SUPERIOR COURT OF AUSTRALIA BILL

SPEECH BY THE PRIME MINISTER

4 JUNE 1975

THIS BILL TO ESTABLISH THE SUPERIOR COURT OF AUSTRALIA AFFORDS AN OUTSTANDING EXAMPLE OF LIBERAL INEPTITUDE IN GOVERNMENT AND OBSTRUCTION IN OPPOSITION.

A PAPER ENTITLED "THE NECESSITY FOR A NEW FEDERAL COURT" WAS DELIVERED AT THE 13TH LEGAL CONVENTION IN HOBART IN JANUARY 1963 BY MR MAURICE BYERS, Q.C. AND MR PAUL TOOSE, Q.C., RESPECTIVELY NOW THE SOLICITOR-GENERAL OF AUSTRALIA AND A JUDGE OF THE SUPREME COURT OF NEW SOUTH WALES. IN THE DISCUSSIONS ON THE PAPER THE SOLICITOR-GENERAL, SIR KENNETH BAILEY, ANNOUNCED ON BEHALF OF THE ATTORNEY-GENERAL THAT THE CABINET HAD AUTHORISED HIM TO DESIGN A NEW FEDERAL SUPERIOR COURT. SIR KENNETH WENT ON TO SAY THAT THE PAPER WOULD BE OF MATERIAL ASSISTANCE TO THE ATTORNEY-GENERAL, SIR GARFIELD BARWICK, WHOSE CONGRATULATIONS HE GAVE TO THE LEARNED AUTHORS.

IN 1964, JUST BEFORE HE BECAME CHIEF JUSTICE, SIR GARFIELD WROTE A 21-PAGE ARTICLE ON THE PROPOSED NEW FEDERAL SUPERIOR COURT FOR THE INITIAL ISSUE OF THE FEDERAL LAW REVIEW, THE JOURNAL OF THE LAW SCHOOL OF THE AUSTRALIAN NATIONAL UNIVERSITY.

On 15 March 1967, in answer to a Question by the honourable member for Moreton, Attorney-General Bowen, now Chief Judge in Equity in the Supreme Court of New South Wales, said an anormous amount of work had been done on the proposal for the new court by Sir Garfield Barwick and by his own immediate predecessor, Mr Snedden. He promised a ministerial statement. He made the statement on 18 May. He delivered a paper on the proposal to the 15th Legal Convention on 17 July.

In March 1968, opening a new session, the Governor-General stated:

> "My government will prepare legislation for creation of a Commonwealth Superior Court to relieve pressure on the High Court."

On 29 October 1968, Attorney-General Bowen asked a committee under Mr Justice Kerr, later Chief Justice of New South Wales and now the Governor-General, to consider the jurisdiction to be given to the proposed Commonwealth Superior Court to review administrative decisions. The other members were Solicitor-General Mason, later a judge of appeal of the Supreme Court of New South Wales and now a justice of the High Court, and Professor Whitmore and later Solicitor-General Ellicott, now the honourable member for Wentworth. The committee's report was tabled on 14 October 1971.

MEANTIME, ATTORNEY-GENERAL BOWEN AND IN THE 1969 PARLIAMENT THE NEW ATTORNEY-GENERAL HUGHES, AND UNDER THE McMAHON GOVERNMENT THE RESTORED ATTORNEY-GENERAL BOWEN, WERE ENGAGED IN PREPARING SOME 68 COMPLEMENTARY BILLS WHICH IT WAS DESIRED TO INTRODUCE BEFORE DEBATING THE COMMONWEALTH SUPERIOR COURT BILL.

