

COMMONWEALTH OF AUSTRALIA.

No. 32.

JOURNALS OF THE SENATE.

WEDNESDAY, 14TH JUNE, 1950.

1. MEETING OF SENATE.—The Senate met at three p.m., pursuant to adjournment.—The President (Senator the Honorable Gordon Brown) took the Chair.
2. PRAYERS.
3. QUESTIONS.—Questions on notice were answered.
4. SENATOR WARD'S BEREAVEMENT.—Senators concurring, the Minister for Trade and Customs (Senator O'Sullivan) tendered to Senator Ward the sympathy of the Senate on the death of his sister.
5. POSTPONEMENT.—Ordered—That Orders of the Day Nos. 2 and 3, Government Business, be postponed until after the consideration of Order of the Day No. 4.
6. COMMUNIST PARTY DISSOLUTION BILL 1950.—The Senate, according to Order, resolved itself into Committee for the further consideration of the Bill.

In the Committee.

Consideration resumed of clause 5, and the amendment moved thereto by the Attorney-General (Senator Spicer), viz.—page 5, lines 39 to 48, leave out sub-clauses (4.), (5.) and (6.), insert the following sub-clauses :—

“(4.) At the hearing of the application, the applicant shall begin; if evidence is given in person by such officer or officers of the applicant as the court is satisfied is or are best able to give full and admissible evidence as to matters relevant to the application, the burden shall be upon the Commonwealth to prove that the applicant is a body to which this section applies, but, if evidence is not so given, the burden shall be upon the applicant to prove that the applicant is not a body to which this section applies.

“(5.) Upon the hearing of the application, the declaration made by the Governor-General under sub-section (2.) of this section shall, in so far as it declares that the applicant is a body of persons to which this section applies, be *prima facie* evidence that the applicant is such a body.”.

Question—That the words proposed to be left out be left out—put and passed.

Question—That the words proposed to be inserted be inserted—put.

The Committee divided—

Ayes, 21.

Senator—	Senator—
Cooper.	Robertson.
Gorton.	Scott.
Guy.	Simmonds.
Hannaford.	Spicer.
Kendall.	Spooner.
McCallum.	Wedgwood.
McLeay.	Wood.
Maher.	Wordsworth.
Mattner.	<i>Teller:</i>
O'Sullivan.	Senator Rankin,
Piesse.	A. J. M.
Rankin, G. J.	

Noes, 31.

Senator—	Senator—
Amour.	Katz.
Armstrong.	Large.
Arnold.	McKenna.
Ashley.	Morrow.
Aylett.	Murray.
Beerworth.	Nash.
Brown.	Nicholls.
Cameron.	O'Byrne.
Cooke.	O'Flaherty.
Courtice.	Ryan.
Critchley.	Sandford.
Devlin.	Sheehan.
Finlay.	Willesee.
Fraser.	
Grant.	<i>Teller:</i>
Harris.	Senator Clothier.
Hendrickson.	

And so it was negatived.

Senator McKenna moved—That after sub-clause (3.) the following sub-clauses be inserted :—

“(4.) If, upon the hearing, the Commonwealth satisfies the court—

(a) that the applicant is a body to which this section applies ; and

(b) that the continued existence of the body would be prejudicial to the security and defence of the Commonwealth or to the execution or maintenance of the Constitution or of the laws of the Commonwealth,

the court shall dismiss the application, and the declaration shall, subject to this section, remain in force.

“(5.) If the Commonwealth does not so satisfy the court, the court shall set aside the declaration.

“(6.) The applicant or the Commonwealth, as the case may be, may, within twenty-one days after the decision of a court under sub-section (4.) or (5.) of this section, appeal against the decision—

(a) where the application was made to the Supreme Court of a State—to the Full Court of that Supreme Court ; or

(b) where the application was made to the High Court or to the Supreme Court of a Territory of the Commonwealth—to the Full Court of the High Court,

and the decision of the court on the appeal shall be final and conclusive.”.

Debate ensued.

Question—That the words proposed to be inserted be inserted—put.

The Committee divided—

Ayes, 30.

Noes, 20.

Senator—

Amour.

Armstrong.

Arnold.

Ashley.

Aylett.

Beerworth.

Brown.

Cameron.

Cooke.

Courtice.

Critchley.

Finlay.

Fraser.

Grant.

Harris.

Hendrickson.

Senator—

Katz.

Large.

McKenna.

Morrow.

Murray.

Nash.

Nicholls.

O'Byrne.

O'Flaherty.

