Speech by

Miss FIONA SIMPSON

MEMBER FOR MAROOCHYDORE

Hansard 22 July 1999

AUSTRALIA ACTS (REQUEST) BILL

Miss SIMPSON (Maroochydore—NPA) (11.43 a.m.): I passionately believe in an independent Australia, not tied to the shirt tails of foreign judges, foreign parliaments or councils, and an Australia where we are proud of our heritage, but even prouder to be one nation speaking one language and governing ourselves. I also believe that we have achieved this already through a system which happens to involve a constitutional monarchy—a system with 700 years of history.

I do not support a republic. Certainly, if we were to stand back from all the emotive debate and consider the model that is currently being proposed, we would see that it is one of the worst models we could have. It delivers no benefits, only uncertainty, to the people of this country, who have enjoyed a very peaceful system of government. We have only to look overseas to see that, where there have been quite dramatic changes in systems of government, there has also been quite a degree of uncertainty and in some cases even violence.

We cannot take for granted the fact that a stable system of government delivers great benefits to the people of Australia. We are most fortunate that we have had that stability. The system that we have had allowed us to reach for and attain real self-determination 100 years ago and, more importantly, it has checks and balances to curb extreme abuses of power by politicians.

The Australia Act 1986 removed the final opportunity for appeal to the Privy Council in London. That Bill was enacted with plenty of rhetoric about Australia being independent, with the last ties cut to a foreign power. One prominent Labor politician said that it was "entirely anomalous and archaic for Australian citizens to litigate their differences in another country before judges appointed by the Government of that other country." In fact, Gough Whitlam said that. Yet, in the short time since the passage of the Australia Bill in 1986, a former Labor Government opened up appeals to three United Nations human rights committees—foreign councils. We should all be screaming bloody murder about this.

This is where the great hypocrisy in this whole debate lies. After all, who are these foreigners who are making laws for Australians? You and I did not select or elect them, so who makes them accountable? Members would be interested to know that, in the past, the government nominee members for the UN Committee for the Elimination of Racial Discrimination came from countries, such as Romania, whose human rights records were far from distinguished. Yet these countries were supposedly going to uphold this new world order of great international democracy.

In the past, there has been ample criticism of the lack of independence from political interference of the members of these bodies. However, that issue does not get much airplay in Australia. If an Australian politician tried to direct or influence an Australian judge, there is sufficient awareness in the community for people to know that that is wrong. It is equally wrong for this to happen in UN circles. However, the further the decisions are removed from the people, the less accountable the decision makers will be and the less scrutiny they will come under. If anything, we need to be heading not towards foreign rule but towards giving more power to local voters.

I suggest that all United Nations conventions, both past and future, really should be subject to the full ratification of an Australian Parliament. I know that that fact has been raised already in the debate.

Mr Springborg: Hear! Hear!

Miss SIMPSON: I take that interjection from my honourable colleague. I know that the member for Indooroopilly raised this issue as well. If we are fair dinkum about having an Australian system of government and true independence, we should have these laws ratified within the sovereignty of our Parliaments, not signed away overseas and barely scrutinised back home. That is just not on. It is up to the Australian people to say whether they want these things.

An honourable member interjected.

Miss SIMPSON: That is right. This is where the whole hypocrisy in the system lies. On the one hand, we have people who have a hang-up about the fact that we have a British heritage. In order to change the system, they are hell-bent, in many ways, on most racially and intolerantly bagging our British heritage while turning a blind eye to the increasing influence of other foreign jurisdictions in our Australian system of government. I just cannot understand the blind hypocrisy that has been pushed in this whole debate in terms of cutting off and not recognising our heritage while increasingly having foreign rules of law cited within our Parliaments. Furthermore, these UN committees' standards of judicial process are not a patch on those we employ in our courts here. Their proceedings are not public hearings and there is no cross-examination of witnesses.

