



Speech by

**PETER WELLINGTON**

**MEMBER FOR NICKLIN**

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Hansard 25 August 1998

**CITIZENS' INITIATED REFERENDUM (CONSTITUTION AMENDMENT) BILL**

**Mr WELLINGTON** (Nicklin—IND) (10.11 a.m.): I move—

"That the Bill be now read a second time."

I rise today to introduce one of the most important pieces of legislation ever to be presented to the Queensland Parliament, my Citizens' Initiated Referendum (Constitution Amendment) Bill 1998. This Bill aims to amend the Constitution Act of 1867 which is a prerequisite to my citizens' initiated referenda machinery Bill, and I most humbly seek the support of the honourable members of this House for this Bill.

This Bill to amend the Constitution Act of 1867 is necessary so that any citizens' initiated referendum Bill can withstand a High Court challenge, and it is essential because, under the Constitution Act of 1867, all proposed legislation must go through Parliament irrespective of the outcome of a referendum. That means that, without the amendment to the Constitution Act of 1867, if Queensland voters support a citizens' initiated referendum, it would still have to run the gauntlet of the Parliament which could veto it.

Mr Speaker, the CIR Bill that I present to you today is very simple. What it proposes is that any Queensland voter may register a proposed law with the Electoral Commission. Once this is done, the proponent has 12 months in which to collect signatures of support from qualified electors in Queensland. The proponent must collect a minimum of two and a half per cent of Queensland voter support from a majority of State seats. That is at least 45 State electorates and approximates to 53,000 voters. This makes it impossible for a major population centre such as Brisbane to dominate or control any CIR Bill. It will also eliminate any objection that a powerful lobby group could exert.

If the required numbers of signatures are obtained on the petition, the Governor will issue a writ for a referendum on the proposed law. The referendum must not be held within three months of advice to the Governor that the petition contains the necessary number of signatures to satisfy the minimum requirement for the holding of a CIR. Once the three months have passed, the referendum must be held in conjunction with the next scheduled election in order to save taxpayers money. So, although a person may be able to collect support for a proposed law from at least, say, 53,000 voters in Queensland, the proposed law still has to face the might of all Queenslanders at a referendum. And, I reiterate that for the Bill to succeed it must be supported by a majority of Queenslanders from a majority of State seats.

My proposal is that, if a citizens' initiated referenda Bill is supported in a referendum by a majority of Queenslanders in a majority of electorates, that Bill will go direct to the Queensland Governor for assent and will then become law. This will bypass the Parliament and politicians. But in order to achieve this, we must first amend the Constitution Act. I propose to do this by way of a referendum to be held in conjunction with the next scheduled election in Queensland. The very first question that will be asked of Queenslanders is: do you support an amendment to the Constitution to pave the way for citizens' initiated referenda? If the answer is no, that is the end of it, but if they say yes, Queenslanders can initiate the process of direct democracy.

Mr Speaker, as you would understand, to initiate a referenda would take considerable dedication, commitment and money. It is not just a matter of dashing off a petition and getting

signatures. What I am proposing is that voters in Queensland will be able to create laws for peace, welfare and good government of the State of Queensland which the Parliament of the day is reluctant to do.

However, there are a number of specific matters that are expressly excluded from this process. Under my proposal—

citizens' initiated referenda cannot be used to change the law in order to benefit a particular area, a person or a group of people to the exclusion of the rest of Queensland or other Queenslanders. Let us say, for example, that I wanted to have my electorate of Nicklin excluded from a proposed State law. That would not be on.

Citizens' initiated referenda cannot be used to impose a fine, a penalty or a liability on a person retrospectively. For example, it will be impossible to use CIR to increase penalties already imposed by the courts.

CIR cannot be used to appoint or remove a particular person from public office.

CIR cannot be used to interfere or control the Government of the day's budgetary process.

CIR cannot be used to change the composition of the judiciary of the Supreme and District Courts of Queensland.

CIR cannot be used to make a law in relation to matters beyond the Parliament's constitutional power to enact; and

CIR also cannot be used to remove the Queen or the Governor as long as Queensland remains a constitutional monarchy.

If this Bill is adopted by Parliament and Queenslanders say yes to it when it goes to a referendum, then the Governor consents to it and Parliament has no power to repeal or amend the law for 12 months from the commencement of the Bill. Alternatively, if the CIR Bill is unsuccessful, it cannot be presented again to Queenslanders for a minimum of five years. I also propose that Parliament make laws which will set out the minimum requirements for the preparation of a referendum Bill and the manner in which the referendum is to be conducted. Some of those matters to be considered are as follows—

The initial petition must contain not less than 0.05% of the number of electors enrolled in the State before it can be registered with the Electoral Commission. I understand that is approximately 1,000 enrolled voters.

