

COMMONWEALTH OF AUSTRALIA

SPEECH

BY

The Rt Hon. W. McMAHON, C.H., M.P.
Prime Minister

ON

Companies (Foreign Take-overs) Bill 1972

Second Reading

[From the 'Parliamentary Debates', 24 October 1972]

Mr McMAHON (Lowe—Prime Minister) (8.55)—This Bill makes provision for the control of foreign takeovers of companies. The House will recall that in the statement I made on 26th September last concerning overseas investment in Australia I announced the Government's intention to legislate for the control of those foreign takeovers it considers would be against the national interest. In outlining the measures that would operate under the legislation I indicated that decisions on whether particular takeovers would be against the national interest would be taken by the Government. I added that in making its decisions the Government would be assisted by an independent authority established under the legislation. This authority would analyse and report to the Government on takeover proposals which the Government judged warranted further investigation as to whether they would be against the national interest. I indicated that the proposed measures for the control of foreign take-overs would apply from 27th September 1972 and that they would embrace takeover proposals then current.

Pending the establishment of the proposed independent authority I said that there would be an interim arrangement under which departmental machinery would be used for consideration of particular takeovers on the basis of the announced criteria. This departmental machinery has been established and is

functioning. A special group of officers has been appointed specifically for the purpose of examining the national interest aspects of particular takeover proposals. This group is located in my Department but it comprises officers from several other departments and is under the direction of a very senior officer who has been seconded from the Department of Trade and Industry. The reports of the group are considered by very senior representatives of several departments before being referred to the Government for decision.

The administrative arrangements for the examination of particular foreign takeovers are an important step in the implementation of the Government's policy which I announced on 26th September. That policy recognises that we are not as dependent on others as formerly and that Australians have rights at stake in foreign takeovers in the ownership and control of Australian industry. But we also recognise that the interests of the Australian investors should not be prejudiced, except when the overriding interest of the nation requires it. The administrative machinery alone is not sufficient. If it is to be fully effective that machinery must have the backing of the law. A decision that a particular foreign takeover should not proceed must be one that, if necessary, is enforceable in a court. On the other hand, the parties to foreign takeover proposals are entitled to know with certainty where they stand. The law should make their position clear too.

The Bill will give immediate legal backing to the proposals I announced on 26th September insofar as those proposals relate to foreign takeovers of companies. The Bill will ensure the effectiveness of the Government's control of the takeovers. It will also provide clear and precise procedures for the business world. Parties involved in or contemplating takeover proposals will know just what steps they should take to remove uncertainties. The Bill does not at this stage establish the proposed independent authority. That will be provided for in a further Bill, which will be introduced next year and will necessarily take some time. In the meantime it is desirable that the effectiveness of the control being exercised under the departmental machinery should be ensured. The present Bill will do this.

The powers under the Bill to prevent foreign takeovers that are against the national interest will be exercisable by the Government, acting through the Minister administering the Act. This is in accord with the proposals announced on 26th September. In exercising these powers, however, the Government will in practice act on advice from the departmental officials I have mentioned. The present Bill applies to foreign takeovers of companies, and these comprise most of the takeovers within the proposals of 26th September 1972. Certain other types of takeovers are not covered by the Bill. These takeovers will continue to be controlled administratively under the departmental machinery. They will be provided for in the Bill to be introduced next year. I assure the House that the Government will not hesitate to use its powers to the full to ensure compliance with the controls. The Bill will apply to proposals for foreign takeovers of trading or financial corporations formed within the Commonwealth and also of bodies incorporated in a Territory of the Commonwealth other than Papua New Guinea. Holding companies of such bodies are also covered.

The Bill is not confined to companies of any particular size. But the Government does not propose, except in special circumstances, to apply the legislation to takeovers of companies unless their assets exceed \$1m. Two main powers are

provided in the Bill. One will enable the Minister to make an order prohibiting a particular foreign takeover proposal, whatever its form, from being implemented if the Minister is satisfied that it would be contrary to the national interest. The other main power will enable the Minister to limit the beneficial interests that a particular foreign interest or associated group of interests may have in a specified company. This power will be available to ensure that the prohibition of one particular takeover proposal is not avoided by resort to some alternative proposal which would achieve the same ultimate effect. It will also be available if foreign control of an Australian company has been achieved since 26th September 1972 without prior notification of the proposal to the Government.

