COMMONWEALTH OF AUSTRALIA.

SPEECH

BY

Rt. Hon. R. G. MENZIES, K.C., M.H.R.,

ON

CONSTITUTION ALTERATION (SOCIAL SERVICES) BILL 1946.

[*From the "Parliamentary Debates," 3rd. April,* 1946.]

Mr. MENZIES (Kooyong—Leader of the Opposition) [3.52].—In 1944, the Government put forward a number of proposed amendments to the Constitution—a very substantial number which finally reached about seventeen—and the people were given one vote in relation to all of these amendments, because they were included in one bill. As honorable members know, the proposals were rejected. At that time, the Attorney-General (Dr. Evatt) pressed very strongly, not once but many times, for a non-party approach to the problem, and he consistently emphasized that questions of constitutional power should not be determined along party lines. It cannot be said that that ambition was entirely realized; nevertheless, there were honorable members on this side of the House who gave support to the Government's proposals. The Government has now changed its mind on both points. As to the first, I have no regret. It is a good thing that questions should come before us in three bills instead of in one. That removes one of the difficulties which arose on a former occasion. However, the Government proposes to hold a referendum on these proposals on the same day as the general elections. That involves at once the abandonment of a non-party approach to them.

HONORABLE MEMBERS.—Why?

Mr. MENZIES.—Because the dominant reason why caucus has decided to have the referendum on polling day is that it desires to confuse people into believing that a vote for constitutional amendment necessarily will involve a vote for the Government, and that a vote against the Government will in some way be regarded as against one or other of the referendum proposals. After all, honorable members opposite must not think that we are children in these matters. When a government decides to have a referendum concurrently with a general election, the inference is quite obvious.

Mr. BURKE.—The right honorable gentleman is battling very hard for points.

Mr. MENZIES.—The honorable member for Perth (Mr. Burke) will not even be able to battle for points at the general election; it will be a clean knock-out. However, I am quite unmoved because junior members on the Government side

of the House resist my suggestion. I do not observe that any experienced member would care to deny it.

In 1944, the Opposition put forward a reasoned amendment to the proposals then made by the Government, and the last paragraph of this amendment was as follows:—

> That provision should be made for the setting up, within a period of two years after the termination of actual hostilities, of an elective popular convention for the review of the structure and working of the Constitution.

We still believe that such a convention is essential. Indeed, it might be a very good thing if we adopted the practice of holding such conventions periodically—I do not mean at short periods, but at substantially long periods—in order that the working of the Constitution might be reviewed in a proper atmosphere and in an objective way. Our belief that there ought to be a convention is strengthened by the character of the amendments now before us, some portions of which are good, whilst others are open to very serious criticism. The total character of them, taken together, is that they are hurriedly assembled and piecemeal. I propose to deal in turn with each of the three proposals—social services, marketing, and employment—and I propose to examine them in a critical, but constructive way. Where I take exception to something I shall make positive suggestions in relation to it. The second-reading debate on bills designed to amend the Constitution should present a great opportunity to the House for a pooling of ideas, and therefore, whilst I shall be critical on some matters, I shall not make a merely blank, negative approach to them.

I turn first to the social services amendment. This is a proposal to alter the Constitution by including power in relation to maternity allowances, widows' pensions, child endowment, unemployment, sickness and hospital benefits, medical and dental services, benefits to students, and family allowances. The *Pharmaceutical Benefits* case, which was recently decided by the High Court, has undoubtedly produced some real questions as to the validity of social services other than invalid and old-age pensions. This matter of the power of the Commonwealth to make appropriations at large or for purposes not to be found elsewhere in section 51 of the Constitution, was debated to some extent in this House on a former occasion. Up to the time of the decision of the High Court, apart from some obversations in an earlier case, the Commonwealth practice had uniformly been over a long term of years to rely upon a wide interpretation of section 81 of the Constitution. It reads—

> All revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one Consolidated Revenue Fund, to be appropriated for the purposes of the Commonwealth.

