320 acres under the new Act, he became ineligible to select further areas.

This Act also imposed for the first time a statutory limit on land which could be sold by auction and provided that not more than 200 000 acres could be so disposed of in any one year. The Act contained elaborate machinery for the occupation of Crown land for other than pastoral or agricultural purposes and several forms of leases and licences were prescribed. This Act laid the foundation for a sound and equitable administration of the Crown lands of the Colony and many of its provisions were retained in subsequent legislation.

By this time, pastoral occupation, which under the Act of 1862 had been under annual licence for existing tenancies and by fourteen year lease for new tenancies, had been greatly reduced by excisions for selections, but was still considerable and it was necessary to provide for continuity of the older occupations which were due to expire on 31 December 1870. The 1869 Act permitted yearly licences to be continued for the remaining tenants subject to the land being made available for other purposes when required.

This Act was intended to last ten years and to expire on 31 December 1880. Minor amending Acts were passed in 1875, 1878 and 1880 and the last Act extended the operation of the 1869 Act until the end of 1881. Further extensions were made by Acts in 1881, 1882 and 1883 and a complete amending and consolidating Act was passed in 1884.
At this time, the total area alienated was approximately 25 000 000 acres of which about 18 500 000 had been disposed of under the selection provisions of the Acts since 1860.

3.3.7 Land Act 1884

This Act of 1884 provided for the division of the unalienated Crown land remaining in Victoria into eight classes, namely:

- Pastoral lands
- Agricultural and grazing lands
- Auriferous lands
- Lands which may be sold by auction
- Swamp lands
- State Forest Reserves
- Timber Reserves
- Water Reserves.

Pastoral land was to be divided into allotments and leased for a term not exceeding fourteen years.

Agricultural and grazing land could be licensed in areas not exceeding 320 acres, with conditions regarding residence and improvements, for a term of six years and on expiry and subject to the conditions having been complied with, a lease could be obtained under which the balance of purchase money, after crediting the rents paid under licence, was payable over fourteen years. Alternatively, the Crown grant could be obtained on immediate payment of the balance. The purchase money was fixed at one pound per acre.

Provision was made for non-residential licences, but, in any such case, the purchase money was increased to two pounds per acre and the total area allotted under this form of licence was restricted to 50 000 acres in any one year. As in the 1869 Act, previous selectors of 320 acres were not eligible for land under the new Act.

Auriferous land could be licensed in allotments not exceeding 20 acres for purposes of residence and cultivation, or for grazing in allotments not exceeding 1000 acres. The alienation of land classed as auriferous was forbidden, but, in later legislation, licensees for residence and cultivation were allowed to purchase, subject to special mining conditions, if required. Subject to there being no mining objection, it was possible to remove land from the auriferous class and add it to one of the other classes, allowing alienation.

Sales by auction were confined to an area of not more than 100 000 acres in any year, a further restriction on the figure of 200 000 acres specified in the Land Act 1869.

Swamp lands could be drained by the Government and leased in allotments not exceeding 160 acres for a term of 21 years with no right of purchase and subject to the lessee maintaining drainage channels on the land.

The alienation of any of the lands classed as State Forest, Timber Reserves or Water Reserves was forbidden.

33.8 Mallee Pastoral Leases Act 1883

Prior to the introduction of the Land Act 1884, special provision had been made, in the preceding year, for the pastoral occupation of the Mallee country which was described as the area comprising some 10 000 000 acres in the north-west district of Victoria, either wholly or partially covered with mallee scrub.

This new Act provided for the territory, then practically uninhabited and uninhabitable as a result of the rabbit pest, to be divided into blocks each having a narrow frontage to the River Murray or containing a depression or watercourse where water could be conserved. Each block was to contain not less than 60 square miles, with a maximum of 500 square miles, and was to be divided into two parts. One part could be leased for pastoral purposes for a term of twenty years and the other part licensed for five years, on condition that the whole block was cleared of vermin within three years. This Act was the forerunner of several Acts in later years to deal with land in the Mallee, and, in 1889, provision was made for any pastoral lessee to obtain a purchase lease of an area not exceeding 320 acres.
In 1890, the *Land Act* and the Acts relating to the Mallee were consolidated but no new features were enacted.