THUS WORK ON THIS BILL PROCEEDED THROUGH THE PARLIAMENTS ELECTED IN 1961, 1963, 1966 AND 1969, UNDER LIBERAL PRIME MINISTERS MENZIES, HOLT, GORTON AND McMAHON, LIBERAL ATTORNEYS-GENERAL BARWICK, SNEDDEN, BOWEN, HUGHES AND BOWEN AGAIN AND, IN ONE CAPACITY OR ANOTHER, SOLICITORS-GENERAL BAILEY, MASON, ELLICOTT AND BYERS. AND AT LAST ON 27 OCTOBER 1972, THE DAY AFTER THE HOUSE OF REPRESENTATIVES ROSE FOR THE ELECTIONS, THE LAST LIBERAL ATTORNEY-GENERAL, SENATOR GREENWOOD, ANNOUNCED THAT THE McMAHON GOVERNMENT HAD REACHED THE CONCLUSION THAT THE PROPOSAL TO ESTABLISH A COMMONWEALTH SUPERIOR COURT SHOULD NOT BE PROCEEDED WITH.

ON THE LABOR SIDE THE PROPOSAL HAD BEEN SUPPORTED AND PROMOTED CONSISTENTLY. I URGED IT AT THE 10th LEGAL CONVENTION IN PERTH IN 1957 AND IN THE DEBATE ON THE ATTORNEY-GENERAL'S ESTIMATES IN 1958 AND IN DOZENS OF SPEECHES AND QUESTIONS IN THE HOUSE THROUGHOUT THE 1960's. I INCLUDED THE PROPOSAL IN THE POLICY SPEECHES I DELIVERED ON BEHALF OF THE AUSTRALIAN LABOR PARTY AT THE ELECTIONS IN 1972 AND 1974.

THERE CAN SCARCELY HAVE BEEN A PROPOSAL WHICH BOTH SIDES OF POLITICS HAVE WORKED ON SO LONG. BUT WHAT HAS BEEN THE HISTORY OF THE BILL UNDER MY GOVERNMENT?

A BILL TO ESTABLISH THE SUPERIOR COURT OF AUSTRALIA WAS INTRODUCED INTO THE SENATE IN DECEMBER 1973 BY ATTORNEY-GENERAL MURPHY. THAT BILL LAPSED WHEN PARLIAMENT WAS PROROGUED TO ENABLE THE QUEEN TO OPEN THE PARLIAMENT ON THE OCCASION OF HER VISIT TO AUSTRALIA IN FEBRUARY 1974. THE BILL WAS AGAIN INTRODUCED INTO THE SENATE ON 14 MARCH LAST YEAR, BUT THE MOTION FOR THE SECOND READING OF THE BILL WAS DEFEATED IN THE SENATE ON 2 APRIL 1974.

THE BILL WAS REINTRODUCED INTO THIS HOUSE AFTER THE DOUBLE DISSOLUTION OF MAY LAST YEAR AND WAS PASSED ON 24 JULY. THE OPPOSITION AGAIN OPPOSED THE BILL IN THE SENATE AND THE MOTION FOR THE SECOND READING OF THE BILL RESULTED IN A TIED VOTE ON 26 FEBRUARY THIS YEAR. SO NOW THE BILL HAS BEEN INTRODUCED FOR A SECOND TIME IN THIS HOUSE.

THE PROPOSALS FOR THE ESTABLISHMENT OF THE SUPERIOR COURT WERE WELCOMED FROM THE OUTSET BY LEADERS OF THE LEGAL PROFESSION IN AUSTRALIA. A COMMITTEE APPOINTED BY THE LAW COUNCIL OF AUSTRALIA REPORTED IN FAVOUR IN AUGUST 1963. SO DID THE NEW SOUTH WALES BAR ASSOCIATION. ATTORNEY-GENERAL BOWEN TOLD THE LEGAL CONVENTION IN JULY 1967 THAT THERE WAS A BROAD CONSENSUS THAT SUCH A COURT SHOULD BE ESTABLISHED. HE STATED CATEGORICALLY THAT "A DECISION HAS BEEN TAKEN TO ESTABLISH THE COURT" AND THAT ARGUMENTS ADVANCED AGAINST THE IDEA ARE NOW "ACADEMIC". BUT A MORE CONSERVATIVE VIEW WAS

TAKEN IN THE TWILIGHT YEARS OF THE LIBERAL GOVERNMENT AND THE CONCEPT CAME TO BE OPPOSED WHEN IT WAS APPRECIATED THAT THE BILL DESCRIBED BY ATTORNEY-GENERAL BOWEN 8 YEARS AGO WOULD ENABLE THE SUPERIOR COURT TO ENTER UPON JURISDICTION NOW EXERCISED BY THE SUPREME COURTS OF THE STATES.