The question that has existed since the words were written into the Constitution might be put in this way: when section 81 authorizes this Parliament to appropriate money for the purposes of the Commonwealth, are those purposes to be found in the legislative and executive powers specifically conferred by the Constitution, or does "the purposes of the Commonwealth" mean any purposes that the Commonwealth Parliament may think proper? The first is a narrow interpretation and the second a wide interpretation of the words. Quite plainly, if the narrow interpretation applies, there are many appropriations made by this Parliament that are either invalid or doubtful. For 40 years the Commonwealth Parliament acted on the wide view. I think that can be said about governments of all political complexions that have occupied the treasury bench. The High Court did not, in precise terms, decide that question in the *Pharmaceutical Benefits* case. I think the Attorney-General will agree that, in some of the judgments, one does not find that neat question neatly determined; but, at the same time, I think that perusal of the judgments indicates a real doubt as to whether, if a challenge were made, the wide power of appropriation would be upheld. I say, "if challenge were made", because there are some matters within the scope of this proposition that have never been challenged. Maternity allowances, for example, have always been subject to this question, but have never been challenged, and, I daresay, would never be challenged; but, in the event of a challenge, there are doubts, and, therefore, it is proper that those doubts should be resolved in relation to social services,

to which this Parliament attaches importance. These doubts might have been resolved in one of three ways. They might have been resolved by a reference of power from the States under Section 51, paragraph (xxxvii.). I know that the experience in seeking references of power from the States of. late has not been an entirely happy one, but I greatly doubt whether either House of any State Parliament would refuse a reference of power that would validate such matters as, by way of example, child endowment and widows' pensions. That is one method that might have been pursued. It is the method that we believe should have been pursued. The second method is to have a referendum taken separately from the general elections, so that genuine election issues shall not be confused by questions of constitutional power. After all, in general elections, the prime conflict is between political programmes and policy, and the moment that is confused by arguments on constitutional power there might be produced entirely strange results; results not expected by either side in the political conflict. The third method is one that the Government has adopted, a referendum taken concurrently with the general elections. I say quite plainly that, in the circumstances, the way will be open to a great mass of skilful propaganda, in which the merits of the constitutional issue may entirely disappear. The Government has adopted the third method, unwisely, in my view, and has taken the occasion to include new items. The proposed amendment, the terms of which I have just read to the House, specify certain matters about which there is no argument at all. Widows pensions, maternity allowances, child endowment and family allowances are common ground to all parties in the House, and we all support the removal of any doubt as to their validity. Unemployment and sickness benefits, hospital services and medical and dental services are, in their turn, most desirable, but we believe, as honorable gentlemen opposite know, because for some time we have made no secret of our views on this matter, that those things should all come within the scope of some form of national insurance, and, therefore, would have been much better dealt with by expanding or clarifying, as the case may be, the Commonwealth's insurance power under section 51, paragraph (xiv.) of the Constitution. Having stated those general views, I add a few words about some of the expressions employed. Take the phrase "medical and dental services", as a separate head of power, because it is so stated. The expression is very curious. The learned Attorney-General was questioned about this during his second-reading speech.

Dr. EVATT.—It says "provision of".

Mr. MENZIES.—I am sorry. Yes, "provision of" and then the other words follow later. The Attorney-General was questioned about this during his second-reading speech. I agree that it was as the result of the question that he said what he did, and I do not desire to tie him to anything he said without having weighed what he was saying. But the right honorable gentleman was asked by the honorable member for Warringah (Mr. Spender) whether this power would enable the Commonwealth to nationalize the medical and dental professions. The Attorney-General said—

> The Commonwealth could obtain the services of medical and dental practitioners, nurses and the like for that purpose; but the proposed alteration would not enable the Commonwealth to say, "We shall make all members of the medical and dental professions part of the service of the Commonwealth".
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> Mr. ARCHIE CAMERON.—Why not?
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> Dr. EVATT.—We shall be able to do everything necessary and incidental to providing these services. That is a very wide power.
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> Sir EARLE PAGE.—Would this provision control the registration of doctors and dentists?
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> Dr. EVATT.—Not the general registration. The right to practise in those professions is governed by State law. This proposal would not affect that, nor would it affect the right of a doctor or a dentist as an individual to practise his profession.
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> Mr. MCEWEN.—Would it not override the State laws?
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> Dr. EVATT.—It would enable the Commonwealth to make use of the services of doctors and dentists to provide national medical and dental services.

