

COMMONWEALTH OF AUSTRALIA

SPEECH

BY

The Rt Hon. J. G. GORTON, M.P.

ON

BACKGROUND TO COMMONWEALTH-STATE TALKS ON OFF-SHORE LEGISLATION

(Ministerial Statement)

[From the 'Parliamentary Debates,' 15 May 1970.]

Mr GORTON (Higgins—Prime Minister)—by leave—This is not a statement on the control of off-shore minerals or on the need to decide where proper legal authority for that control should lie. That is best left for a discussion of the Bill. But last Friday the former Minister for National Development, the honourable member for Farrer (Mr Fairbairn), placed before the House his interpretation of meetings with the States and his belief that the Commonwealth Government had broken commitments which he had made with the States. I think that that interpretation is mistaken and I believe I should put on the record the Government's interpretation in this matter. In February 1969 Cabinet decided that the Commonwealth should legislate to assert total rights over the seabed outside the 3-mile limit. It deputed the Minister for National Development to inform the State Ministers for Mines of this decision. This, Sir, was not an offer to the States. It was not an approach which said: 'If you agree to us legislating for control outside the 3-mile limit we will agree to you controlling inside the 3-mile limit'. It was simply a clear and unequivocal statement of intention on the part of the Government.

At the Australian Minerals Council meeting of 3rd March, the Minister made a statement setting this out very clearly. The state-

ment begins on page 39 of the transcript and the significant words are on page 41. They are:

As to off-shore minerals other than petroleum, the Commonwealth is of the view that it should proceed on the footing that it enjoys total rights outside the three-mile limit. It proposes to legislate in pursuance of this position.

On page 44 of the transcript the Minister was asked:

When do you intend to legislate?

And he replied:

No date has been set but I assume it will be done as soon as is reasonably possible.

From that time forth all the discussions and all the proposed arrangements were held against the background that the Commonwealth had announced its intention to legislate and to legislate as soon as was reasonably possible. The Minister undertook at that meeting that there would be further discussions with the States before the legislation was actually introduced. But those discussions were not to be on whether the Commonwealth would legislate, or when it would legislate, because clear statements of intention had been made on that. They were to be discussions on consequential matters which would arise as a result of the legislation we had announced—matters of administration, royalties and things of that kind. Such discussions were in fact held in

September 1969. The March 1969 meeting closed with the ordinary, normal, machinery provision that the next meeting of the Minerals Council, to discuss these matters, would be held in Perth in February 1970.

Then on 30th July the former Minister for National Development wrote to me. He said that he wished to write to the States and indicate that he was unable to hold a meeting before the one scheduled for February 1970, and he also wished to write to them to tell them that the Commonwealth would not legislate unilaterally until there had been an opportunity to discuss fully and frankly the views he had expressed to them at the March meeting. I replied on 18th August raising no objection to his writing to the States on the general matter of the meeting. However, I said:

I would want to avoid if at all possible a situation where the Commonwealth became committed to long drawn out discussion or consultation with the States on this matter. For this reason I would prefer that you eliminate from your proposed letter the suggestion that the Commonwealth will not legislate unilaterally until after the completion of full and frank discussions with the States on this matter.

I think the Minister fully understood that I did not want to give any assurance to the States that we would defer legislation, for after receiving my letter the Minister did not write to the States in the terms he had proposed, or, indeed, write to them at all. Further, I think the Minister was in no doubt that the introduction of legislation did not depend on prior agreement with the States, for his quotation from his letter to me of 30th July is immediately followed by

In the meantime my Department is pressing on with the basic work necessary for the preparation of legislation. This will be of value whether or not we eventually succeed in achieving an amicable arrangement with the States.

The 'amicable arrangement' referred to was on the regime—not on whether we should legislate. The Minister then arranged, or agreed to, a meeting of the Minerals Council to be held on 26th September 1969. That meeting was held against the background I have just outlined. That is, the State Ministers had been told by the Minister that we proposed to legislate as soon as possible. The discussions which had been suggested were not discussions on whether or when we should legislate, but discussions on the administrative and other consequen-

tial effects of our legislation on what is called the regime. And the Minister was proceeding on the basis that the introduction of legislation did not depend on agreement being reached with the States.

I can see no evidence in the records before the House that in the September transcript there was anything to show that this position was changed. The Minister does not retract his previous statement that we intended to legislate. Nor did he retract the statement that we intended to legislate as soon as possible. He did agree that there would be further discussions. There have been further discussions and I have no doubt that there will continue to be more discussions. But I can see no commitment that he would delay our legislation until after those discussions had been held. In short, Sir, it seems to me that the transcript shows that we were committed to further discussions but not to prior discussions.

What happened was that the State Ministers, through Mr Griffith, made an opening statement expressing the view that the petroleum legislation should be taken as the model for further legislation. That is, it was suggested that no attempt should be made to discover where sovereignty and responsibility in this matter legally reside—which was the object of the Commonwealth Government's legislation. The Minister undertook to place these views before Cabinet and, Mr Speaker, he had verbal authority to say that he would place those views before Cabinet. This was done by the incoming Minister. Cabinet considered them carefully, but it decided that the question of legal responsibility should in the national interest be determined.

That meeting of 26th September then discussed, from page 6 of the transcript until page 39, the method by which new titles should be granted in what was called the 'interim' period, or the 'interregnum'. That is, I take it, the period between the date of the discussions and the date when Commonwealth legislation was to be introduced. That discussion on the method of issuing titles arose because the Minister had told the States in March that pending the introduction of the legislation he had announced to them he did not wish the States to issue new titles outside the 3-mile limit unless the Commonwealth had first concurred.