SUCH ARGUMENTS, HOWEVER, LOSE SIGHT OF THE FACT THAT THERE IS ALREADY A LARGE BODY OF FEDERAL LEGISLATION WHICH WOULD FALL TO BE INTERPRETED AND ADMINISTERED BY A FEDERAL SUPERIOR COURT IN WHICH THE LEGAL PROBLEMS OF A JURISDICTIONAL NATURE THAT HAVE BEEN URGED AS OBJECTIONS AGAINST THE SUPERIOR COURT WOULD HAVE NO PLACE. FOR MORE THAN SEVENTY YEARS, INDUSTRIAL MATTERS ARISING UNDER THE CONCILIATION AND ARBITRATION ACT HAVE BEEN DEALT WITH BY A FEDERAL COURT WITHOUT GIVING RISE TO SUBSTANTIAL JURISDICTIONAL PROBLEMS.

FOR ALMOST FIFTY YEARS, THERE HAS BEEN A FEDERAL COURT OF BANKRUPTCY, WHICH HAS SAT IN SYDNEY AND MELBOURNE. THESE ARE TWO EXAMPLES OF LONG-STANDING JURISDICTIONSEXERCISED BY FEDERAL COURTS.

TO THESE HAVE BEEN ADDED IN RECENT YEARS, SUBSTANTIAL ADDITIONAL AREAS OF FEDERAL LAW. FROM THE VERY FIRST TRADE PRACTICES ACT IN 1965 EXCLUSIVE JURISDICTION IN FEDERAL TRADE PRACTICES LAW HAS BEEN VESTED IN THE INDUSTRIAL COURT. THAT WAS A MATTER INITIATED BY OUR PREDECESSORS. THE TRADE PRACTICES ACT 1974, ADOPTED BY THIS PARLIAMENT, CONTINUES TO RECOGNISE THE PRINCIPLE THAT THE PROPER COURT TO INTERPRET AND APPLY THE FEDERAL LAW ON TRADE PRACTICES IS A FEDERAL COURT. THE TRADE PRACTICES ACT 1974 VESTS JURISDICTION IN THE SUPERIOR COURT AND, UNTIL THAT COURT IS ESTABLISHED, IN THE AUSTRALIAN INDUSTRIAL COURT.

THERE IS BEFORE THE PARLIAMENT A NATIONAL COMPENSATION BILL AND THE CORPORATIONS AND SECURITIES INDUSTRY BILL. THE DRAFTING OF A NATIONAL COMPANIES BILL IS WELL ADVANCED. THIS HOUSE HAS PASSED THE ADMINISTRATIVE APPEALS TRIBUNAL BILL, THE FIRST OF A SERIES OF MEASURES INTENDED TO BRING ABOUT A SUBSTANTIAL REFORM OF ADMINISTRATIVE LAW AT THE FEDERAL LEVEL.

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THIS GOVERNMENT HAS ESTABLISHED THE LAW REFORM COMMISSION TO APPROACH THE TASK OF REFORMING THE LAW IN AUSTRALIA ON A NATIONAL SCALE. THE LAW REFORM COMMISSION IS CHARGED WITH THE DUTY OF CONSIDERING NOT ONLY MATTERS WITHIN THE JURISDICTION OF THIS PARLIAMENT BUT ALSO PROPOSALS FOR UNIFORMITY BETWEEN THE LAWS OF THE STATES AND OF THE TERRITORIES. THE ESTABLISHMENT OF THE LAW REFORM COMMISSION IS A RECOGNITION OF THE ABSURDITY OF HAVING SO MANY DIFFERENCES IN LAW ACROSS STATE AND TERRITORY BOUNDARIES. IT HIGHLIGHTS THE NEED TO HAVE A COURT THAT HAS JURISDICTION THROUGHOUT AUSTRALIA AND THAT CAN INTERPRET AND APPLY THE LAWS ENACTED BY THIS PARLIAMENT ON A UNIFORM BASIS THROUGHOUT THE WHOLE OF AUSTRALIA.

