

AUSTRALIA

HOUSE OF REPRESENTATIVES
VOTES AND PROCEEDINGS

No. 8

WEDNESDAY, 24 JULY 1974

1 The House met, at fifteen minutes past two o'clock p.m., pursuant to adjournment. Mr Speaker (the Honourable J. F. Cope) took the Chair, and read Prayers.

2 PETITIONS: The Clerk announced that the following Members had each lodged petitions for presentation, viz.:

Mr Drury, Mr McLeay and Mr Wilson—from certain citizens of Australia praying that the Government take no measures to interfere with the existing national health scheme.

Dr Gun, Mr Nicholls and Mr Wallis—from certain citizens of Australia praying that the Government take immediate steps to implement a pension scheme for males bringing up and supporting their children and to make tax deductible the total wage of a housekeeper employed by any parent working full time.

Mr Hodges and Mr Kelly—from certain citizens of Australia praying that the House will not proceed with the Human Rights Bill.

Mr FitzPatrick—from certain citizens of Australia praying that the Government (1) grant a cash loading to pensioners, (2) increase within a reasonable period the weekly pension to 25 per cent of average weekly earnings, (3) freeze the tapered means test ceilings of income and assets and (4) give an assurance that the proposed national superannuation Bill will provide pensioners with a guaranteed minimum income of 30 per cent of quarterly adjusted average weekly earnings.

Mr Garland—from certain citizens of Australia praying that Parliament (1) take any steps necessary either to direct the Commonwealth Banking Corporation to preserve and restore the Palace Hotel, St George's Terrace, Perth, or itself to acquire, preserve and restore the hotel on its present site and (2) make available any funds necessary to purchase the entire contents of the hotel from the owners.

Mr Keogh—from certain citizens of Australia praying that the Government hasten to introduce a universal health scheme so that health care services in Australia can function efficiently and economically.

Mr McLeay—from certain citizens of Australia praying that the Government legislate to protect the whale from commercial exploitation.

Mr Wilson—from certain citizens of Australia praying that the law be amended to allow taxpayers to deduct from income, for income tax purposes, all rates and taxes paid by them in respect of their primary home or land bought for the purpose of building thereon.

Petitions received.

3 QUESTIONS: Questions without notice were asked.

4 PAPERS: The following papers were presented, by command of His Excellency the Governor-General:

Citizen Military Forces—Committee of Inquiry—Report on the Army Cadet Corps, dated June 1974.

Industries Assistance Commission—

Report—Injection moulding machines (Dumping and Subsidies Act), dated 14 June 1974.

Temporary Assistance Authority—Report—Mushrooms, dated 5 April 1974.

National Superannuation in Australia—Committee of Inquiry—Interim Report, dated June 1974.

The following paper was presented, pursuant to statute:

States Grants (Secondary Schools Libraries) Act—Annual Statement of payments under the Act, for 1973.

- 5 DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—INDUSTRIAL UNREST: Mr Speaker informed the House that Mr Fraser had proposed that a definite matter of public importance be submitted to the House for discussion, namely, “The man hours and time lost through industrial unrest and the Government’s failure to exercise the necessary national leadership in relation to industrial questions”.

The proposed discussion having received the necessary support—

Mr Fraser addressed the House.

Discussion ensued.

Discussion concluded.

- 6 TRADE PRACTICES BILL 1974: The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—
Ordered—That Mr Ellicott be granted an extension of time.
Debate continued.
Question—put and passed—Bill read a second time.
The House resolved itself into a committee of the whole.

In the committee

Clause 1 agreed to.

Clause 2—

Mr Ellicott, by leave, moved the following amendments together:

Page 1, line 12, after “47 (1)” insert “and 49 (1)”.

Page 1, line 14, after “47 (1)” insert “and 49 (1)”.

Debate continued.

Amendments negatived.

Clause agreed to.

Clauses 3 to 6, by leave, taken together, and agreed to.

Clause 7—

Mr Ellicott moved the following amendment: Page 7, at the end of the clause add the following sub-clause:

“(5) A person shall not be appointed as a member of the Commission unless he appears to the Governor-General to be qualified for appointment by virtue of his knowledge of, or experience in, industry, commerce or public administration.”.

