permanent body, called the Central Awards Committee, was set up for the purpose of receiving complaints by Government employees who were dissatisfied with the terms proposed or awards made by the Departments in respect of their inventions. In our view, a similar body might usefully be established in New Zealand, but it is thought that an even more important and fundamental consideration is that all departments should have uniformity in regard to their approach to this particular problem.

42. We think that, so far as Government employees are concerned, a uniformity of practice in the various Government Departments, coupled with a constituted body to deal with complaints as has been suggested, should provide adequate remedies without the necessity of seeking redress under any of the provisions of the Patents Act. The difficulties of invoking the provisions of the Patents Act as against the Crown will be sufficiently obvious without the necessity for elaboration here.

43. In the case of private employees, we have come to the same opinion as the Swan Committee that where, in fact, there has been a written agreement between the parties in which the rights to any particular invention or inventions have been clearly defined, there is no more reason for interfering with the terms thereof than is admissible in the case of any other contract. In those cases, however, in which there is no written agreement between the parties, but where the circumstances are such as create a genuine doubt as to whether, having regard to all the circumstances, the property in the invention resides in the employer or the employee, difficulties have always existed. A reference to the authorities shows that almost all such cases turn on questions of fact. Once the facts are adequately ascertained, the principles of law applicable thereto appear to give rise to little dispute.

44. As has been pointed out in paragraph 25 of the Swan report, three cases where no written agreement has been entered into require consideration—firstly, the ownership of the invention may reside in the employee; secondly, it may reside in the employer; and, thirdly, the circumstances may be such that both the employer and the employee are entitled to share in and derive benefit from the invention.

45. The matter obviously received very careful consideration in the drafting of the 1949 British Act, and was sought to be adjusted by section 56 thereof, which appears on its face to cover not only the case where a patent has been granted or applied for, but also the case where a dispute arises between an employer and employee in respect of an invention when no application for patent has been made. However, reference to the form 55 in the regulations under the 1949 Act would seem to suggest that the jurisdiction of the Comptroller does not arise in respect of any invention until an application for letters patent in respect of the invention is actually before the Patent Office. If this be the case, we think that the application of the section as it at present stands may be too limited, and that a number of cases are likely to occur in which a dispute arises between an employer and employee prior to any application for a patent being made in respect of an invention. The employee inventor may claim the invention to be his entirely or, on the other hand, may not be prepared to assign it to his employer except on terms not acceptable to the latter. The employer, for his part, may contend that by virtue of the circumstances he is entitled to the benefit of the invention without giving any additional remuneration to the employee. It is clear that in such cases it is a matter of importance to both parties that an application for a patent should be made at the earliest possible date so that an effective filing date as against third parties is secured.

46. We think that in such cases provision should be made whereby both parties may apply on a special application form which will include a statement that there is a dispute between them as to which is entitled to the grant of the patent. If the employee refuses to be a party to a joint application, then either of them should be able to apply alone on a special form of application in which the fact that there is a dispute is stated. Where application is made in any of the ways suggested, the position of neither party will be prejudiced, and the filing of an application need not be held up pending a settlement of the dispute.