To ensure that the proposed law meets the minimum legal requirements, under my proposal, Parliament would provide assistance with its drafting.

If the proponents should die or be unable to follow through with the CIR Bill, they must make provision for another person or persons to take over their role.

Before a referendum is held, a summary of the effects of the proposed law and arguments for and against it must be presented to the public.

Provision must also be made to be able to stop a citizens' initiated referendum Bill if the proponent is satisfied that the Parliament has passed a law sympathetic to that proposed by the proponent.

Monthly returns of the petitions must be submitted to the Electoral Commission who will conduct random sampling to ensure that the signatures are valid.

I am confident that, with the safeguards that are in place with this Bill, we will not see dozens or even hundreds of Bills initiated by any Tom, Dick or Harry with an axe to grind. There would also be significant costs associated with the drafting of any CIR Bill and, under my proposal, they would have to be met by the person or persons initiating it. However, while there are safeguards in place, they are not such that they would deter those who have a sincere desire to put what they consider are important matters to the people of Queensland. Taking into consideration all of these factors, I believe that the chances of mischievous or frivolous CIR Bills will be negligible. In fact, in those countries where CIR operates, such as Switzerland, there are virtually no cases of mischievous application.

I believe that CIR will deliver to Queenslanders true democracy. So I ask: why would we, the representatives of the people, reject such legislation? Under our present system, we Queenslanders have the right to answer questions that are put to us in a referendum. However, we are denied the right to put forward questions to a referendum, and this CIR legislation gives us that right. The Citizens' Initiated Referendum Bill I present to the Parliament today will overcome major constitutional impediments. It is the result of hard work and effort by some of the finest constitutional lawyers in Queensland, and I pay particular tribute and publicly thank John Pyke, lecturer in constitutional law at Queensland University of Technology. I am proud and grateful to John and to the Queensland University of Technology for their contribution to this Bill. I also publicly thank former Senator Michael

Macklin for lending his expertise to this Bill. I also thank the many other willing helpers who have assisted with this important piece of legislation.

What I now ask my honourable colleagues is whether they have the courage and foresight to deliver this tool of democracy to the people of Queensland. To those of my colleagues who are vehemently opposed to my citizens initiated referendum, I say: support the people's rights to have their say and if you do not want them to say yes to a particular citizens initiated referendum Bill, get out in your electorates and canvass against it. To deny the people of Queensland the right to at least have a referendum on the matter is to treat them with total contempt. You are effectively saying to them, "You cannot or are not able to make decisions that will impact on your lives."

I caution my honourable colleagues not to treat Queensland voters as fools. As I said in my maiden speech, never before have the people of Queensland been so politically astute. They are watching and waiting to see how this Parliament treats this promised tool of democracy. To reject citizens initiated referendum without at least giving the voters a chance of deciding for themselves via a referendum will, I predict, attract a massive backlash. Surely it is not too much to ask of honourable members that at least they give the people of Queensland a fair go and let them decide whether to say yes or no to what is certainly the most important piece of legislation ever to be presented to them.

The idea of direct democracy is nothing new; it goes back to as far as ancient Athens and to the plebiscites of the Roman republic that gave commoners or plebs the means of voting on repealing or enacting laws. Here in Queensland, I believe the first move to introduce a Popular Initiative and Referendum Bill was in 1915 by the then Labor Premier T. J. Ryan. This Bill was blocked by the Opposition-controlled Upper House. It was introduced four times over the next two years and heavily amended so that it was unacceptable to the Government. By 1919 the Bill had qualified to be submitted to the people but when Edward Theodore took over as Labor Premier it was dropped.

After the First World War the Labor Party lost interest in citizens initiated referendum, although I understand it remained Labor Party policy until 1963. I believe in the 1970s the Australian Democrats in the Senate began introducing Bills to pave the way for the introduction of citizens initiated referendum. Over the years, there have been numerous attempts to introduce similar legislation to the Parliaments with the same negative results. There is strong argument for the introduction of citizens initiated referendum. It will promote Government responsiveness and accountability. If politicians ignore the voice of the people, the people will have an opportunity to make the law via citizens initiated referendum. Citizens initiated referendum enables voters to separate issues from personalities.

Citizens initiated referendum overcomes voter apathy and alienation by allowing for greater participation in Government. It instils a greater sense of responsibility in the electorate for public affairs. It will lead to more acceptance of constitutional change and a wider range of alterations being proposed. Because laws instituted by citizens initiated referendum are the people's laws, they are treated with greater respect and legitimacy. Citizens initiated referendum will produce open and educated debate on critical issues that might not be adequately discussed and it will allow controversial social issues which legislators may not wish to entertain to be resolved. Let us face it, as Senator Macklin said—

"It would be naive to suggest that the current parliamentary system with its rigid party structure is not subject to pressure from strong, special-interest groups. A small number of these groups can exert enormous and, by community standards, disproportionate influence."