The States did not wish to accept this. They wished to issue titles themselves out to the continental shelf, with the Commonwealth merely having the authority to object if there was a Commonwealth head of power involved. It was this matter with which the discussions of 26th September were concerned, from, as I have said, page 6 to page 39 of the transcript. I can see in them nothing to substantiate the claim that they contained any commitment, or any agreement, as to whether or when the Commonwealth should legislate. But the former Minister thinks he does see in them passages which show he entered into a commitment. So I will examine these passages which he quotes, for while I do not for a moment reflect on his own beliefs, I do not think that the passages he quotes support his own beliefs. He quotes a passage from his letter to me, which reads:

I will suggest that the matter be taken up at the next scheduled meeting of the Minerals Council, which is set down for February 1970.

And he says rightly that I did not object to this. But this means merely that the Minister had written to me saying he did not feel that he could propose a firm date for a meeting before February and the 'matter' referred to is the discussion on the administrative arrangements consequent on the Minister's announcement that we intended to legislate. Next he quotes a passage from page 18 of the transcript in which he agrees to hold a meeting in December, instead of February, if the States wish. This is evidence that there was to be another meeting or meetings, but that question was never in doubt. In fact there have been meetings and there will, I am sure, be more, but it is not a commitment that nothing would be done by the Commonwealth before there was a further meeting or meetings. After all, we had already announced our intentions to legislate as soon as possible and discussions had to be held on matters flowing from that discussion.

The former Minister next quotes Mr Griffith on page 24 of the transcript:

I have pressed you to a meeting in December and with this in mind—the possibility of the status quo arrangements being continued until the Commonwealth and the States come to a mutual arrangement—I would gladly withdraw and suggest you call the meeting when you are ready.

The former Minister asks: 'Are not those the words of a man who believes he has entered into an agreement?' But the trans-

cript shows that the answer to that question must be no, because what Mr Griffith was saying to the Minister was: 'Let us—the States—continue to issue titles as we are doing at present. Do not change that during the interregnum. If you will agree to this I will not press for an early meeting.' But the Minister replied that he could not agree to the suggestion as put and that if the States issued titles without first conferring with the Commonwealth—'It is on your own head.' Mr Griffith at once replied—page 26 of the transcript:

It looks to me as if you will not come our way at all. You are not proposing to budge an inch from the March statement. You are not prepared to give us anything.

Mr Speaker, those are not the words of a man who believes he has entered into an agreement. The next passage quoted, from page 30, is an exchange between Mr Griffith and Mr Bowen which shows nothing except that Mr Griffith was asking what would happen under the legislation which the Commonwealth had said it proposed to introduce to assert control outside the 3-mile limit. The last passage quoted by the Minister arises in this way: The Minister stated on page 36 that in the interim period the Commonwealth could not go further than to say that it would support titles issued by the States if there had been consultations with the Commonwealth, but he would not guarantee to support such titles if there had not been consultations. Mr Griffith said he was prepared to leave that matter on that basis and suggested not that the States would accept a later meeting to meet the convenience of the Commonwealth but that they wanted a later meeting—in May—so that there would be an opportunity for some of the members to visit the north of Western Australia at that time. To this the Minister replied:

All right, and we would have an interim meeting as soon as we are ready to discuss this particular matter.

Since the particular matter discussed for the last 30 pages of the transcript had been the method of issuing titles in the interim period I think it is difficult to think that this particular matter can refer to anything but that.

Sir, I have spent some time on these excerpts quoted by the former Minister because they are the evidence he produces to suggest a breach of commitment by the

Commonwealth. I do not think that they support that charge. They do show a commitment to further discussions. But the Government does not think they show a commitment to refrain from announcing legislation before those discussions. Mr Fife, a member of the Council, summed it up on page 39 of the transcript when talking about the Press release which might be made. He said:

I think all we need to say is that we have asked the Commonwealth to agree to a proposition similar to the off-shore petroleum legislation. Secondly the Commonwealth has agreed to consider this proposal.

That was all. Yet I do not believe the honourable member for Farrer would make the statements he has made unless he thought he had a basis for them. We have only the transcripts to go on. It may be that there was an impression not shown by the transcripts. Maybe there was an impression left around the table that there would be discussions—not just discussions but discussions before the Commonwealth proceeded on the course or announced again the course which it had previously announced, with additions. But the records do not show it. All they show is that while there was an undertaking for further discussion—which has taken place on some matters—there was no undertaking recorded by the Minister on behalf of the Commonwealth that that legislation would be deferred until after those discussions.

But, even assuming that there was an impression, an understanding, a feeling in the minds of the people around the table, which does not appear in the records of

the meeting—let us assume that that is so—what in fact flows from that? It would mean, on that assumption, that there was an impression in the Minerals Council that before further discussion the Minerals Council would be informed of the Commonwealth's decision on their proposals to it. Well, the Minerals Council was not so informed. It was not called together. It was not so informed although each individual member of the Council was individually informed. So I suggest that even if that impression was there—and this is not evident in the transcript—that is the most that can be made from that approach. So I believe that the records sustain no charge of ill faith. I think the most that can be said of any impression, if there was any, was that the Council was not called together to be told of the Commonwealth's rejection of its proposals for petroleum legislation.

I think that all these papers are before the House for analysis by each honourable member. I believe that that seems a flimsy ground on which to accuse the Government of dishonour and it is not supported by the record. I do not doubt for one moment that the former Minister has given his interpretation with sincerity and that he has expressed his views of the feeling of the meeting at which he presided—and he could well be supported by others. I do not doubt that he has given that interpretation with sincerity. But, Sir, so has the Government on the record which it has placed before these Houses of Parliament.

Motion (by Mr Snedden) proposed:

That the House take note of the paper.