Amendment negatived.

Clause agreed to.

Clauses 8 to 16, by leave, taken together, and agreed to.

Clause 17—

Mr Ellicott moved the following amendment: Page 9, at the end of sub-clause (1) add the following words:—“Where a member discloses an interest in any such business or body corporate and the body corporate carrying on any such business is concerned in any application before the Commission the Chairman shall disclose to it the interest of the member.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clauses 18 to 28, by leave, taken together, and agreed to.

Clause 29—

Mr Ellicott moved the following amendment: Page 13, omit sub-clauses (1) and (2).

Debate continued.

Amendment negatived.

Clause agreed to.

Clauses 30 to 39, by leave, taken together, and agreed to.

Clause 40—

Mr Ellicott moved the following amendment: Page 16, at the end of the clause add the following sub-clause:

“(2) Where a member of the Tribunal discloses an interest in any such business or body corporate and the body corporate is concerned in any application before the Tribunal the President shall disclose to it the member’s interest.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clauses 41 to 44, by leave, taken together, and agreed to.

Clause 45—

Mr Ellicott moved the following amendment: Page 17, omit sub-clauses (1), (2) and (3), substitute the following sub-clauses:

“(1) A contract in restraint of trade or commerce whether made before or after the commencement of this sub-section is unenforceable in so far as it confers rights or benefits or imposes duties or obligations on a corporation but nothing in this sub-section shall render unenforceable any provision in such a contract which is not in restraint of trade or commerce.

“(2) A corporation shall not—

- (a) make a contract or arrangement, or enter into an understanding, in restraint of trade or commerce; or
- (b) give effect to a contract, arrangement or understanding that is in restraint of trade or commerce, whether the contract or arrangement was made or the understanding was entered into before or after the commencement of this sub-section.

“(3) (a) Subject to paragraph (b) of this section a contract, arrangement or understanding is not in restraint of trade or commerce for the purposes of this Act unless the restraint has or is likely to have a significant effect on competition between the parties to the contract, arrangement or understanding or on competition between those parties or any of them and other persons; and

- (b) A contract, arrangement or understanding fixing or controlling or providing for the fixing or controlling of, the price for, or any discount, allowance or rebate in relation to, any goods or services supplied by the parties to the contract, arrangement or understanding, or by any of them, in competition with each other, to persons not being parties to the contract, arrangement or understanding is in restraint of trade or commerce for the purposes of this Act unless that restraint has such a slight effect on competition between the parties to the contract, arrangement or understanding and on competition between those parties, or any of them and other persons as to be insignificant.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 46—

Mr Ellicott, by leave, moved the following amendments together:

Page 18, line 29, after “shall not” insert “wilfully”.

Page 18, after sub-clause (2) insert the following sub-clause:

“(2A) For the purpose of this section, a corporation in a position substantially to control a market for goods or services includes a corporation which by reason of its share of the market, or of its share of the market combined with availability of technical knowledge, raw materials or capital, has the power to determine prices or control production or distribution for a substantial part of the goods or services in that market.”.

Debate continued.

Amendments negatived.

Clause agreed to.

Clause 47—

Mr Ellicott moved the following amendment: Page 20, at the end of the clause add the following sub-clause:

“(6) This section does not apply to a practice of exclusive dealing where the only parties engaging in it are two or more bodies corporate that are related to each other.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 48 agreed to.

Clause 49—

Mr Ellicott, by leave, moved the following amendments together:

Page 20, lines 5 and 6, omit “directly or indirectly”, substitute “knowingly”.

Page 20, line 25, after “benefit” insert “reasonably believed to be”.

Debate continued.

Amendments negatived.

Clause agreed to.

Clause 50—

Mr Ellicott moved the following amendment: Page 21, after sub-clause (1) insert the following sub-clause:

“(1A) This section does not apply to an acquisition of assets in a corporation in the ordinary course of business.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 51—

Mr Ellicott moved the following amendment: Page 23, at the end of sub-clause (2) add the following paragraph:

“(h) such other acts, things or provisions as may be prescribed by regulation.”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clauses 52 to 75, by leave, taken together, and agreed to, after debate.