Although I am of Scottish, Irish, English and Italian descent, I had never even heard of the British term "tugging the forelock" until the former Prime Minister, Paul Keating, dredged it up from what must have been a very twisted childhood. However, it is interesting to note that, as a younger Australian, I had heard of the Chinese term "kowtowing". It seemed that when Paul Keating started off this push for a republic, he did not want us to tug the forelock to Britain; the culturally correct genuflection for his new Asian republic was "kowtowing".

The real threat to our sovereignty is not in the past; it is in the future. I believe in the right of Australians to self-determination. I believe in the right of Australians to choose, and I support a referendum so that people can choose to alter their system of government. However, it is right that we have a rigorous debate. In the debate yesterday it was noted that in this country we have the ability to stand and argue different viewpoints and to come into our parliaments and not end up in the sort of fisticuffs that we see in some overseas parliaments that should know better. Parliamentarians actually put their fists up and knock each other over in the parliament. The fact that we have a stable and more civilised system of government is because of the Westminster constitutional monarchy that we have inherited.

Stability should never be rejected out of hand by those who have other motives for changing our system of government . There is no minimalist change in a move to a republic, and it is most dishonest for anybody to suggest that there is. In fact, it is likely to be the lawyers who will benefit when they say, "Don't you worry. This is simple. It is only a small constitutional change." Anybody who has ever heard a lawyer put forward a small constitutional change should immediately hear warning bells ringing.

Maybe as a nation we have been easygoing in our ways and unused to threats of revolutions and wars. In comparison with other countries, we have been ignorant of the true value of the checks and balances on power that are built into our current system of government. Those checks and balances were utilised when Gough Whitlam's administration undertook illegal acts in 1975 and he was forced to face the people again. What a beaut system. When somebody acts outside of the law, who makes the choice? The people! Despite all of the "maintain your rage" garbage from that old political dinosaur, the reality was that the people wanted to make a choice. Under our constitutional system, they had the ability to make a choice—and it was not for Gough Whitlam.

These rules are there to stop politicians such as Whitlam from grabbing excessive power and using it against the people. That is why the Queen is described as the protector of the people. In reality, she has nothing to do with daily policy decisions, but she represents a system where her reserve powers reside in an Australian Governor-General or Governor and not a political party or political leader. Megalomaniacs hate this system because it is a curb upon their ultimate excesses. No-one in their right mind would give more power to less and less accountable people unless they had been educated to know no better.

People may think that we have a battle on our hands now, but the battle will be in the hands of future generations who are not being taught to defend the system that has defended us. We need a republic no more than we needed a recession. The choice should be ours, but we must teach our children about the values of the system that we have inherited. As Winston Churchill said, the empires of the future are the empires of the mind.

I quote from an article by Sir Harry Gibbs on the Australian constitutional monarchy. Sir Harry Gibbs was the Chief Justice of Australia until he retired in 1987. He makes some very succinct and learned arguments on this particular point. He states—

"It is neither un-Australian nor unpatriotic to argue that Australia should remain a Constitutional Monarchy and not become a Republic.

When the Republican campaign began, much nonsense was talked about the possible advantages to Australia of becoming a Republic. It is, I think, now generally understood that we would not benefit in any practical way from becoming a Republic. Australia would not be any more independent, nor democratic, as a Republic. The change would not help to solve the real problems that face the nation, such as unemployment, crime, or the size of the national debt. The argument about whether Australia should become a Republic diverts attention from more pressing questions.

On the other hand, there are real dangers that we would be worse off if Australia became a Republic. That is because the Governor-General in the Commonwealth, and the Governor in each State, has a key role to play in the working of the Constitution, and provides safeguards which a President would be unlikely to provide. By the express words of the Commonwealth Constitution, the Governor-General is given powers that may, without exaggeration, be described as virtually those of a dictator, but by convention most of those powers are exercised on the advice of the Ministers who form the Government.