3.3.9 *Settlement of Lands Act 1893*

This Act provided for the allocation of Crown lands for village communities, homestead associations and labour colonies and this legislation was apparently intended to alleviate unemployment due to the financial depression at the time.

3.3.10 *Mallee Lands Act 1896*

Here, provision was made for land in the Mallee country to be made available for selection as agricultural allotments containing not more than 640 acres each, and two further Acts in 1900 provided for the classification of Mallee land and a restriction on selection of land further than 25 miles from the River Murray or any railway.

3.3.11 *Land Act 1898*

The main feature of this amending Act was a further division of the land classification introduced by the *Land Act* 1884. The classifications of “pastoral” and “agricultural and grazing” were replaced by four new classifications namely:

1. Good agricultural or grazing land
2. Agricultural and grazing land
3. Grazing land
4. Pastoral land (large areas).

Land in classes 1, 2 and 3 could be selected under licence, similar to provisions of the *Land Act* 1884, in allotments not exceeding 200 acres, 320 acres and 640 acres in each class respectively. The purchase money for each class was one pound, fifteen shillings and ten shillings per acre respectively. Instead of non-residential licensees being required to pay an increased purchase price, the value of the improvements to be effected was increased. Subject to compliance with conditions over the period of the first 6 years, the licence could be converted to a lease for the ensuing 14 years.

Provision was also made for the term of this lease to be increased from 14 years to 31 years, at the option of the lessee, in order to spread the purchase money over a longer period.

3.3.12 *Land Act 1901*

A consolidating *Land Act* in 1901 brought the provisions regarding Mallee land into the Principal Act but introduced no new features.

3.3.13 *Land Act 1911*

The next major amendment was by the *Land Act* 1911 which introduced a system of selection purchase leasehold. Residential or non-residential leases for either 20 or 40 years could be issued for land classed 1, 2, 3 and 4 at a purchase price of one pound, fifteen shillings, ten shillings and five shillings per acre respectively, and in allotments not exceeding 200 acres for Class 1 land up to 960 acres of Class 4 land. The Crown grant could not be obtained until after expiry of the first six years of the lease and after compliance with conditions regarding residence on or within five miles of the leasehold (if applicable) and improvements. Until the lease was endorsed with a certificate of compliance, it was not negotiable. Similar provisions were applied to the Mallee country where the area in any allotment could be 640 acres of Class 1 land up to 1600 acres of Class 4 land.

Further consolidations of the Land Acts occurred in 1915 and 1928 without any major amendments.
33.14 Land (Residence Areas) Act 1935

This Act transferred from the Mines Act the provisions relating to occupation for residence purposes under Miners' Rights in the old gold-mining districts.

33.15 Land Settlement Post World War 2 - the Declining Years

The most important legislation in later years was the North-west Mallee Settlement Areas Act 1948, which provided for the reconstruction of leaseholds in parts of the Mallee and the issue of perpetual leases. An amendment of this Act followed in 1949. In the same year, provision was made by the Land (Grants and Leases) Act for disposal of Crown land at concessional rates to assist in the establishment of decentralised industries.

In 1951, the Land (Development Leases) Act allowed development by the Australian Mutual Provident Society of some 571 000 acres in the Little Desert, in the western part of Victoria, and for Crown grants to be issued to persons selected by the Society and approved by the Minister of Lands, for farms established by the Society which paid the Crown the unimproved value of the land.

In 1956, the Land (Improvement Purchase Lease) Act introduced a new system which allowed the leasing for 20 years of any Crown land proclaimed available, regardless of its classification, with no limitation on the area which could be taken up by one person provided the unimproved value of the land he already held, when added to the value of the land he desired to select, did not exceed 7500 pounds. The valuation of land so leased was not fixed by the Act, but could be any amount determined by the Minister, having regard to the quality and position of the land. The valuation could also be loaded with the cost of any road which would benefit the leased land. Improvements to be effected were to comprise clearing and preparation of the land for crops or pasture, besides any structural improvements, such as fencing and housing, which the lessee might find it necessary to erect. If the block were classed as a living area, the lessee was required to establish his residence on it, otherwise he could reside on other land owned by him within 20 miles of the block. The lease could not be transferred during the first six years but could be mortgaged with the consent of the Minister, and, after the first six years and compliance with the conditions, the freehold tide could be claimed on payment of the balance of purchase money.