With very great respect, I believe that explanation to be inadequate. I am rather disposed to think that on reflection the right honorable gentleman will agree with me. Recently, in the High Court,

the *Airlines* case was decided. It was a case that attracted great atention, and in it the High Court decided unanimously that a power to make laws with respect to trade and commerce among the States included a power to set up a government airline, under a government corporation, though, by reason of section 92 of the Constitution, that airline could not be given a monopoly. In other words, the Commonwealth Government could not prevent another company from engaging in the business of interstate flying, but it could, under the trade and commerce power, set up a government service. That was not an obvious decision. As the Attorney-General knows, that finally disposed of a problem that had arisen once or twice in the past in the court and very many times outside the court, because there was one view that the trade and commerce power is a power to regulate trade and commerce in the hands of those who carry it on, and not a power enabling the Government to engage in it.

Mr. FALSTEIN.—In any case, there is an appeal pending to the Privy Council.

Mr. MENZIES.—An application for special leave to appeal has been announced. What will happen I do not know. All I can do is to discuss the matter on the unanimous finding of the High Court, and its view was that the trade and commerce power enables the Government itself to set up an airline and does not confine the Commonwealth Parliament to regulation of airlines in the hands of other people. Apply that to the power to provide medical and dental services. There is no real question of interstate trade and commerce in the provision of medical or dental services, and so it is not likely that section 92 will be brought into this argument. In those circumstances, very little doubt exists that not only the words of the proposed amendment but also the decision of the High Court will mean that under those words, the medical and dental professions could be nationalized by making all doctors and dentists members of one government service which had a monopoly of medical and dental treatment. In that sense, this power includes a power to nationalize medicine and dentistry.

Mr. CHAMBERS.—Is there anything wrong with that?

Mr. MENZIES.—I have a very great objection to nationalizing the medical profession, but that is a matter of practical politics which, perhaps, we can discuss more fruitfully on another occasion. I am pointing out at present what the power will do. As there is no immediate urgency about this problem, it is a great pity that the Government does not defer it, pending consideration of the whole Constitution by a convention along the lines that have been suggested from this side of the House. After all, a national convention, duly elected, might come to the conclusion that it would be better to give to the Commonwealth Parliament full power over public health as such than to deal with the problem piecemeal.

Similar comment upon piecemeal and rather ambiguous treatment arises in relation to the reference to sickness and hospital benefits. After all, these are matters which deal with results rather than causes, and, if I may say so, experience of the last few months under the legislation that has been passed shows that the proposed powers are much more likely to be exercised largely for industrial ends than in a real attempt to deal with the problem of health. In this country or in any other country, the problem of health is dealt with not merely by looking at certain results and trying to deal with them, but by seeking causes and trying to deal with them. In the long run, social preventive action may prove to be much more important than medical treatment.

The other phrase about which I desire to say a few words is the expression, "benefits to students". I am a little uncertain as to the scope of this. I have no doubt that many benefits to students—benefits which are very liberal, and I have a warm appreciation of what has been done in that regard—are being provided under the repatriation powers of the Commonwealth. As far as it goes, the expression is quite all right, but again, it deals with only a fraction of the total problem—the total problem being the assistance of education generally. Grants to the States in aid of education, I agree, can in any

event be safely made under section 96 of the Constitution, and they should be made, because for reasons which I discussed at some length on an earlier occasion, it seems to me that, as time passes, the Commonwealth is bound to accept increasing responsibility for education. Therefore, my reference to "benefits to students" is made, not with a view to condemning government action for the purpose of benefiting students—I support it—but to point out that it represents only one small fraction of a total problem, and, consequently, represents what I describe as a piecemeal treatment of a large problem.