Clause 76—

Mr Ellicott, by leave, moved the following amendments together:

Page 36, line 5, omit paragraph (f).

Page 36, line 6, omit “is, if the Court so orders, liable to pay”, substitute “is upon proof thereof beyond reasonable doubt liable, if the Court so orders, to pay”.

Debate continued.

Amendments negatived.

Clause agreed to.

Clause 77—

Mr Ellicott moved the following amendment: Page 36, line 20, omit “at any time”, substitute “within 6 years”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 78 agreed to.

Clause 79 debated and agreed to.

Clauses 80 to 84, by leave, taken together, and agreed to.

Clause 85—

Mr Ellicott moved—That the clause be omitted, and the following clause be substituted:

“85. (1) Where in any proceedings against a person under this part it appears to the Court that he has or may have done an act in contravention of a provision of Part IV or of section 76 of this Act but that he acted honestly and reasonably and that having regard to all the circumstances of the case he ought fairly to be excused, the Court may relieve him either wholly or partly from liability to any penalty or damages on such terms as the Court thinks fit. Relief from liability.

“(2) In this section ‘person’ includes the corporation.”.

Debate continued.

Question—That the clause proposed to be omitted stand part of the Bill—put and passed.

Clauses 86 and 87 agreed to.

Clause 88—

Mr Ellicott, by leave, moved the following amendments together:

Page 41, after sub-clause (4) insert the following sub-clause:

“(4A) Subject to this part, the Commission may, upon application by a corporation, grant an authorization to the corporation to engage in conduct that would or might be of a kind referred to in section 46 (1) and while such authorization remains in force, section 46 does not prevent the corporation from engaging in that conduct in accordance with the authorization.”.

Page 41, after sub-clause (5) insert the following sub-clause:

“(5A) Subject to this part, the Commission may, upon application by a corporation grant an authorization to the corporation to engage in conduct that would or might be of a kind referred to in section 49 (1) and while such authorization remains in force, section 49 does not prevent the corporation from engaging in that conduct in accordance with the authorization.”.

Page 42, at the end of the clause add the following sub-clause:

“(8) An authorization under this section may be sought at any time after the date fixed by proclamation under sub-section 2 (3).”.

Debate continued.

Amendments negatived.

Clause agreed to.

Clause 89 agreed to.

Clause 90—

Mr Ellicott moved the following amendment: Page 43, lines 14 and 15, omit “results, or is likely to result, in a specific and substantial benefit”, substitute “does not result, or is not likely to result, in a detriment”.

Debate continued.

Amendment negatived.

Clause agreed to.

Clause 91 agreed to.

Clauses 92 and 93, by leave, taken together.

Mr Ellicott, by leave, moved the following amendments and new clauses together:

Amendment—

Clause 92, page 46, omit sub-clause (2), substitute the following sub-clauses:

“(2) Where a corporation so gives notice to the Commission, the Commission shall within 30 days after receiving the notice (or within such longer period as the Corporation may agree) give notice in writing to the Corporation stating whether or not the Commission considers that the contract, arrangement or understanding is or would be in restraint of trade or commerce within the meaning of section 45.

“(2A) Where a corporation has given a notice to the Commission under sub-section (1) and the Commission gives notice to the corporation in accordance with sub-section (2) stating that the Commission considers that the contract, arrangement or understanding, or the proposed contract, arrangement or understanding, is not or would not be in restraint of trade or commerce within the meaning of section 45, the contract, arrangement or understanding shall be deemed not to be in restraint of trade or commerce for the purposes of this Act.”.

Proposed new clause—

Page 46, after clause 92 insert the following new clause:

“92A. (1) A corporation that proposes to engage in conduct that might be of a kind referred to in sub-section 46 (1) may give notice as prescribed of the proposed conduct to the Commission. Notice of possible monopolization.

“(2) Where a corporation so gives notice to the Commission, the Commission may within 30 days give notice in writing to the corporation stating that the Commission considers that the proposed conduct is of a kind referred to in sub-section 46 (1).