The consolidating Land Act 1958 introduced no new features and the next major amendment was the Land (Plantation Areas) Act 1959 which provided for the leasing of Crown land for the establishment of commercial tree plantations. This legislation was later amended in May 1966.

The legislation relating to the North-west Mallee was amended in 1961 to allow holders of perpetual leases to convert their blocks to freehold, and, in the same year, the provisions which had hitherto been in the Local Government Act concerning the licensing of unused roads and water frontages were transferred to the Land Act.

Between 1961 and 1988, from a land settlement point of view, there were virtually no major legislative changes. This was a period when there was a drastic diminution in land settlement resultant upon an ever-increasing trend towards the need for conservation and proper management of remaining natural resources. In January 1988 public consultation was initiated in respect of a proposed new Lands Bill aimed at furtherance of that trend.

In the foregoing summary, no attempt has been made to give details of all the Acts which have been in force in Victoria affecting the administration of Crown land. Since the first Act in 1860, there have been approximately 100 Acts (including the consolidations) which have dealt with some phase of the matter and which, in many cases, have served their purposes and been repealed during consolidations. The legislation in respect of Crown lands set aside for State Forests and Timber Reserves, which were originally, but in a minor way, included in the Land Act, has since 1907 been dealt with under the Forests Act, first enacted in that year.

Further, the summary has concentrated mainly on the sale and occupation of Crown land for agricultural or pastoral purposes. Even in the earliest legislation there was, as there is now, provision for dealings for other purposes such as residential and industrial licences and leases, and for the reservation and management of Crown land for public parks, recreation and similar purposes.
The legislation concerning land for closer and soldier settlement which was administered by Boards and Commissions within the framework of the Department of Lands and Survey in the period 1898-1938 is dealt with separately in Section 3.4.

Soldier and civilian land settlement under the administration of the Rural Finance and Settlement Commission in more recent years has also been separately dealt with in Section 3.4.3 and 3.4.4.

3.4 Closer Settlement Schemes in Victoria

3.4.1 Emergence of Closer Settlement

In 1898, sixty years after the first alienation of Crown land in Victoria, the Government of the day, Sir George Turner being Premier at that time, put into legislative effect ideas which apparently had been exercising the minds of those interested in accelerating the development of the State, with the aim of increasing the rural population.

During his second reading speech on a Bill to amend the Land Act, on 30 August 1898, the Minister of Lands, R.W. Best, referred to a provision for the acquisition of land for the purpose of closer settlement. He said, "We have reason to reproach ourselves as to our past laws, our past recklessness, profligacy and extravagance so far as land legislation is concerned. The land rackets and dummying which took place in the early history of the Colony have resulted in the creation of large estates and now we have to realise, as the fact is, that nearly the whole of our good agricultural land has passed into private hands, and, in a year or two, we shall have to face the position that the scarcity of land, if it does not exist at present, will exist then in a pronounced form."

The Government even now has difficulty in supplying the land that is required for settlement and, unless the Government does supply that land, the exodus of farmers and the settlement by them on lands in adjoining Colonies are the most inevitable results". (Hansard Vol.88 p.1218).

The proposal was vigorously debated, particularly on the question of whether land should be acquired compulsorily by the Government for subdivision and re-allocation for closer settlement, and, on the insistence of the Legislative Council, the Government accepted an amendment which omitted this provision. (Hansard Vol.90, p.3844).

The Bill was finally passed in the form set out in Part III, Sections 150-181, of the Land Act 1898 No.1602. In brief, the Board of Land and Works (a body in existence at that time to deal with matters concerning public lands and works, of which the Minister of Lands was President) was empowered to purchase, by agreement, good arable private land, in any farming district (but excluding the Mallee) at a valuation ascertained by the Minister, but any provisional contract or agreement to purchase had to be submitted to both Houses of Parliament for resolutions that it was expedient to acquire the land. Land so acquired was to be subdivided into allotments for a value of not more than 1000 pounds each and made available for conditional purchase lease, with conditions regarding improvements to be effected and residence on the leasehold during the first six years, during which the leasehold could not be transferred or encumbered. The purchase money was payable over the term of the lease (maximum period 31.5 years) with interest at 4.5%. However, the freehold title could be obtained at any time after the first six years if the conditions were complied with, on payment of the unpaid balance.