Ryan.

Sandford.

Sheehan.

Willesee.

Teller:

Senator Clothier.

Senator—

Cooper.

Gorton.

Guy.

Hannaford.

Kendall.

McCallum.

Maher.

Mattner.

O'Sullivan.

Piesse.

Rankin, G. J.

Robertson.

Senator—

Scott.

Simmonds.

Spicer.

Spooner.

Wedgwood.

Wood.

Wordsworth.

Teller:

Senator Rankin,
A. J. M.

Amendment (Senator McKenna's) agreed to accordingly.

Clause 5, as amended, agreed to.

Clause 6 read—

Senator McKenna moved an amendment, viz.—lines 5 to 10, leave out sub-clause (2.), insert the following sub-clause :—

“(2.) Where the body applies to a court to set aside the declaration, the body shall not be dissolved where the final result of the proceedings (including any appeal) is the setting aside of the declaration, or before the time specified in this sub-section, and the time of dissolution of a body which has made such an application but which does not succeed in having the declaration finally set aside shall be—

(a) where the application is dismissed but the body does not, within a period of twenty-one days after the dismissal, appeal against the dismissal in accordance with the last preceding section—the expiration of that period ; and

(b) where an appeal under sub-section (6.) of the last preceding section by either party is decided against the body—the day on which the appeal is decided.”.

Amendment agreed to.

Clause 6, as amended, agreed to.

Clause 7 read—

Senator Spicer moved an amendment, viz.—after sub-clause (1.) insert the following sub-clause :—

“(1A.) A person shall not, after the dissolution of an organization or a body of persons by this Act, knowingly—

(a) do any act or thing which is calculated or intended to maintain that organization or body of persons in existence ;

(b) continue, or assume or pretend to continue, any of the activities of that organization or body ; or

(c) do any other act which assumes or pretends that that organization or body has not been dissolved.

Penalty : Imprisonment for five years.”.

Debate ensued.

Amendment agreed to.

Senator McKenna moved a further amendment, viz.—lines 28 and 29, leave out “ by the unlawful association to the appropriate court ”, insert “ or appeal by the unlawful association ”,

Amendment agreed to.

Clause 7, as amended, agreed to.

Clause 8 read—

Senator McKenna moved an amendment, viz.—lines 36 to 41, leave out sub-clause (3.), insert the following sub-clause :—

“(3.) If—

(a) the declaration is set aside by a court constituted by a single Justice or Judge and the time within which an appeal may be instituted has expired without an appeal being instituted, or an appeal has been dismissed ; or

(b) the declaration is set aside, on appeal, by the Full Court of the High Court or of a Supreme Court,

all sales or dispositions of property, payments made and acts done by the receiver (or by a person acting under his authority) shall be valid but the property of the body shall revert to the body for its estate or interest therein on such terms and subject to such conditions, if any, as the court by which the setting aside of the declaration is effected or confirmed orders.”

Amendment agreed to.

Clause 8, as amended, agreed to.

Clause 9 read—

Senator Spicer moved an amendment, viz.—lines 2 to 5, leave out paragraph (a), insert the following paragraph :—

“(a) who was, at any time after the specified date and before the date upon which the Australian Communist Party is dissolved by this Act, a member or officer of the Australian Communist Party ; or”.

Debate ensued.

Closure.—Ordered, on the motion of Senator Spicer—That the Question be now put.

Amendment put accordingly, and agreed to.

On the motion of Senator Spicer the following further amendments were made :—

After sub-clause (2.) insert the following sub-clause :—

“(2A.) The Executive Council shall not advise the Governor-General to make a declaration under the last preceding sub-section unless the material upon which the advice is founded has first been considered by a committee consisting of the Solicitor-General, the Secretary to the Department of Defence, the Director-General of Security, and two other persons appointed by the Governor-General.”.

Lines 15 and 16, leave out “ the last preceding sub-section ”, insert “ sub-section (2.) of this section ”.

Senator McKenna moved a further amendment, viz.—lines 18 and 19, leave out “ on the ground that he is not a person to whom this section applies ”.

Debate ensued.

Closure.—Ordered, on the motion of the Minister for Fuel, Shipping and Transport (Senator McLeay)—That the Question be now put.

Question—That the words proposed to be left out be left out—put.

The Committee divided—

Ayes, 30.

Noes, 21.

