



MEMORANDUM

16th SEPTEMBER 2009

The Prahran Mechanics' Institute (PMI), a small, non-profit community organisation, created the Prahran Technical School in 1908 and presented its use in 1915 to the Victorian Education Minister (Sir Alexander Peacock), who described it as the best gift the government had ever received.

The buildings the PMI had erected for the accommodation of the school were leased to the Victorian Education Minister for 33 years at a peppercorn rent.

The lease was renewed in 1947 for a further 99 years when the government desperately needed school buildings immediately after World War II. At the time, the PMI was represented on the school's council and clearly did not foresee the eventual dismantling of the technical school system and the removal and closure of its school.

The PMI's generosity over 90 years has consisted not only of foregone rent from the heritage-registered school buildings, but of a further gift of land adjoining the school which together total an estimated \$26.5 million in today's monetary values.

Meanwhile, these arrangements have placed a financial burden on the PMI, which continues to operate its expanding library service. With the costs of running the library on the verge of exceeding its limited income, the PMI has been forced to take action towards terminating the lease (which, if valid, would have 37 years to run).

Had the PMI sold the land subject to the unexpired lease, its price would have been considerably discounted because no commercial rent could be gleaned from it until 2046. Only by termination of the lease could the PMI either re-let that part of the property it was not using at a commercial rent or sell the property free of the encumbering lease and use the money to make a fresh start elsewhere. PTO.

That is why it became necessary for the PMI to commence action against either or both of the responsible Ministers which it did on the basis of advice received from its solicitors and subsequently confirmed by Senior Counsel Mr Gerard Nash QC. Before the expiration of a notice which was served upon both Ministers, representatives of the Minister for Skills and Workplace Safety, Swinburne University of Technology and the PMI entered into a mediation process under the guidance of Mr Stuart Morris QC as a result of which a Settlement Agreement was prepared and signed copies have been exchanged between the relevant parties.

The Settlement Agreement resulted, as you would expect, from all parties making concessions. It is subject to a number of conditions precedent including that the PMI must obtain its members support of its actions. If you are willing to give that support the Settlement Agreement will continue but if you are unwilling to give that support the Settlement Agreement will collapse leaving PMI in the same weak position I have just outlined.

The committee, on legal advice, does not propose to prejudice the successful outcome of the other conditions precedent by prematurely releasing the Settlement Agreement. Instead, it has prepared a statement of the essential terms, copies of which will be distributed to you. I will also read to you the advice of Mr Gerard Nash QC who was the leading member of PMI's legal team at the mediation and who has subsequently reviewed the Settlement Agreement before it was signed and exchanged on behalf of PMI.

Your Committee is of the firm belief that the settlement of this dispute as agreed at the mediation on the terms to be circulated to you tonight is in PMI's best interests and represents a settlement on the best terms available to PMI. That being the case, your Committee recommends that you support the settlement by voting to give it your approval.