Under this legislation, an area of 4247 acres at Whitneld was acquired and special Acts in 1900 and 1901 (Nos.1639, 1665, 1688 and 1735) authorised the purchase of areas at Wando Vale, Walmer, Brunswick and Eurack - in all 29 415 acres. The Act relating to the Brunswick land No.1688 provided that it should be subdivided into allotments for workmen's homes. The Department's Annual Report for 1900 (p.15) refers to this purchase as a means whereby workmen in densely populated areas "might devote their spare time and labour to create for themselves comfortable homes under healthy and cheerful conditions".

3.4.2 Closer Settlement Act 1904 No.1962

In 1904, apparently realising that some compulsory measures were necessary to acquire land in any worthwhile quantity for closer settlement, the Bent Government negotiated through
Parliament the Closer Settlement Act which established a Lands Purchase and Management Board of three members, with power to acquire private land in any part of Victoria, either by agreement or compulsorily, for subdivision and allocation under conditional purchase lease as farm, workmen's homes or agricultural labourers' allotments, to a maximum value of 1500, 100 and 200 pounds respectively. The conditions of leasing and purchase were generally similar to those in the 1898 legislation, except that the freehold title could not be claimed until after expiration of the first twelve years of the lease (six in the earlier Act). Provision was made for the Board to cause cottages to be erected for workmen's homes, or on agricultural labourers' allotments at a cost not exceeding 100 pounds each, repayable by the lessee over sixteen years with interest at 5%. Advances could also be made, not exceeding 50 pounds in each case, in aid of fencing the allotments and building dwelling houses by lessees.

A further provision, which was to cause much discussion in Parliament in later years, was that every Crown grant maturing from a lease was to contain a condition requiring the owner for the time being or any member of his family to reside on the land or on any part of the estate of which it formed part, during each and every year unless satisfactory evidence of illness preventing compliance was produced. Breach of this condition rendered the Crown grant liable to annulment and the area subject to repossession by the Crown.

Full information on the operation of this Act can be found in the Annual Reports of the Lands Purchase and Management Board.

Further Acts (Nos.2053, 2067, 2128 and 2168) were passed in 1906, 1907 and 1909. The most important of these was No.2053, which provided for the use of any Crown land or any private land acquired by the Board as "small improved holdings" for the purpose of assisting "deserving persons to acquire holdings in rural districts to provide homes for their families and profitably use their time when out of employment". Act No.2067 extended the power of the Board to erect dwellings and other buildings and make other improvements on workmen's and agricultural labourers' allotments, and No.2128 allowed the Board to advance moneys to any lessee up to a maximum of 60% of the improvements effected by him.

An amending Act (No.2229) in 1910 made many changes, principally in regard to the method of acquisition of land by the Board. Another Act (No.2438) in 1912 raised the value of land to be allotted for workmen's home and agricultural labourers' leaseholds from 100 to 250 pounds and from 200 to 350 pounds respectively. Provision was made for the provisions of the legislation relating to closer settlement to be administered by the State Rivers and Water Supply Commission in respect of land which was suitable for irrigation settlements.

There were many minor amendments of a machinery nature in this Act and of interest is an amendment to the condition requiring residence to be continued on or near the block after the freehold title had been obtained. This was made less onerous by allowing residence to be by "any person approved by the Governor in Council" and not necessarily the owner or a member of his family.

The Acts were consolidated in 1915 by Act No.2629, and, previous to that, a Royal Commission had been appointed to inquire into and report as to the working of the legislation in both irrigable and non-irrigable areas.

The Commission's Progress Report dated 22 June 1915, dealt with the non-irrigable districts and made many criticisms of the work of the Lands Purchase and Management Board (which, since its inception, had comprised three persons from outside the Public Service, except for a period from October 1906 to 1 March 1910, when the Surveyor-General, J.M. Reed, was a member without additional salary). Among the many recommendations made by the Commission was one that the Board be dissolved and a temporary departmental Board appointed to deal with the non-irrigable areas pending legislation to provide for a new method of management. It was also recommended that the residence condition after a lessee had obtained freehold of his allotment be abolished by amending legislation.

The Commission's Final Report, dated 8 November 1916, dealt mainly with the irrigable areas and made recommendations regarding the management of this form of settlement.

