Speech by

BILL FELDMAN

MEMBER FOR CABOOLTURE

Hansard 21 July 1999

AUSTRALIA ACTS (REQUEST) BILL

Mr FELDMAN (Caboolture—ONP) (Leader of the One Nation Party) (4.26 p.m.): If the world were as rosy as the member for Chermside makes out and if the relationship between Australia and England were as was stated, we would probably all be sleeping better tonight. However, it is not. A recent court case involving Heather Hill illustrated quite dramatically that the relationship between Australia and England is not as stated by the member for Chermside. England has been declared a foreign power by the High Court. No longer can people rest easy in their beds at night, thinking that good old mum is looking after us.

The court case in relation to Heather Hill certainly changed what people considered was the reality. In fact, people now know that we do have an Australian head of state: the Governor-General. The Queen of England does not rule over us, does not empower us and does not change our thinking. Britain is, as I said, a foreign power.

Counsel representing the Federal Attorney-General, Daryl Williams, made the comment during the court case involving Heather Hill that Beryl Smith from Canberra could be elected Queen of Australia tomorrow. Although the comment caused some chuckles among the High Court judges, that proposition must indeed be the case.

I thoroughly agree with the member for Gladstone when she says that the Federal Government has not done Queensland any favours over the last four years. However, I feel that she was far too generous, because I do not think it has done us any favours for over 20 years.

What the Commonwealth Government has actually said in this legislation is that if it receives a request under section 15(1) of the Australia Act it will not exercise its powers under sections 15(3) and 7(1). That means that if it could steamroll the States into accepting what was being trowelled out, then it would appear as though the States had requested the change. If we did not, the sledgehammer would be held over us once again.

We are told that the Australia Acts (Request) Bill must be debated before the referendum is held. As the member for Gladstone said, South Australia has not yet done this and we are wondering whether proposed legislation will be introduced into that Parliament. If it is not, I wonder what exactly will happen. Will the Commonwealth force those powers upon us or not?

The Australian Constitution still remains prone to unwanted and undesirable change. The Australia Acts now allow for the Statute of Westminster—which includes the power to repeal or alter the Constitution—to be changed by the Federal Government at the request or the concurrence of all State Parliaments. The 1988 Constitutional Commission reaffirmed that—

> "Sections 8 and 9 of the Statute of Westminster 1931 (Imperial) ensured that the power given to the Parliament of the Commonwealth to repeal or amend Imperial laws operating in Australia did not extend to overriding the Constitution."

Section 9 of the Statute of Westminster was repealed with the introduction of the Australia Acts in 1986, which included complementary provisions relating to the States. While eminent constitutional lawyer Professor Cheryl Saunders indicated in her statement that she doubted that section 15 of the Australia Acts would be accepted as a backdoor method of future constitutional change, she was

unable to give an unequivocal and absolute guarantee that this could not happen. In her words, "There is no neat answer".

This simply is not good enough. The provision for changing the Constitution is far too important to be left in limbo and subject to justiciable action. Any law that impacts on changing the Australian Constitution must be clear, concise and definitely not ambiguous. The people should be informed and able to understand what is happening and how it will affect them. The public has little knowledge of the republican issue. Many believe it to be just as the American system works, and they imagine a president such as the American President. They get excited about the hype and the patriotism that is portrayed in the hundreds of movies made about American Presidents, and they believe that the Australian president will be the same. They do not understand the real issues. They do not know what is involved, and they really do not know what to expect or what they are going to get.

This is not entirely their fault. It is the Government's responsibility to educate them. It is the responsibility of all members of Parliament, Federal and State, to educate their constituents with the facts—not with bias, not with misinformation, but solely with the facts. Only with these facts in hand, and in a manner which can be understood by the average Australian, can the decision in November even be valid.

Not only should this be done for the November referendum, but every time an alteration is made to our Constitution, or something which affects it, such as the Australia Acts, the public should be informed and should have a say. As Governments and politicians in general seem uninterested in such things, the only way to achieve this is to entrench the Australia Act 1986 and the Statute of Westminster 1931 as Schedules 2 and 3 of the Constitution at the 6 November referendum. Any future amendments to these Acts should only be made subject to the provisions of section 128 of the Constitution. Failure to do this could well mean the illegal demise of the Australian Constitution and the ending to all the freedoms that it provides.