Senator—	Senator—
Amour.	Katz.
Armstrong.	Large.
Arnold.	McKenna.
Ashley.	Morrow.
Aylett.	Murray.
Brown.	Nash.
Cameron.	Nicholls.
Cooke.	O'Byrne.
Courtice.	O'Flaherty.
Critchley.	Ryan.
Devlin.	Sandford.
Finlay.	Sheehan.
Fraser.	Willesee.
Grant.	
Harris.	<i>Teller:</i>
Hendrickson.	Senator Clothier.

Senator—	Senator—
Cooper.	Robertson.
Gorton.	Scott.
Guy.	Simmonds.
Hannaford.	Spicer.
Kendall.	Spooner.
McCallum.	Wedgwood.
McLeay.	Wood.
Maher.	Wordsworth.
Mattner.	<i>Teller:</i>
O'Sullivan.	Senator Rankin.
Piesse.	A. J. M.
Rankin, G. J.	

Amendment agreed to accordingly.

Senator Spicer moved a further amendment, viz.—lines 20 to 29, leave out sub-clauses (4.), (5.) and (6.), insert the following sub-clauses :—

“(4.) At the hearing of the application, the applicant shall begin ; if he gives evidence in person, the burden shall be upon the Commonwealth to prove that he is a person to whom this section applies, but, if he does not give evidence in person, the burden shall be upon him to prove that he is not a person to whom this section applies.

“(5.) Upon the hearing of the application, the declaration made by the Governor-General under sub-section (2.) of this section shall, in so far as it declares that the applicant is a person to whom this section applies, be *prima facie* evidence that the applicant is such a person.”.

Debate ensued.

Question—That the words proposed to be left out be left out—put and passed.

Question—That the words proposed to be inserted be inserted—put.

The Committee divided—

Ayes, 21.

Senator—
Cooper.
Gorton.
Guy.
Hannaford.
Kendall.
McCallum.
McLeay.
Maher.
Mattner.
O'Sullivan.
Piesse.
Rankin, G. J.

Senator—
Robertson.
Scott.
Simmonds.
Spicer.
Spoonier.
Wedgwood.
Wood.
Wordsworth.

Teller:
Senator Rankin,
A. J. M.

Noes, 29.

Senator—
Amour.
Armstrong.
Arnold.
Ashley.
Brown.
Cameron.
Cooke.
Courtice.
Critchley.
Devlin.
Finlay.
Fraser.
Grant.
Harris.
Hendrickson.
Katz.

Senator—
Large.
McKenna.
Morrow.
Murray.
Nash.
Nicholls.
O'Byrne.
O'Flaherty.
Ryan.
Sandford.
Sheehan.
Willesee.

Teller:
Senator Clothier.

And so it was negatived.

Senator McKenna moved—That after sub-clause (3.) the following sub-clauses be inserted :—

“(4.) If, upon the hearing, the Commonwealth satisfies the court—

(a) that the applicant is a person to whom this section applies ; and

(b) that the applicant is engaged, or is likely to engage, in activities prejudicial to the security and defence of the Commonwealth or to the execution or maintenance of the Constitution or of the laws of the Commonwealth,

the court shall dismiss the application and the declaration shall, subject to this section, remain in force.

“(5.) If the Commonwealth does not so satisfy the court, the court shall set aside the declaration.

“(6.) The applicant or the Commonwealth, as the case may be, may, within twenty-one days after the decision of a court under sub-section (4.) or (5.) of this section, appeal against the decision—

(a) where the application was made to the Supreme Court of a State—to the Full Court of that Supreme Court ; or

(b) where the application was made to the High Court or to the Supreme Court of a Territory of the Commonwealth—to the Full Court of the High Court,

and the decision of the court on the appeal shall be final and conclusive.

“(6A.) Where a declaration under this section is set aside by a court (including a Full Court upon appeal from a single Justice or Judge) or the setting aside of such a declaration is confirmed by a court, the court, in its decision—

(a) shall order the Commonwealth to pay to the applicant the costs of the application and of any appeal ; and

(b) may order the Commonwealth to pay to the declared person such sum by way of compensation as the court thinks just in all the circumstances.

“(6B.) Where a declaration is in force under this section in respect of a person and the procedure provided by the preceding provisions of this section for the setting aside of the declaration is no longer available (whether or not that person made an application under those provisions), that person may, subject to this section, at any time apply to—

(a) the Full Court of the Supreme Court of the State or Territory of the Commonwealth in which the applicant resides ; or

(b) the Full Court of the High Court,

for leave to apply to have the declaration revoked.