Let us face it, the effect of moneyed groups on our political parties is potentially more insidious than any citizens initiated referendum. They have the potential to influence policy agendas without the electors even knowing what is going on.

Citizens initiated referendum is an integral part of life for many countries, including New Zealand, various Canadian provinces, Switzerland and the most famous of all, California. Everyone who has had something to do with citizens initiated referendum, particularly the knockers, will quote Proposition 13. Well, let us look at this Proposition 13.

What happened was that in California citizens initiated referendum was used to halve the property taxes. But, we are not told what actually happened, and it was this: although the Californian voters supported halving their property taxes, just one year later when another citizens initiated referendum Bill was presented to halve their income taxes, the population voted against it. This proves that while the people said yes to the first citizens initiated referendum because the taxes were quite clearly too high, when they were asked to slash taxes a second time they were responsible enough to say no because they realised that the taxes were reasonable. They also knew that it would be irresponsible to say yes because the taxes were needed to run the State. Put very simply, the power was put into the hands of the people and they were intelligent enough and responsible enough to make the right decision.

This very clearly indicates to me that we must let the people decide because, by denying them this right, we are treating them with contempt. We are telling them that they do not have the ability to

make decisions that will affect their lives. I have presented the mechanics whereby my citizens initiated referendum legislation can be enacted into law. I have explained the nuts and bolts of the actual Bill and now I will present my argument to honourable members for them to give it their wholehearted support.

The great benefit of honourable members supporting this piece of legislation so that it can go to the people of Queensland for a decision is that they are delivering true democracy to the people. In seeking the support of my honourable colleagues for this Bill, I would point out to the members of the Government that I believe citizens initiated referendum was Labor Party policy until 1963. I congratulate those in the Labor Party for their foresight in the past and ask them to at least take the time to read my Bill. Although the majority of the Labor Government may not look favourably on my citizens initiated referendum proposal, there is a reason why they might see some benefit in a referendum to alter the entrenched provisions of the Constitution Act.

The Bjelke-Petersen amendments, which inserted section 53 so as to entrench certain sections in 1977, have produced at least one anachronism and three sources of inconvenience or possible invalidity of laws. The most serious problem is the section relating to the Public Service Act. This has attracted strong criticism from leading constitutional lawyers, including the abovementioned John Pyke from the Queensland University of Technology. John Pyke said—

"In 1996 the Borbidge Government was advised, recklessly in my opinion, that the entrenchment of section 14 did not have to be taken seriously, and included a section (s 146) in the Public Service Act 1996 that purported to repeal subsection s 14(1) and the reference to section 14 in section 53."

I am informed that the Courier-Mail has reported Professor Suri Ratnatpala of the University of Queensland as believing that the Act was therefore invalid and I am informed that John Pyke wrote to Premier Borbidge threatening to sue for a declaration of its invalidity. Apparently the Government pooh-poohed their claims. However, once the Act was passed, the Government impliedly admitted some doubt by proclaiming the commencement of all the other sections but not section 146! They may have thought they had avoided the problem by leaving the section uncommenced—but now the second inconvenience arises.

John Pyke further informs me that section 53 provides that a Bill that affects any of the entrenched sections or the office of Governor "shall not be presented for assent...unless it has first been approved by the electors" and if it is assented to in contravention of the section "it shall be of no effect as an Act." In light of the above, I suggest to the Government that it is worth spending some public money on a referendum to alter some of the entrenched sections.

I suggest that we could have a package deal; I would happily support the removal of the anachronisms and absurdities from the Constitution Act if they would agree to at least holding a referendum on citizens initiated referendum. To the honourable members of the National/Liberal coalition, citizens initiated referendum legislation has been bandied around the traps for decades. I am informed that Mr Borbidge intends introducing his own citizens initiated referendum Bill and I most humbly suggest to him that he considers my Bill in his determinations.

I also suggest to the Honourable Leader of the Opposition that he already knows the support that is out there in his branches for this legislation. As for the Liberal Party: citizens initiated referendum is at the very heart of the democratic process and most certainly deserves their strong support.

The honourable members of One Nation have already had the foresight to prepare their own citizens initiated referendum Bill and I commend them for it. As with the Leader of the Opposition, I most humbly suggest that they give my Bill their full support because I believe that it covers all the anomalies that have been touted by those opposed to citizens initiated referendum in the past.

Today I am asking whether politicians are ready to allow the people of Queensland to make their own decisions. It really is that simple. Are you ready to let Queenslanders decide? In closing, I appeal to my colleagues to support me to amend the Constitution so that Queenslanders can ask questions of their fellow Queenslanders without first having to have them approved by politicians. Thank you for your patience.

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