The question whether a takeover proposal will result in control of a company passing from Australian to foreign hands will be a matter for separate consideration in the circumstances of each case. The question in each case will be whether there is a passing of effective control. In general such control will be treated as passing if, as a result of the takeover, 15 per cent or more of the voting power would be controlled by a single foreign interest or associated group of interests. A similar position will apply if in the aggregate 40 per cent or more of the voting power is controlled by foreign interests. These percentages will not be a conclusive indication of foreign control.

If the Minister is satisfied that having regard to all the circumstances an acquisition would not give a significant degree of foreign control over the conduct of the company in question, the powers of the Bill will not apply. The question whether a particular takeover would be against the national interest will be a matter for decision by the Government. That is where the responsibility should rest. In discharging this responsibility the Government will apply the criteria that I outlined in my statement on 26th September 1972. In that statement I mentioned that a takeover may be treated as against the national interest if the company concerned is considered by the Government to be an economically strategic industry leader, or to be so large

that the takeover would significantly affect the relative balance of Australian ownership and control of the industry concerned.

I mentioned also the criteria that are to be applied to other foreign takeovers. The first criterion is whether, against the background of existing circumstances in the industry concerned, the takeover would lead, either directly or indirectly, to net economic benefits in relation to such matters as production, prices, quality and range of products and services and efficiency and technological change which would be sufficient to justify the increased degree of foreign control of the particular industry that would result from the takeover. If the proposed takeover is judged to be not against the national interest on this basis, the following additional criteria will also be taken into account: Whether, after the takeover, the firm concerned could be expected to follow practices consistent with Australia's interest in matters such as exports, imports, local processing of materials produced, research and development, and industrial relations, including employee protection; and whether the takeover would have adverse effects on the Government's defence objectives, environmental protection or regional development.

In making judgments as to whether particular foreign take overs would be against the national interest on any of the foregoing grounds, due weight will be given to 3 other matters. One is the extent of Australian participation in ownership and management that would remain after the take over; another is the interests of shareholders of the company subject to the take over; the third is the attitude of its board of directors. The Government's consideration of take over proposals will normally be in 2 stages. The first stage will involve preliminary consideration to see whether a detailed investigation is warranted. This preliminary consideration will have to be completed within one month from the date that the proposal is notified to the Minister.

The Bill does not formally require all foreign take overs to be notified. But its effect will be to cause all take overs within the ambit of the Act to be notified. This will be because the Government will have the right to make orders to reverse take

overs that have proceeded without prior notification. If a conclusion is reached that further investigation of particular proposals is desirable, the Minister will have power to issue an interim order prohibiting implementation of the proposal for such period not exceeding 3 months as is necessary for the further consideration to be given to it.

If no order is made in respect of a takeover proposal within a period of one month from notification, it will be free to proceed. In addition, the Minister will be able in appropriate cases to grant clearance certificates in respect of take over proposals notified to him. A breach of any of the orders I have mentioned will be an offence punishable by a heavy penalty. In addition a Supreme Court will have power, on application by the Minister, to make further orders against a person who commits such an offence. The Court will be able in such circumstances to restrain the exercise of voting rights, direct payments to be withheld, direct the sale of shares, and make desirable ancillary orders.

In exercising these powers, however, the Court will be required to satisfy itself, as far as it reasonably can do so, that any order it proposes to make will not unfairly prejudice any person. The Court's powers are limited where the breach in question was due to inadvertence and excusable. Orders made by the Minister under the proposed Act will have to be published in the Gazette. Parliament will also be informed of the making of the orders as soon as it is practicable to do so. Some will come into operation on the date of their publication. Others will operate as from a later date specified in the order. If the provisions I have outlined are to operate effectively it goes without saying that the Government will need to be able to obtain any relevant information and documents. In particular, information as to the persons who have beneficial interests in shares held by nominees will be needed. The Bill recognises this need and accordingly empowers the Minister to requisition relevant information and documents by notices in writing.

This Bill is a major step in the implementation of the Government's decisions which I announced on 26th September. The Bill will ensure the effectiveness of our decision to prevent foreign take overs

of Australian companies where they are against the national interest. It will do this in a way that has due regard to all relevant interests and, most importantly, keeps uncertainty to a minimum.

In due course a further Bill which will provide amongst other things for the establishment of the independent authority will

be introduced. With this in mind the operation of the present Bill will cease on 31st December 1973 or such earlier date as may be proclaimed. In the meantime this Bill will ensure that the interim arrangements function both smoothly and effectively. I commend the Bill to the House.