

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

FOREIGN ANTITRUST JUDGMENTS (RESTRICTION
OF ENFORCEMENT) ACT 1979

EXPLANATORY MEMORANDUM

PURSUANT TO SECTION 3

(Circulated by authority of the Attorney-General,
Senator the Honourable P.D. Durack, Q.C.)

Foreign Antitrust Judgments (Restriction
of Enforcement) Act 1979

Statement by the Attorney-General on the
making of an order pursuant to section 3

When the Bill for the Foreign Antitrust Judgments (Restriction of Enforcement) Act 1979 was before the Parliament it was indicated that the Attorney-General intended to make an order in respect of an antitrust judgment obtained by the Westinghouse Electric Corporation.

2. An order in respect of that judgment, and another judgment related to it, has now been made and Gazetted.

3. Both judgments were entered by the United States District Court for the Northern District of Illinois, Eastern Division. One was entered on 3 January 1979; the other was entered on 24 January 1979.

4. The proceedings in which the judgments were entered were brought by the Westinghouse Electric Corporation against 29 uranium producers including the following Australian Companies:

- . Conzinc Rio Tinto of Australia, Ltd.,
- . Mary Kathleen Uranium, Ltd.,
- . Pancontinental Mining, Ltd., and
- . Queensland Mines, Ltd.

5. The proceedings relate to arrangements for the marketing of uranium alleged to have been made in 1972 in violation of the antitrust laws of the United States of America. The claim in the proceedings is for treble damages approximating U.S.\$7 billion.

6. The judgment of 3 January 1979 is a final judgment on issues of liability. The judgment was entered against 9 non-United States defendants (including the Australian companies mentioned in paragraph 4 above) which have declined to enter appearances. They so declined because they considered there were jurisdictional objections to the proceedings against them and that they might be taken to have waived those objections if they were to enter appearances. By the judgment the Court ordered and adjudged those 9 defendants to be jointly and severally liable to the plaintiff in an amount which as yet remains to be determined by the Court.

7. The judgment of 24 January 1979 is an interim injunction restraining those 9 defendants until further order of the Court from dealing with their assets in the United States except as provided in the injunction. The purpose of the injunction is to have those assets kept available to satisfy the judgment of 3 January 1979 when the amount of that judgment has been determined.

8. The order in respect of both judgments has been made pursuant to section 3 of the Foreign Antitrust Judgments (Restriction of Enforcement) Act 1979. Under

sub-section (2) of that section before making an order the Attorney-General is required to be satisfied of the existence of one or more prescribed grounds. The prescribed ground on which the order is based is the Attorney-General's satisfaction that it is desirable for the purpose of protecting the national interest in relation to the trading operations of trading or financial corporations formed within the limits of the Commonwealth that the judgment should not be recognised or enforceable in whole or in part in Australia.

9. If the abovementioned judgments were permitted to be enforced in Australia against the corporations referred to in paragraph 4 above, the consequence could be of such an order that the very ability of those corporations to maintain their Australian operations would be endangered. Moreover, the position which the corporations collectively occupy in the Australian economy, particularly in relation to the marketing of Australian resources, is such that it is in the national interest that their ability to continue those operations be protected from such a liability under a law of a foreign State. This is particularly so where, as here, that law is being applied to conduct of Australian corporations outside that foreign State contrary to the expressed views of the Australian Government as to what is appropriate in that regard.