I turn from that matter to the second bill, upon which I desire to make some suggestions for the consideration of the House. The second measure deals with marketing, and I make two preliminary observations about it. This problem, so far as it deals with section 92 of the Constitution—freedom of interstate trade—was omitted from the referendum of 1944. Marketing was included in the referendum, but there was nothing about qualifying the effect of section 92. Now, it is stated to be a matter of such urgency that it must be put before the people at the forthcoming election. My second preliminary observation is that this proposed amendment is entirely different from the one put forward by the Lyons Government in 1936-37. I want to explain that with some care, because there is a disposition in some quarters to believe that this particular proposal merely takes up a proposal with which a number of us on this side of the House were very actively associated in the referendum of 1937, and which agitated parties in such a way that a great number of people found themselves in opposition to it, who will undoubtedly find themselves supporting this one. On that occasion the proposal was that a new section—section 92A—should be inserted in the Constitution in these terms—

> The provisions of the last preceding section shall not apply to laws with respect to marketing made by or under the authority of the Parliament in the exercise of any powers vested in the Parliament by this Constitution.

The whole idea of that proposed amendment, which would have prevented section 92 from invalidating a marketing law, was that validity should be given to joint Commonwealth and State marketing schemes. Honorable members will recall that before the war we had a great deal of experience—some of it very painful—of these matters. The Commonwealth and the States went into joint schemes in relation to wheat and dried fruits. Each State passed a bill which dealt with trade in that commodity within its own boundaries, and the Commonwealth then put the coping stone on the structure by passing legislation which dealt with interstate trade in the same commodity, and it was hoped that between the two sets of legislation, the whole field of transactions in that commodity would be dealt with.

Mr. SCULLIN.—What if one State stood out of the scheme?

Mr. MENZIES.—If that State was not concerned with the production of that particular commodity, there were occasionally ways and means of overcoming the problem. The real difficulty arose, not from the abstention of any one State, but because section 92 cropped up and invalidated attempts which were made to restrict the interstate movement of goods. In that condition of affairs, we had certain good elements and one very bad element. The good elements were these: It is a very good thing to have joint Commonwealth and State action on marketing matters. After all, the States control a great number of factors which the Commonwealth does not touch. The States are in charge of land settlement, agriculture, water supply, and production policies generally, whilst the Commonwealth had power to deal with interstate trade which enabled it to come to the rescue, provided section 92 did not operate to destroy the scheme. Another advantage was that Commonwealth and State schemes were invariably the subject-matter of discussion between the governments. They became well known to the producers who were affected, and there was a general opinion developed, and a very wide representation of producer opinion at all relevant times.

What the proposed amendment contemplated in 1936-37 was simply to prevent section 92 from invalidating joint Commonwealth and State marketing schemes. The proposed amendment in

the bill sets out to do something quite different. It is designed to give to the Commonwealth power to deal with the organized marketing of primary products. That is a new power to be conferred upon the Commonwealth Parliament, and, as the Attorney-General pointed out in his second-reading speech, it is a power which will operate upon intrastate trade just as much as upon interstate trade. In other words it is a power which will enable the Commonwealth to deal with marketing transactions which begin and end in one State, and, consequently, it proceeds upon the footing that all that is needed is a single Commonwealth control and not joint Commonwealth-State control. That, of course, means that there is a very sharp distinction between this amendment and the one with which some of us were associated some years ago.

Mr. HOLT.—And also the proposed amendment of 1944.