THE GREAT DEVELOPMENT IN FEDERAL LAW TO WHICH I HAVE REFERRED MAKES THE NEED TO ESTABLISH THE SUPERIOR COURT MUCH MORE PRESSING. WHILE THE INTERPRETATION OF THE LAW REMAINS WITH THE SUPREME COURTS OF THE STATES NO MATTER CAN BE REGARDED AS BEING SETTLED THROUGHOUT AUSTRALIA UNTIL A DECISION HAS BEEN GIVEN ON IT BY THE HIGH COURT. IT IS TRUE THAT A DECISION OF, SAY, THE FULL COURT OF THE SUPREME COURT OF VICTORIA IS TREATED WITH THE GREATEST RESPECT BY THE COURT OF APPEAL OF NEW SOUTH WALES.

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BUT THE VICTORIAN DECISION HAS NO BINDING FORCE ON THE NEW SOUTH WALES COURT, EVEN THOUGH THE TWO COURTS MAY BE DEALING WITH THE SAME SECTION OF AN ACT OF THIS PARLIAMENT. A DECISION OF THE FULL COURT OF THE SUPERIOR COURT WOULD BE BINDING ON THE JUDGES OF THAT COURT THROUGHOUT AUSTRALIA, SO THAT IN THOSE IMPORTANT AREAS OF FEDERAL LAW IN WHICH THE SUPERIOR COURT WOULD BE EXERCISING EXCLUSIVE JURISDICTION THE ESTABLISHMENT OF THE COURT WOULD SUBSTANTIALLY CONTRIBUTE TOWARDS CERTAINTY IN THE LAW.

THE CASE FOR THE SUPERIOR COURT IS NOW EVEN FURTHER STRENGTHENED BY THE ESTABLISHMENT OF THE FAMILY COURT OF AUSTRALIA UNDER THE FAMILY LAW BILL. THIS DECISION BY THE PARLIAMENT IS CLEAR RECOGNITION THAT IN THIS MOST IMPORTANT AREA OF LAW, WITH ITS OWN SPECIAL PROBLEMS AND A NEED FOR SPECIAL PROCEDURES, THERE IS GREAT MERIT IN HAVING A COURT THAT HAS JURISDICTION THROUGHOUT AUSTRALIA, AND THAT CAN INTERPRET AND APPLY THAT LAW ON A UNIFORM BASIS.

THE SUPERIOR COURT WILL ENABLE A CONSOLIDATION OF JURISDICTION THAT IS NOW EXERCISED BY FEDERAL AND TERRITORY COURTS. IT WILL BRING TOGETHER IN THE ONE COURT THE AUSTRALIAN INDUSTRIAL COURT, THE FEDERAL COURT OF BANKRUPTCY AND THE SUPREME COURTS OF THE AUSTRALIAN CAPTIAL TERRITORY AND THE NORTHERN TERRITORY. IT WILL ENABLE THE JURISDICTION OF THESE COURTS TO BE EXERCISED ON A MORE RATIONAL AND COMPREHENSIVE BASIS.

IT IS ALMOST SEVEN YEARS SINCE THE FIRST BILL TO ESTABLISH THE SUPERIOR COURT WAS INTRODUCED INTO THIS HOUSE. CAN ANYONE DOUBT THAT IT IS TIME THAT WE MOVED ON THIS MATTER? IS IT NOT TIME THE OPPOSITION STOPPED PREVARICATING? SHOULD WE NOT NOW PUT THE INTERESTS OF ALL AUSTRALIANS AHEAD OF STATE RIGHTS AND PARTY CONSIDERATIONS?

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