“(6C.) Where, upon such an application, the court grants leave, the court shall direct whether the application for revocation of the declaration is to be heard—

(a) by the court constituted by a single Justice or Judge ; or

(b) by the Full Court.

“(6D.) The court so constituted, or the Full Court, as the case may be, may hear and determine the application for revocation of the declaration and revoke the declaration or refuse the application, as it thinks just, and its decision shall not be subject to appeal.

“(6E.) A declaration which is revoked under the last preceding sub-section shall cease to have effect upon the day upon which the order of the Court revoking the declaration is made.”.

Debate ensued.

Question—That the words proposed to be inserted be inserted—put.

The Committee divided—

Ayes, 29.		Noes, 21.	
Senator—	Senator—	Senator—	Senator—
Amour.	Large.	Cooper.	Robertson.
Armstrong.	McKenna.	Gorton.	Scott.
Arnold.	Morrow.	Guy.	Simmonds.
Ashley.	Murray.	Hannaford.	Spicer.
Brown.	Nash.	Kendall.	Spooner.
Cameron.	Nicholls.	McCallum.	Wedgwood.
Cooke.	O'Byrne.	McLeay.	Wood.
Courtice.	O'Flaherty.	Maher.	Wordsworth.
Critchley.	Ryan.	Mattner.	
Devlin.	Sandford.	O'Sullivan.	<i>Teller:</i>
Finlay.	Sheehan.	Piesse.	Senator Rankin,
Fraser.	Willesee.	Rankin, G. J.	A. J. M.
Grant.			
Harris.	<i>Teller:</i>		
Hendrickson.	Senator Clothier.		
Katz.			

Amendment (Senator McKenna's) agreed to accordingly.

Clause 9, as amended, agreed to.

Clause 10 agreed to.

Clause 11 read—

Senator McKenna moved an amendment, viz.—leave out sub-clauses (3.) and (4.), insert the following sub-clauses:—

“(3.) If an application is made to the appropriate court to set aside the declaration, the suspension effected by sub-section (1.) of this section shall continue until the application has been decided and shall further continue until the day upon which any appeal against the decision is decided or, if no such appeal is duly instituted, until the last day on which any such appeal could have been instituted.

“(4.) On the day immediately following the day until which the suspension continues under the last preceding sub-section—

(a) if the declaration has been set aside, the suspension shall cease; or

(b) if the declaration has not been set aside, the office held by the person concerned shall, by force of this Act, become vacant, or that person shall cease to be so employed, as the case may be.”

Amendment agreed to.

Clause 11, as amended, agreed to.

Clauses 12 to 17 agreed to.

Clause 18 read—

On the motion of Senator Spicer the following amendment was made:—at end of clause add the following words:—“or the rights of a person making title in good faith and for valuable consideration through or under a person who is not a purchaser, payee or encumbrancee in good faith and for valuable consideration.”

Clause 18, as amended, agreed to.

And it being 11 p.m.—The Chairman, under Sessional Order, put the Question—That he do leave the Chair and report to the Senate.

The Committee divided—

Ayes, 29.		Noes, 21.	
Senator—	Senator—	Senator—	Senator—
Amour.	Large.	Cooper.	Robertson.
Armstrong.	McKenna.	Gorton.	Scott.
Arnold.	Morrow.	Guy.	Simmonds.
Ashley.	Murray.	Hannaford.	Spicer.
Brown.	Nash.	Kendall.	Spooner.
Cameron.	Nicholls.	McCallum.	Wedgwood.
Cooke.	O'Byrne.	McLeay.	Wood.
Courtice.	O'Flaherty.	Maher.	Wordsworth.
Critchley.	Ryan.	Mattner.	
Devlin.	Sandford.	O'Sullivan.	<i>Teller:</i>
Finlay.	Sheehan.	Piesse.	Senator Rankin,
Fraser.	Willesee.	Rankin, G. J.	A. J. M.
Grant.			
Harris.	<i>Teller:</i>		
Hendrickson.	Senator Clothier.		
Katz.			

And so it was resolved in the affirmative.

The President resumed the Chair; and the Chairman of Committees (Senator Nicholls) reported accordingly.

7. ADJOURNMENT.—The President, under Sessional Order, then put the Question—That the Senate do now adjourn.
Question—resolved in the affirmative.
The Senate adjourned at five minutes past eleven p.m. till to-morrow at eleven a.m.
8. ATTENDANCE.—Present, all the Members except Senators Cole, Collings, Lamp, Reid, Tangney, Tate, Ward and Wright.

JOHN EDWARDS,
Clerk of the Senate.