Mr. MENZIES.—Yes. In brief, it is now proposed to transfer the whole field of the organized marketing of primary products to the Commonwealth, and to render co-operation with the States unnecessary. That would produce a state of affairs in which the problems of production, which would still remain primarily problems for the States, and the problems of marketing, which would become, in effect, exclusively the problems of the Commonwealth, would be dealt with entirely separately, subject to this qualification, that the Commonwealth, by marketing legislation, might very well be able to exercise an indirect control over production without having any real responsibility for it. That would be a bad business. It would be very unwise to deal with the problem of production and the problem of marketing in entirely separate compartments, each under the authority of a different legislature. It was for that reason that before the war we saw so clearly the great merit of joint Commonwealth and State action. I would have thought that it would be clear to most of us that, if the organized marketing power were to be used in order to stabilize prices, the volume of production would probably have a direct relation to the stabilized prices. Yet, under these proposals the volume of production, except for the indirect pressure which I have described, would remain a matter for the six State Parliaments, whereas the problem of the stabilized price would be under the jurisdiction of the Commonwealth Parliament. To put it in another way, volume of production may be determined by the policies of six State governments and the price stabilization scheme would be under the exclusive control of the seventh Parliament, the Commonwealth Parliament. In using the word "exclusive" I do not desire the Attorney-General to take me as saying that it is not a concurrent power, but the exercise of it will make it, in effect, an exclusive power, because it will invalidate all State schemes inconsistent with it.

The second comment I wish to make on the proposed amendment turns upon the expression "primary products". That expression is not defined. The Attorney-General brushed this problem aside by saying—

> In the ordinary popular sense primary products are understood to include not only the immediate products of such occupations as the agricultural, dairying and pastoral industries, but also certain processed goods derived directly from those products. All Australians, for instance, would immediately recognize butter, cheese, flour and dried fruits as primary products, though not cakes or bread.

I do not desire to use too strong an expression, but it seems to me that that statement is rather astray and somewhat misleading, if I may use that term inoffensively. The expression "primary products" is not a technical one, and, indeed, so far as I have been able to discover, it is almost peculiar to Australia. My search through the Oxford Dictionary recently indicated that apparently the editor of that work had not met the expression at all. Where an expression is used in a constitution, and that expression is not one of technical law, the meaning of it must be ascertained by the courts by evidence, the perusal of books, records and statutes, and by other means. By reference to contemporary sources, the courts must determine whether there is an accepted and popular meaning for it. So if this amendment be accepted by the people, the High Court will be called upon, from time to time, to

decide whether, as these words are understood, butter, cheese, coal, sugar, iron ore or anything else, is a primary product.

Mr. SCULLIN.—Butter is sometimes said to be a secondary product.

Mr. MENZIES.—Both the right honorable member for Yarra and I would have a little difficulty, I venture to say, in regarding butter produced from a factory as a primary product; yet the Attorney-General says that under this legislation butter would be deemed to be a primary product. I should think it a novel use of language to say that a flour miller is a primary producer, yet we are assured that flour would be regarded as a primary product. Factories are to be found in the capital cities of Australia which manufacture large quantities of cheese; yet we are told that a commodity like cheese must be regarded as a primary product.

Mr. ARCHIE CAMERON.—The best illustration would probably be butter and margarine.

Mr. MENZIES.—A good argument could be developed in respect of those products. It would hardly be suggested by most people that margarine is a primary product, yet some forms of margarine are just as close to the original source of production as is butter.

It may interest honorable members to know that at least one definition of "primary production" has been endorsed by this Parliament. For almost as long as there has been an Income Tax Assessment Act, that measure has contained a definition of "primary production". Let me say at once that I do not contend that that definition would bind any court, but it would be one source of information available to a court to determine what these words mean, because, as the Attorney-General knows, it has been the common practice of the High Court, in determining the meaning of words in a constitution which are not terms of art, to consult contemporary sources including contemporary statutes. The words "primary production" are defined in the Income Tax Assessment Act as follows:—

> Production resulting directly from the cultivation of land or the maintenance of animals or poultry for the purpose of selling them or their bodily produce, including natural increase, and includes the manufacture of dairy products by the person who produces the raw material used in that manufacture.

The production of farm butter would come within that definition, but the production of butter in a factory in the ordinary course would not come within it, nor would the flour produced by a flour-miller or the cheese made by a cheese-maker come within the definition. It should be clearly understood by the public that the expression "primary products", though it will unquestionably include wool, wheat and live stock, may, and probably will, turn out not to include articles which result from processing certain goods.