The Premier says that he will become terribly depressed if the referendum debate actually goes into the details of the republican model that he supports. Well, the Premier had better stock up on many antidepressants. Australians will not surrender what is one of the world's most successful constitutional systems—certainly not for a flawed and shoddy alternative—and they will not ignore the details, and certainly not if they have all of the facts in hand. The suggestion that the details could be fixed up in future referendums is an extraordinary admission of failure—an admission that what is being put to the people is vastly inferior to the product which we already have. It is just as well that our founders did not adopt the Premier's approach. They drafted a Constitution which, unlike most Constitutions in the world, has actually worked, and worked well, in the good times and the bad, in war and in peace, in depression and in prosperity.

The manner in which the Constitutional Convention held in Gladstone in June dealt with the implications for the States is unsatisfactory. The convention recognised that it would be desirable that the advent of a republican Government should occur simultaneously in the Commonwealth and all States, but left open the possibility that some States might retain monarchical status. It would be absurd, and destructive of the symbolic significance which republicans attach to the change, if some States remained monarchies when the Commonwealth became a republic. Further, such a situation would give rise to constitutional questions as yet unresolved, including the question of whether the change could be made without the assent of all States. It is a matter of controversy whether a referendum carried only in a majority of States would suffice for this purpose. On any view, the Commonwealth of Australia Constitution Act 1900 would require amendment, and one view is that this could only be done by way of section 128 of the Constitution.

Even more objectionable is the suggested procedure for the dismissal of a Governor. In this regard, the Australian Republican Movement has displayed remarkable pliability. It originally proposed a procedure—requiring a two-thirds majority of Parliament—which would have made a Governor virtually irremovable, but has eventually suggested one which would place the Governor entirely at the mercy of the Premier, who can effect an immediate dismissal. Although the Premier's action in removing a Governor must be considered by the Legislative Assembly, failure to ratify it does not restore the Governor to office but merely renders him or her eligible for reappointment. It appears that a Governor, once dismissed, could be reappointed only if nominated again by the Premier, who might well be the person who had effected the dismissal. Although the vote of the Legislative Assembly refusing to ratify the dismissal would constitute a vote of no confidence in the Premier, it would be a matter of conjecture whether the Premier would resign. Since the question regarding the appointment of an acting head of state was left unanswered by the convention, it remains doubtful whether the person acting as Governor would have effective power to enforce compliance with the constitutional conventions and secure the dismissal of the Premier in those circumstances.

Another question left unanswered by the convention was whether a Governor who had been removed could be reinstated only after the nomination procedure already mentioned, involving public consultation and the compilation of a short list, had been carried out. The suggested procedure fails

completely to strike the necessary balance between the offices of Governor and Premier and greatly strengthens the position of the latter at the expense of the former.

One rather gets the impression that some delegates to the convention were less concerned to achieve excellence in the proposed constitutional model than to have a republic at any price. The model proposed by the convention is so obviously defective that it must surely have little chance of success at the referendum. If, by some possibility, it were to be adopted, the result would be a disaster for the State. Unfortunately, the public is not aware of these facts, and the pro-republicans do not want them to be. They know that, if the public were made aware of the extended powers that the republic will be granting to current politicians, they would be outraged. The safeguards and checks which are currently in place will no longer exist. The office of Governor may still have the same role but will be basically ineffective due to the power of the Premier.

The Constitution (Request) Bill and the Australia Acts (Request) Bill mark the Queensland Government's acceptance of the republican model for Queensland and Australia. So when the Premier goes on about not wanting the actual republic models and technicalities of the republic to be debated in relation to these Bills, he is in fact trying to thwart the issue. Debate on these Bills should most certainly include debate on the republic and the models decided upon to date. If the Premier was really interested in the interests of Queensland, he would encourage this and he would encourage the education of the people of Queensland as to what exactly the pros and cons of the republic are and will be to this State.

It is with great sadness that I see the progression of these Bills throughout Australian Parliaments, especially as someone who loves this country and has such pride in our history and our achievements and, for no flimsy reason, distrust of the powers that be. The entire republican issue saddens me. I accept, however, that if the people decide they want a republic then a republic we must have—as long as they decide based on fact, not on propaganda and hype. My deep patriotism for this nation and this State forces me to vote against these Bills. One Nation does not and will not support a republic. We fight for less power for politicians, not more. The republican models, as they are currently proposed, are not in the best interests of the people but, instead, are in the best interests of politicians. We refute them entirely.