The result was the termination of the appointment of the members of the Lands Purchase and Management Board and their places were taken by three officers of the Department of Lands and Survey, who issued the Annual Report for the year ended 30 June 1916. On 14 August 1917, the personnel were changed and an officer of the Department of Agriculture included.
3.4.3 Discharged Soldiers' Settlement Act 1917 No.2926

This Act enabled any Crown land or any land acquired under the Closer Settlement Act or the new Act (which contained power to compulsorily acquire land especially for soldier settlement) to be allotted to discharged soldiers, and advances to be made at concessional rates of interest.

3.4.4 Establishment of Closer Settlement Board

A further Act in 1918 (No.2987) abolished the Lands Purchase and Management Board and set up a body called the Closer Settlement Board to administer the Acts relating to closer and soldier settlement. The persons appointed as members of this Board were officers who had gained experience in settlement matters by association with previous Boards. In this connection it should be pointed out that the decisions by previous Boards were executed by officers of the Lands Department and covered such matters as valuations of land, subdivisional surveys, keeping of accounts and correspondence with settlers. A companion Act (No.2988) made further provision for the settlement of discharged soldiers.

Act No.2987 repealed the contentious provision about residence after freehold titles had issued to settlers, and negated the condition in titles already issued.

Several minor Acts, mainly of a financial nature, followed (Acts Nos.3039, 3061, 3130, 3253, 3332 and 3370) and the acquisition of land and allocation to discharged soldiers proceeded on a large scale.

Settlement for both civilian and soldier settlers in non-irrigable areas was handled by the Closer Settlement Board with the assistance of Lands Department officers, and, in irrigable areas, by the State Rivers and Water Supply Commission.

By 1925, the financial position of soldier settlers was causing concern. In that year, the Victorian Government instituted an inquiry by a Royal Commission, and the Commonwealth Government, which was involved in providing some of the funds for settlement schemes in all States, deputed Mr. Justice Pike to inquire into the matter in 1927.

The reports arising from these inquiries (dated 23 October 1925 and 24 August 1929 respectively) led to several Acts giving concessions to settlers. First, Act No.3422 (December 1925) allowed payment of installments to be deferred and the writing off of debts in cases where, owing to adverse circumstances or insufficiency of area the settler was unable to meet all his obligations. Further concessions were given by Act No.3622 (January 1929), mainly by allowing a settler's accounts for land and advances to be consolidated and repaid over a fresh period of thirty years.

3.4.5 Closer Settlement Commission

However, despite these remedies, the position had so deteriorated by 1932, due mainly to the financial depression at the time, that Parliament decided on a complete overhaul of land settlement matters and, by Act No.4091, set up a new body called the Closer Settlement Commission, comprising five members chosen for their experience in both irrigable and non-irrigable settlement schemes and their knowledge of finance and primary production.

This Commission was charged with the duty, for a period of five years, to make annual adjustments of installments payable by both soldier and civilian settlers in both the dry and irrigable areas, having regard to seasonal conditions and prices for farm products and the ability of settlers to meet their commitments. The excess amounts of installments were to be written off. The principle of the legislation was that in any case where the adjusted installments were not paid and the settler concerned had no prospect of success due to circumstances within his control, his lease was cancelled and the land made available for distribution amongst adjoining settlers who had a reasonable chance of success if given additional land.

By an amending Act (No.4196) in 1933, an outgoing payment of 100 pounds was authorised to any settler whose lease was cancelled, in addition to the concession of writing off, as well as accrued interest, any deficiency in his account for advances in respect of which no realisable asset remained on the property.

At the end of the five year period, a re-assessment of all settlers' liabilities was to be made with a view to reducing them to amounts within the capacity of the settlers to repay.
3.4.6 Further Changes in Administration

Acts of a financial and machinery nature (Nos.4150, 4257, 4328, 4521 and 4554) were later passed and ultimately the Closer Settlement Act 1938 No.4597 was enacted as the result of the Closer Settlement Commission's operations. The Commission went out of office and the remaining settlers were given new leases for terms not exceeding forty years under which their adjusted liabilities, as fixed by the Commission, were repayable. No distinction was made between civilian and soldier settlers and the administration of the new Act, including disposal of any land remaining unoccupied, was placed in the hands of the Board of Land and Works (as explained earlier, a departmental authority presided over by the Minister of Lands).