Mr. ABBOTT.—What about fellmongers' wool?

Mr. MENZIES.—That is another instance. In fact, the whole subject of processed products in a form which is not the form in which they come from the farm would have to be considered.

Mr. HOLT.—What about tinned fish?

Mr. MENZIES.—I hope that honorable members will not invite me to say now what I think does and what does not fall within the definition. That question will have to be determined one fine day by the High Court and not by us. It will be determined in the light of such material as the court can get together. If there is to be a power to deal with primary products as distinct from others, then I suggest to the Attorney-General that, with all its difficulties, some definition should be undertaken; otherwise, many people who believe that they are to have the benefit of organized marketing will never obtain it. The more I consider the terms of this amendment, the more remarkable it seems to me that the Government should have departed from the substantial terms of the 1936-37 amendment. The very point that I have just been raising is another confirmation of that. The final point that I want to make on this amendment is this: The word "organized" also is one of uncertain meaning. All marketing conducted under the authority or by direction of the law may be said to be in one sense "organized", since the law may be said to put such marketing into working order.

Mr. SHEEHAN.—Straw-splitting.

Mr. MENZIES.—I am sorry that my friend should think that a contribution of this kind is mere "straw-splitting". It is not designed to be "straw-splitting". Everybody, and most of all the Attorney-General, will agree that the more thought we give to the words that we write into a constitution—words that are not altered so easily as are those of an ordinary statute—the better. If the honorable member is quite satisfied to have his constitution-making done in a slapdash, indifferent way, and regards every careful examination of the language used as mere "straw-splitting", the Constitution will turn out to be a very bitter disappointment to him. If this view as to the meaning of the word "organized" prevails, then the whole of the law relating to the sale of primary products, including the setting-up of boards, the licensing of those engaged in transactions, and the prices and terms and conditions of sales will pass into the hands of the Commonwealth.

The third bill also lends itself to some comment. It deals with the terms and conditions of employment in industry. The wording is short—

> Section fifty-one of the Constitution is altered by inserting after paragraph (xxxiv.) the following paragraph:—
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> (xxxiv.A.) Terms and conditions of employment in industry, but not so as to authorize any form of industrial conscription:

Paragraph (xxxiv.A.), now proposed, will immediately precede the existing paragraph (xxxv.), perhaps the best-known paragraph in the Constitution, which reads—

> Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State.

When the bill first arrived, and this provision manifested itself, I had anticipated that paragraph (xxxv.) was being repealed. But it is not being repealed. This new power is being added to the list of powers in section 51; therefore, in the event of its being adopted by the people, it will take its place side by side with the conciliation and arbitration power as it now stands. From a drafting point of view, and from the point of view of results, I confess that that astonishes me; and my astonishment grows when I consider the very brief explanation that was given by the learned Attorney-General, who said this—

> The new power which the bill proposes to give to this Parliament will not in any way abrogate or curtail the existing industrial powers given by section 51, paragraph xxxv. The new power, however, will supplement the present conciliation and arbitration power in two vital respects.

He then went on to describe the direct legislation which could be passed. I want to put this to honorable members—perhaps it may be a little complex, but I believe it to be important: If paragraph (xxxv.), the present conciliation and arbitration power, were repealed, and the new power in paragraph (xxxiv.A.) were given its full interpretation, clearly it would enable the Commonwealth, either by direct legislative enactment, or by the setting up of tribunals, or both, to regulate all the terms and conditions of employment, including, of course, wages, hours, and so on. The Attorney-General will agree with that. In other words, paragraph (xxxiv.A.), the proposed new power, is so far-reaching, that under it the Commonwealth could deal with the terms and conditions of employment as it thought fit. It might decide to have them dealt with through the arbitration court, or through a series of tribunals. It might decide to deal with them by direct legislative enactment. It might decide to have a little of each in the way in which it dealt with the matter.

Mr. HUGHES.—It could also set up another court.