“(3) Where a corporation has given notice to the Commission under sub-section (1), engaging by the corporation in the conduct referred to in the notice shall not be taken for the purposes of this Act to fall within sub-section 46 (1) if such conduct takes place more than 30 days after the date of that notice and the Commission has not given notice to the corporation under sub-section (2).

“(4) An application under this section may be made at any time after the date fixed by proclamation under sub-section 2 (3).”.

Amendments—

Clause 93—

Page 47, line 2, omit “at any time”, substitute “within 30 days”.

Page 47, line 17, after “the Commission has” insert “within 30 days”.

Proposed new clause—

Page 47, after clause 93 insert the following new clause:

“93A. (1) A corporation that proposes to engage in conduct of a kind which might fall within sub-section 49 (1) may give notice, as prescribed, of the proposed conduct to the Commission. Notice of possible price discrimination.

“(2) Where a corporation so gives notice to the Commission, the Commission may within 30 days give notice in writing to the corporation stating that the Commission considers that the engaging by the corporation in the proposed conduct would fall within sub-section 49 (1).

“(3) Where a corporation has given a notice to the Commission under sub-section (1), the engaging by the corporation in the conduct referred to in the notice shall not be taken for the purposes of this Act to fall within sub-section 49 (1) if such conduct takes place more than 30 days after the date of that notice and the Commission has not given notice to the corporation under sub-section (2).

“(4) An application under this section may be made at any time after the date fixed by proclamation under sub-section 2 (3).”.

Debate continued.

Amendments and proposed new clauses negatived.

Clauses agreed to.

Remainder of Bill, by leave, taken as a whole.

Proposed new clause—

Mr Ellicott moved—That the following new clause be inserted in the Bill:

“155A. (1) In any proceedings under this Act instituted in the Court by the Attorney-General or the Commission, or in any application to the Commission under Part VII for an authorization or to the Tribunal under Part IX for a review of a determination of the Commission, the Attorney-General or the Commission shall at the Attorney-General or Commission to disclose or furnish documents or information.

request of a party to such proceedings or of the applicant disclose or furnish to him any documents or information in the power, possession or control of the Attorney-General or the Commission which establishes or tends to establish the case of such party or applicant.

“(2) If the Attorney-General or the Commission does not comply with a request under sub-section (1) the party or applicant making such request may apply to the Court to compel the Attorney-General or the Commission to do so and, subject to sub-section (3), the Court shall order accordingly.

“(3) The Court may refuse to make an order in respect of the disclosure of any document or the furnishing of any information (or part of such document or information) which it considers will unduly prejudice any person whether or not a party to the proceedings or application or for any other reason that the Court considers appropriate in the circumstances.

“(4) Before the Court makes a determination under this section it may require any person to produce the documents or furnish the information to it.

“(5) Any order under this section may be expressed to be subject to such conditions as are specified in the order.”.

Debate continued.

Proposed new clause negatived.

Remainder of Bill agreed to.

Bill to be reported without amendment.

The House resumed; Mr Scholes reported accordingly.

On the motion of Mr Morrison (Minister for Science), the House adopted the report, and, by leave, the Bill was read a third time.

7 MESSAGES FROM THE SENATE: Messages from the Senate were reported—

(a) concurring in the resolutions of the House relating to the appointment of the following joint committees, and agreeing that the resolutions have effect notwithstanding anything contained in the standing orders:

23 July 1974—Message—

No. 4—Foreign Affairs and Defence.

No. 5—Prices.

No. 6—Northern Territory.

No. 7—Australian Capital Territory.

(b) returning the following Bill without amendment:

24 July 1974—Message No. 8—Statute Law Revision 1974.

8 SUPERIOR COURT OF AUSTRALIA BILL 1974: The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate adjourned (Mr Daly—Leader of the House), and the resumption of the debate made an order of the day for a later hour this day.

9 PAPER: The following paper was presented, pursuant to statute:

Remuneration Tribunal Act—Remuneration Tribunal—1974 Review—Reports and determinations, dated 19 July 1974.

10 REMUNERATION AND ALLOWANCES BILL 1974: Mr Bowen (Special Minister of State), by leave, presented a Bill for an Act relating to the Remuneration and Allowances payable to Justices of the High Court, Judges of Courts created by the Parliament and the Holders of Certain Offices or Appointments.