An amending Act (No.5281) was passed in 1948 relating to disposal of unallotted Closer Settlement land, and, in 1964, Act No.7228, in relation to the abolition of the Board of Land and Works, caused some amendments in the administration of the Act, which then became wholly under the control of the Minister of Lands and the Department of Crown Lands and Survey.

The total number of new purchase leases issued under the 1938 Act was approximately 11 000. A practically unbroken period of good seasons and prices for primary products enabled many settlers to pay off the balances required to make their holdings freehold before maturity of the leases.

The schemes which have been briefly traced in the foregoing involved vast areas of land and large amounts of public funds. Full details can be found in the Annual Reports of the successive Boards and the final Commission. The supplementary and last Report of the Closer Settlement Commission for the year ended 30 June 1938, contains a statistical review of land settlement schemes since their inception in 1898.

Some brief details are -

<table>
<thead>
<tr>
<th>Land Acquired</th>
<th>Soldier Settlement</th>
<th>Closer Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dry Areas (Acres)</td>
<td>2,355,211</td>
<td>1,220,205</td>
</tr>
<tr>
<td>Irrigable Areas (Acres)</td>
<td>127,075</td>
<td>182,363</td>
</tr>
<tr>
<td>Total Area (Acres)</td>
<td>2,482,286</td>
<td>1,402,568</td>
</tr>
<tr>
<td>Total cost of land (£)</td>
<td>16,229,350</td>
<td>10,833,910</td>
</tr>
<tr>
<td>Advances for stock, implements, buildings etc. (£)</td>
<td>10,684,536</td>
<td>6,568,008</td>
</tr>
<tr>
<td>Total expenditure by the State including interest on loans raised to finance the schemes (£)</td>
<td>45,931,329</td>
<td>23,553,606</td>
</tr>
<tr>
<td>Amounts written off under various Acts and bad debts, depreciation, etc. (£)</td>
<td>19,405,420</td>
<td>8,764,410</td>
</tr>
<tr>
<td>Administration costs not charged to settlers (£)</td>
<td>2,306,044</td>
<td>932,483</td>
</tr>
<tr>
<td>Total number of settlers involved</td>
<td>12,928</td>
<td>16,730</td>
</tr>
</tbody>
</table>

Later schemes for soldier settlement following World War 2 and for civilian settlement on Crown land and re-purchased areas developed by the Government, were administered by the Soldier Settlement Commission, later the Rural Finance and Settlement Commission.
3.4.7 Soldier Settlement Commission 1946

As part of the War Service Land Settlement Scheme inaugurated by the Commonwealth and State Governments, the Soldier Settlement Commission was established in 1946.

This Commission acquired over 1 million acres of freehold land and set apart over 50 000 acres of Crown land. Over 3000 holdings, ranging from dairy, fat lamb, wheat and sheep farms under both dry farming and irrigation conditions, to soft fruit orchards and vineyards under irrigation, were allotted to ex-servicemen. Apart from bringing many thousands of acres of virgin land into production, the yields from the large estates purchased by the Commission and subdivided, were increased many times over.

Ex-servicemen who were allotted these holdings on a merit basis, have almost without exception made a success of their farms. A major contribution to this, apart from the favourable seasonal conditions and prices for products over the past 20 years, were the terms under which they were allotted their holdings, which at the time of allocation were at a forward stage of development with the Commission effecting the construction of house, outbuildings and basic farm improvements. The main concessional terms were an interest rate of 2% on the capital liability placed on the farm which was assessed having regard to long term yields and prices, and a repayment period of 55 years culminating with a freehold Crown grant.

In addition to the "subdivisional" scheme of the settlement, the Commission made loans to a further 2878 settlers to assist them purchase "single unit farms" of their own choice and again the important feature of the assistance was an interest rate of 2% per annum.

3.4.8 Rural Finance and Settlement Commission 1959

In 1959 the Land Settlement Act was passed providing for a "Civilian" scheme of settlement to carry on as the "Soldier Settlement" scheme tapered off. Here the Rural Finance and Settlement Commission, the successor to the Soldier Settlement Commission, placed an emphasis on the development of former unproductive virgin Crown land coupled with closer settlement activities in areas opened up for irrigation where dry farming had been previously carried out.