Mr. MENZIES. — Oh, yes. The choice of the means available to the Parliament to carry out the new powers would be unrestricted. But paragraph xxxv. is not repealed; it still stands, and, still standing, it must be given some meaning. You cannot leave words in the Constitution deliberately, and at the same time deprive them of all meaning. The courts will come to the conclusion that paragraph (xxxv.) must be given a meaning quite independent of this new power, since it will continue to be independently stated. Therefore, it is highly probable that paragraph (xxxv.) will be interpreted as containing an exclusive code on the subject of industrial conciliation and

arbitration. In other words, the court will say, "Where the Constitution wants to deal with conciliation and arbitration, it uses the express terms 'conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any on State'". That is the constitutional provision in respect of conciliation and arbitration. Therefore, the new power has to be dealt with as not including conciliation and arbitration. That is the only way in which you can reconcile these two powers. Otherwise, the new power completely abolishes the old power, which becomes mere surplusage. The result of that would be indeed curious. It would mean that this Parliament could legislate for a 40-hour week; it could pass an act prescribing a basic wage; it could, if it thought fit, pass an act containing a model set of conditions which were to be applied to all people; but, so far as the Arbitration Court was concerned in its task of dealing with industrial disputes, it would still be subject to the limitations under which it now works—in other words, it would still be confined to an interstate dispute, and that dispute would still need to be an industrial dispute, and so on, and all the technicalities that have been evolved in relation to paragraph (xxxv.) would continue to operate.

Mr. FALSTEIN.—This is purely the opinion of the right honorable gentleman; it is not the factual position.

Mr. MENZIES.—Of course, I am stating my opinion! I hope that it is a respectable one on matters of this kind. I go further, and say that I shall be very surprised if the honorable member finds himself disagreeing with it. As honorable members may realize, I have given a good deal of thought to this matter, and I do not want to have any confusion in relation to it. I am stating my view. If the Attorney-General finds himself in possession of another view, I shall listen to that view with very great respect. To sum up: On that interpretation, which is the only interpretation that makes any sense of leaving paragraph (xxxv.) in the Constitution, the court would still be subject to all its jurisdictional difficulties. I suppose that there is hardly a trade union official in Australia who has not found himself in a position to complain about the technicalities that are involved in the limitation of the court's jurisdiction. To adopt a scheme like this, leaving the conciliation and arbitration power untouched, and putting in this other power of direct legislation on industrial conditions, is really to make the worst of both worlds. After all, the prescribing of industrial conditions has become so special a task and requires so prolonged an examination, and such a careful balancing of evidence, that it has become a fixed part of Australian policy for 40 years to entrust this responsibility to independent arbitral tribunals. If there is one thing that has characterized the Australian treatment of an industrial problem, it has been our evolving of this system of compulsory industrial arbitration, with matters being determined objectively by independent arbitrators. To take it crudely away from those tribunals by concentrating on the new power, and giving the "go-by" to arbitration, would be merely to make it a matter of political offer and counter-offer at a general election. Whatever may be the temptation to some of us at some time or other to consider that it would not be a bad idea to be able to make an offer to the electors of a shorter working week, or a bigger wage, the fact still would be that such a competition, regularly pursued, would invite disaster for the country. Quite frankly—and I say this with great personal respect for honorable members—the Parliament is not qualified to determine the basic wage or standard hours, because no member of Parliament could hope to have more than a mere fraction of the information that is possessed by the Arbitration Court when it approaches such a task. Above all, at a time when our greatest problem is that of restoring and increasing our production, any "catch-as-catch-can" methods of dealing with factors which bear so closely upon production might very well prove to be nationally ruinous. If the Government had desired to preserve arbitration, but to get rid of technicalities in the arbitration jurisdiction, and to pave the way for the most flexible and simple machinery, surely its right course would

have been, not to write in this new power, but to amend paragraph (xxxv.), so that it would read "conciliation and arbitration for the settlement of the terms and conditions of employment in industry". In one hit, all jurisdictional difficulties would disappear. No longer would there be arguments as to whether there was an interstate dispute. But the court, and not the Parliament, would proceed to settle the terms and conditions of employment, and could deal with that problem all over Australia.