Bill read a first time.

Mr Bowen moved—That the Bill be now read a second time.

Debate adjourned (Mr Sinclair—Deputy Leader of the Australian Country Party), and the resumption of the debate made an order of the day for the next sitting.

11 SUPERIOR COURT OF AUSTRALIA BILL 1974: The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—Ordered—That Mr Ellicott be granted an extension of time.

Debate continued.

Ordered—That Mr Enderby (Minister representing the Attorney-General) be granted an extension of time.

Question—put.

The House divided (the Speaker, Mr Cope, in the Chair)—

AYES, 60

Mr Armitage	Mr Daly	Mr L. R. Johnson	Mr Reynolds
Mr Barnard	Mr Davies	Mr Jones	Mr Riordan
Mr Beazley	Mr Dawkins	Mr Keating	Mr Scholes
Mr Bennett	Mr Duthie	Mr Keogh	Mr Stewart
Mr Berinson	Mr Enderby	Mr Kerin	Mr Thorburn
Mr Bowen	Dr Everingham	Dr Klugman	Mr Uren
Mr Bryant	Mr FitzPatrick	Mr Lamb	Mr Wallis
Dr J. F. Cairns	Mr Fry	Mr Luchetti	Mr Whan
Mr C. R. Cameron	Mr Fulton	Mr McKenzie	Mr Willis
Dr Cass	Dr Gun	Mr Martin	Mr Young
Mrs Child	Mr Hayden	Mr Mathews	
Mr Clayton	Mr Hurford	Mr Morris	
Mr Coates	Mr Innes	Mr Morrison	
Mr Collard	Mr Jacobi	Mr Mulder	<i>Tellers:</i>
Mr Crean	Dr Jenkins	Mr Oldmeadow	Mr James
Mr Cross	Mr L. K. Johnson	Dr Patterson	Mr Nicholls

NOES, 52

Mr Adermann	Mr Fairbairn	Mr Lloyd	Mr Ruddock
Mr Anthony	Mr Fisher	Mr Lucock	Mr Sinclair
Mr Bonnett	Dr Forbes	Mr Lusher	Mr Staley
Mr Bourchier	Mr Gorton	Mr Lynch	Mr Street
Mr Bungey	Mr Hodges	Mr MacKellar	Mr Sullivan
Mr Cadman	Mr Holten	Mr McLeay	Mr Viner
Mr K. M. Cairns	Mr Howard	Mr McMahon	Mr Wentworth
Mr Calder	Mr Hunt	Mr McVeigh	Mr Wilson
Mr Chipp	Mr Hyde	Mr Millar	
Mr Connolly	Mr Jarman	Mr Nixon	
Mr Drury	Mr Katter	Mr O'Keefe	
Dr Edwards	Mr Kelly	Mr Peacock	<i>Tellers:</i>
Mr Ellicott	Mr Killen	Mr E. L. Robinson	Mr D. M. Cameron
Mr Erwin	Mr King	Mr I. L. Robinson	Mr England

And so it was resolved in the affirmative—Bill read a second time.

The House resolved itself into a committee of the whole.

In the committee

Bill, by leave, taken as a whole, and agreed to, after debate.

Bill to be reported without amendment.

The House resumed; Mr Scholes reported accordingly.

On the motion of Mr Enderby, the House adopted the report, and, by leave, the Bill was read a third time.

- 12 AUSTRALIAN INDUSTRY DEVELOPMENT CORPORATION BILL 1974: The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

Debate adjourned (Mr Duthie), and the resumption of the debate made an order of the day for the next sitting.

- 13 ADJOURNMENT: Dr J. F. Cairns (Minister for Overseas Trade) moved—That the House do now adjourn.

Debate ensued.

Question—put and passed.

And then the House, at eleven o'clock p.m., adjourned until tomorrow at ten o'clock a.m.

MEMBERS PRESENT: All Members were present (at some time during the sitting) except Mr Cohen, Mr Connor, Mr Drummond, Mr Garrick, Mr Hewson, Mr Macphee and Mr Sherry.

N. J. PARKES,
Clerk of the House of Representatives