The development of the former unproductive virgin Crown land on such a large scale was then unique in Australia. For instance in the Heytesbury settlement area south of Camperdown over 100 000 acres of virgin land was set apart for development which commenced in 1956. In the initial stages after sowing, the Commission ran its own beef cattle to assist consolidation of pastures and before allocating blocks erected a modern residence, dairy and boundary fencing. Any male British person over the age of 21 could apply for a lease.

After an initial period under temporary lease the successful applicants were granted purchase leases which mature into freehold and which provide for the repayment of the capital liability, together with interest at 4% per annum over a period of 40 years.

Other large projects developed by the Commission included Yanakie where 30 dairying holdings were established on Wilsons Promontory, the East Goulburn irrigation settlement area where 86 dairying blocks and 79 orchards were allocated and development of a new irrigation dairying project at Rochester.

The Commission acquired over 20 000 acres of freehold land and set apart over 100 000 acres of Crown land. From these combined areas approximately 500 holdings, more than half of which became dry dairy farms, and the balance yielded about 100 irrigated dairy farms and about 80 irrigated soft fruit orchards.

With the enactment of the Rural Finance and Settlement Commission (Amendment) Act 1977, effective from 1 January 1978, the name of the Commission was changed to the Rural Finance Commission, a title which aptly described its activities from that time onwards.
3.4.9 Urban Land Settlement

The term "land settlement" normally conjures up a concept of broad-acre rural lands and the foregoing text has concentrated almost entirely on that concept. There are other aspects of land settlement worthy of mention. These are:

- Settlement for housing purposes;
- Reclamation projects for housing and industrial purposes; and
- Pre-emptive Rights for small allotments in Government Townships.

3.4.10 Settlement for Housing Purposes.

In this context there were two main sources of supply. First the Government Department successively known as the Department of Public Lands, Department of Lands, Department of Lands and Survey, Department of Crown Lands and Survey and now Department of Conservation, Forests and Lands, ever since the earliest days of settlement, made available residential allotments from Crown land under various sections of the Land Acts. There were various modes of disposal, including Sale by Auction, Residence Licence and Residence Area Right.

Allotments sold at auction went to the highest bidder with a freehold title issuing upon payment of the final purchase money and fees. Those granted as a Residence Licence were made available to genuine home site seekers, allocation being determined by a Local Land Board. Terms and conditions enabled the licensee to devote the bulk of his capital to house construction with the land price component remaining at the valuation as at the time of issue of the licence and being payable over a period of up to 20 years without interest. Building operations had to commence within six months and personal residence within twelve months and continue up to the time when the option to freehold was exercised any time after three years up to twenty years.

Residence Area Rights were originally issued under the Mines Act to provide home sites in mining localities. Payment of an annual renewal fee of five shillings, later fifty cents, was all that was required to ensure security of tenure provided the site contained a habitable dwelling bonafide used for residence purposes, not necessarily by the holder of the right. Round about 1935, when the validity of a Residence Area Right under the Mines Act became suspect, control of all existing sites so held was passed to the Department of Lands and Survey pursuant to the Land (Residence Areas) Act 1935 which preserved the same rights and privileges as before.

The Mines Acts and the subsequent Land (Residence Areas) Act 1935 both provided for a validly held Residence Area Right holder to apply for a Crown grant on payment of purchase money based on an appraised, discounted valuation of the land, plus fees. This same privilege was carried forward into the Land Act 1958 and also into the Land (Residence Areas) Act 1972 which, inter alia, provided for conversion to a purchase-lease, registered at the Land Titles Office, as an alternative to a straight-out application for a Crown grant. This 1972 Act also specified that no new Residence Area Rights were to be issued. In practically all of these myriad cases, there was survey involvement not only in the cadastral survey aspect where, over the years, both private practising and government surveyors were involved, but also in aspects such as design, reporting and valuation where surveyors of the Department of Crown Lands and Survey were prominent.

In this context of settlement for housing purposes, there was a second source of supply, which was the Housing Commission. The Housing Commission was initiated by the Housing Act 1937, section 4 of which recited its objects in the following terms:

(a) the improvement of existing housing conditions; and
(b) the provision of adequate and suitable housing accommodation for persons of limited means.