There are just three supplementary observations that I want to make, and I shall have done. The first of them is this: The view which I have put forward—that paragraph (xxxv.), the existing conciliation and arbitration power, will continue to be interpreted as an exhaustive and limiting definition of the conciliation and arbitration power—is, I believe, strongly supported by the fact, very well known to the Attorney-General, that paragraph (xxxi.) of section 51—that is to say, the paragraph which deals with the acquisition of property on just terms from any State or person, &c.—has been so interpreted as to give to it and its terms a full operation, notwithstanding the normal implications that may have been made in other paragraphs. But for the existence of paragraph (xxxvi.), it might have been said that the exercise of any one of a dozen powers in section 51 would have authorized Parliament to pass a law taking someone's property, and on that taking there would be no limitation whatever.

Dr. EVATT.—Paragraph (xxxvi.) deals with them all.

Mr. MENZIES.—Yes, and it has, therefore, been given a universal operation. It is the code on the subject of the acquisition of property. If there is in the Constitution specific reference to legislation on conciliation and arbitration that provision becomes the code of such power on that point. My second comment is this: It may be said that the States have always had power to make laws directly dealing with wages and hours of work, and that, in spite of this fact, no disaster has followed. It is an argument which I can almost hear the Prime Minister (Mr. Chifley) using in the most disarming fashion. Our industrial history shows that after the Parliament of New South Wales enacted the 44 hours week, the High Court decided in the *Cowburn* case that the State act had no application to any case governed by an award of the Commonwealth Arbitration Court. Up to that time there had existed a pleasing belief that there was never any inconsistency between a Commonwealth and State law, provided a person was hopeful enough or rich enough to obey both. By the High Court's decision, the New South Wales act was so limited in its application that it became, to a very large degree, useless, and, in any event, gravely anomalous; because, if there are two authorities dealing with hours of work, one by statute and one by awards, the anomalies to which such a situation would give rise must produce many industrial troubles. Consequently, ever since there has been a Commonwealth Arbitration Court, the scope of State legislation on such matters as I have mentioned has been restricted. But the moment the Commonwealth assumes power to legislate directly regarding wages and hours of work, pegging of wages, &c.—even assuming that my earlier argument about the Arbitration Court is wrong—the functions of the court become so shrivelled that the court falls into a position of secondary importance. It becomes little more than a board of reference to deal with some minor adjustments outside the major rules laid down by Parliament.

The last phrase of the new power is—and I can almost hear the discussion which preceded its framing—

but not so as to authorize any form of industrial conscription.

Mr. CONELAN.—What is wrong with that?

Mr. MENZIES.—It is a very distinct echo of the last referendum campaign. I can imagine the honorable member for Griffith saying, "This is no good. I have just been studying the referendum figures. For heaven's sake let us get away from any suggestion of industrial conscription". No doubt it is a very shrewd move.

Dr. EVATT.—The words are taken from an act passed while the Leader of the Opposition was Prime Minister.

Mr. MENZIES.—Yes, and they were inserted in the act in recognition of a strong demand from the Labour party. If industrial conscription connotes industrial compulsion by the authority of law, will the amendment exclude compulsory unionism? It is a matter upon which I should like some enlightenment. If the High Court decides that the new paragraph contains a full and express statement of the industrial law, I should like some assurance that the defence power will be available in the event of another war to uphold man-power controls, which, on the Government's own showing, were vitally necessary during this war.

My last word is this: I have studied these three bills. I have pointed out various aspects of them which, in my opinion, deserve criticism, and other aspects in which improvement might be made by applying different methods; but all this leads to the conclusion that the proper course would have been to take steps to validate those social service measures which command general support, while putting all these other questions before a convention which might examine points of substance and draftsmanship with a view to placing before the people proposals which would not be discussed during a general election campaign, and would not excite dispute along party lines.

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