31 May 1973

SECOND READING SPEECH BY THE

PRIME MINISTER, THE HONOURABLE E.G. WHITLAM, Q.C., M.P.

PRIVY COUNCIL APPEALS ABOLITION BILL 1973

PRIVY COUNCIL (APPEALS FROM THE HIGH COURT) BILL 1973

Mr Speaker, I informed the House on 1 May of my talks in London, just after Easter, with the British Prime Minister, Foreign Secretary, Lord Chancellor and Attorney-General regarding the abolition of appeals from Australia to the Privy Council.

I gave the House the reason for the Government's policy on this question. The reason is obvious and sound. It is that the High Court of Australia must become the highest court of the land in all matters pertaining to Australia and to the legal rights and obligations, in Australia, of its citizens. That state of affairs should long since have been attained. The present position is utterly anomalous.

Recent reports have come to my notice that the States are proposing to petition the Queen to refer certain seabed questions to the Judicial Committee of the Privy Council under an Imperial statute of 1833. That such action can be contemplated serves only to underline what I am saying. It is no longer appropriate that any possibility should still remain of any government in Australia taking legal questions to, or of Australian citizens litigating their differences before, the courts of another country.

The course embarked upon in 1968 by the Government of that time, with the support of the Australian Labor Party, when the Government introduced the legislation contained in the Privy Council (Limitation of Appeals) Act 1968 for the

purpose of limiting appeals from the High Court to the Privy Council, should now be brought to its logical conclusion, a conclusion which we at that time advocated in supporting the Bill. The introduction of the Bills that the House is now asked to consider takes the next and final step in that direction.

Mr. Speaker, when I spoke in the House on 1 May I foreshadowed that the Government would follow the course of introducing legislation requesting and consenting to the enactment of British legislation abolishing appeals to the Privy Council from State Supreme Courts in State matters. I said that the enactment of such legislation by the Australian Parliament would provide the opportunity, if so desired, for a challenge to be made to the validity of the legislation. If there were to be no challenge within a reasonable period, or if the validity of the legislation is upheld under challenge, the Australian Government would expect that the British Government would introduce into the British Parliament the legislation requested and consented to by the Australian Government and Parliament.

The first of the Bills that I now present and describe to the House is the Privy Council Appeals Abolition Bill. The Bill is based both upon the Australian Constitution and the Statute of Westminster.

The Bill has a two-fold operation. First, clauses 4 to 7 are what I may call self-operating provisions. That is to say, they will operate of their own force by virtue of the powers vested in the Australian Parliament. Secondly, clause 8 requests the United Kingdom Parliament to enact legislation in the terms of the Bill scheduled to the Act. Both sets of provisions are directed to the same end, namely, to bar appeals to the Privy Council from Australian courts other than the High Court and to bar the reference to the Privy Council of matters not being appeals from courts, that arise in or in relation to Australia.

The provisions which I have described as self-operating have been included in the Bill on the basis that the Australian Parliament, as well as requesting and consenting to the United Kingdom legislation on this matter, should assert all powers open to it to achieve the same result.

Clauses 4 and 6(1) of the Bill are directed to the abolition of appeals from Australian courts other than the High Court. Clauses 5 and 6(2) are directed to ensuring that Australian matters that are not appeals from courts shall not be referred to the Judicial Committee of the Privy Council. These clauses are intended to exclude resort to the Privy Council in cases of the kind that the States, according to reports, presently have under consideration.

The schedule to the Bill contains the terms of the legislation which we would expect the British Government to introduce in the British Parliament. Clauses 2, 3 and 4

are to the same effect as the clauses in our own Bill that I have just described to the House.

In connection with the petition on seabed matters which the States are reported to be contemplating, I should inform the House that I have sent a message to the British Prime Minister. The substance of that message is that the Australian Government considers it would not be appropriate for Her Majesty to refer any such petition to the Judicial Committee.

I made the point to the British Prime Minister that the provisions of section 4 of the Judicial Committee Act 1833, under which the States apparently propose to petition Her Majesty, will be included among the provisions that will be repealed when the British Parliament enacts its legislation on the request and consent of this Parliament. I added that this Parliament already has under consideration the Seas and Submerged Lands Bill which, when passed, will provide opportunity, if it is desired, for all relevant seabed questions to be determined by the High Court. The possibility of there being two streams of authority must be avoided. The proper forum for the determination of these important questions of Australian constitutional law is the High Court of Australia.

Mr Speaker, the second Bill is the Privy Council (Appeals from the High Court) Bill. This Bill completes, so far as the High Court is concerned, what the Privy Council (Limitation of Appeals) Act 1968 commenced.

The Act of 1968 abolished appeals to the Privy Council from the High Court in all matters except purely State matters and the so-called inter se questions.

The Constitution itself excludes appeals in respect of inter se questions excepting upon the grant of a certificate by the High Court. The High Court has granted only one certificate - and that in 1912. For all practical purposes there is no appeal to the Privy Council from the High Court in respect of inter se questions.

As to appeals to the Privy Council from the High Court in State matters, the Australian Labor Party moved an amendment to the Bill of 1968 to remove altogether the right of appeal to the Privy Council from the High Court. The amendment was not accepted. What I have referred to as the second Bill completes the process that the Australian Labor Party would have liked to have seen completed when legislation was before the Parliament five years ago.

Mr Speaker, I believe that by passing this Bill the Australian Parliament will demonstrate its view that the Australian courts can and should exercise the final judicial authority in this land. We all know that in the High Court we have a Bench whose learning and authority is respected wherever English law runs.

I commend the two Bills to the House.