It was the latter of these two objects which led to the provision of very many thousands of homesites, with dwellings thereon, both in the Melbourne metropolitan area and in country areas, over the next half century and beyond. During the first thirty to forty years or so, up to the 1970s, the emphasis was mostly on large subdivisions for single residential unit development. The bulk of these subdivisions were of private land purchased by the Commission, but there were also many subdivisions of varying sizes in provincial cities and country towns. Many of these subdivisions were on areas of Crown land acquired by the Housing Commission pursuant to the Housing Acts.
In the inner suburban areas of Melbourne there were numerous multi-storey flat unit developments. In the years following the 1970s there was a changing emphasis towards a policy of spot-purchase of existing residential properties rather than the use of vacant land for home site development. In all of these developmental procedures, both private practising and government surveyors played a vital role.

3.4.11 Reclamation Projects for Housing and Industrial Purposes.

In most of the towns where mining had been prominent in earlier days, and likewise in the provincial cities of Ballarat and Bendigo, there were many areas, some quite extensive and others of lesser extent, of Crown land despoiled by former mining operations. In many of these cases, services such as water, electricity, sewerage and drainage had been extended past these despoiled areas to serve unspoiled areas beyond. In the latter portion of the twentieth century, the false economy of such a situation was recognised and the Victorian Government, through the Department of Crown Lands and Survey, co-operated with local municipal councils in achieving reclamation, reading and provision of other services for housing and industrial development, with the land being subdivided and dealt with under existing sections of the Land Acts.

Financing of the reclamation and provision of services was achieved through the councils by the provision by the Government of guaranteed overdrafts. The reclamation work was effected mostly by the councils and in a few cases by the Mines Department, design of subdivision by mutual co-operation between the Divisional Surveyor, Department of Crown Lands and Survey and the Councils' engineers and the actual survey work by departmental surveyors.

Titles which issued for the resultant allotments contained a subsidence indemnity condition and over the first thirty to forty years to date, there have been remarkably few cases of any serious subsidence. Successful purchasers, lessees and licensees met the cost of reclamation and provision of services in addition to the unimproved valuation of the land plus fees.

3.4.12 Pre-emptive Rights for Small Allotments in Government Townships.

Not all surveyors effecting cadastral surveys in Victoria would be aware of the Pre-emptive Right system of land alienation which existed enabling the early squatters to obtain the freehold of their homestead area. From 1847, these pastoral pioneers were able to obtain a pre-emptive grant of up to 640 acres, at a valuation, but without competition. Some 1100 such grants issued.

There was also another way whereby certain settlers occupying Crown land in surveyed Government Townships could obtain a pre-emptive grant for the land they occupied. From the early days of settlement in the Colony, various dwellings were erected on Crown land to meet the needs of travellers, squatters and selectors. These buildings, such as inns, blacksmiths, stores and eating houses were often of substantial value.

When the surrounding land was eventually surveyed with a view to alienation, the occupiers of these establishments naturally wanted to obtain title to the land which they occupied and had improved, but, understandably, did not want to compete for it at public auction.

It was the opinion of law officers of the Colony that the Regulations made pursuant to Act 9 and 10 Victoria C104, by Order in Council dated 9 March 1847, did not enable the occupants of such premises in Townships to obtain leases of their holdings and they were thus debarred from the privilege of a Pre-emptive Right or an allowance for their improvements on the sale of the land to another person. Sir Charles Fitzroy, writing to Earl Grey, on 28 January 1848, suggested that the Order in Council be modified so the occupants of “Inns, Stores, and other places of business for the carrying on of retail trade or for the accommodation of passengers” have the right to pre-empt the land on which the improvements were erected.

An amending Order in Council, dated 19 June 1850 rectified the situation and Regulations dated 8 December 1851 were duly published. Some 72 such pre-emptive grants were made for land in Government Townships between 1852 and 1856 (43 being granted in 1854). The majority of these grants were for half-acre allotments and were predominantly in the Western District of Victoria.

It should be noted that although 72 such grants issued for Crown allotments, the actual buildings often occupied more than one allotment. In reality only 42 such premises legalised their occupation by obtaining pre-emptive grants. The Border Inn at Lindsay, the Travellers Rest at Branxholme and
the Glenelg Inn at Casterton were some of the more notable dwellings which were situated on land for which pre-emptive grants issued.

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