There are, however, certain powers (called reserve powers) which the Governor-General can exercise for himself or herself, against the advice of the Ministry, for the purpose of ensuring that the basic principles of the Constitution are not flouted by the Government. For example, a Governor-General has power to ensure that a Ministry does not cling to office when it has lost the confidence of the House of Representatives or has been denied supply. The Governors of the States have similar powers.

The fact that a Governor-General or Governor can exercise these reserve powers provides a necessary check on the possible abuse of governmental power. It is impossible to know in advance when it will be necessary to exercise these powers. They have been relied on as recently as 1987 in Queensland by the Governor, Sir Walter Campbell, and 1989 in Tasmania by the Governor, Sir Phillip Bennett. In both cases the Governor acted with complete propriety to resolve a political difficulty.

It is essential to our democracy that the Head of State (the Governor-General or Governor) should exercise the great powers which belong to that office in the way that is required by the conventions. That is, all the powers, except the reserve powers, should be exercised only on ministerial advice, and the reserve powers should be exercised with complete impartiality, free from any political bias. The conventions however, are not rules of law, and since they have developed only in relation to a Constitutional Monarchy, they would not be binding on a President unless the Constitution could be amended to bring that result about.

It is not easy to suggest how the Constitution could be amended to ensure that a President had powers which would be no greater than those of a Governor-General, but at the same time would be able to exercise the reserve powers. None of the suggestions that have so far been made as to the way in which the Constitution might be amended are satisfactory. There is a real risk that the result of changing to a Presidential system would be that the power of the Executive, which has in recent times increased at the expense of the Parliament, would be further increased.

There are other unanswered questions. How should a President be chosen? What should take the place of the office of Governor of a State? The point is that the change to a Republic would not merely be a change of name or a matter of form; it would be a major constitutional change with unpredictable consequences.

It is sometimes claimed that it is inevitable that Australia will become a Republic. However, to change the Constitution to a Republican one would require at least the support of the electors in a majority of States, and there is a serious argument that the support of the electors of all States would be necessary. It is far from inevitable that a referendum to bring about a Republic would get the necessary support.

The system of Constitutional Monarchy under which Australia has always been governed works perfectly well. No benefit would result from changing to a Republic, but we might indeed lose by the change. It never pays lightly to cast aside tradition or to abandon old loyalties, but quite apart from those considerations, surely we would be foolish to make this unnecessary change."

I thought it was necessary to quote from that article because the gentleman in question is a distinguished former judge and has a very thorough understanding of the Constitution and the uncertainty that will come with the so-called minimalist changes that people talk about. There is no such thing as a minimal change when one is changing the foundations of a house that has already been built. It is easier to change what is built on the top than it is to change the foundation.

I am concerned that the reasons why the State Government and the Federal Government are asking us to support this particular legislation are not expressly spelt out in the legislation. We have been told that the Crown Law advice is that this legislation in no way removes or overrides the need under section 53 of the Queensland Constitution for a State referendum. We have also been told that the reason for proceeding with this legislation before a referendum is passed or rejected nationally is to protect the rights of the States by involving the States in the process rather than having the Federal Government use the overriding provisions through a referendum.

It concerns me that nowhere in the second-reading speech or the Explanatory Notes, let alone in the legislation before us, the Australia Acts (Request) Bill 1999, is there a thorough explanation for that. I will certainly be listening with interest to the Premier's explanation. I understand that he has given a commitment to summarise the Crown Law advice in this regard. Section 7 of the Australia Act came into being after a hard-fought battle, particularly on Queensland's part, to entrench further the safeguards that give this State its independence and its standing as a constitutional monarchy in its own right. At the time, there was a lot of pressure to undermine the rights of the States.

I have spoken about concerns in respect of the model for the republic that has been put forward. I respect that there are those who wish to move to a republic. However, we should always have a considered debate. Therefore, we should question whether this is a model that delivers any great benefits. The model being put to the people is a bit like a constitutional camel. It has been said that a camel is a horse designed by a committee. The republican model is a camel constitution; it smells strange and it is likely to spit on us. One proposal suggests a nominating committee for the position of president. However, that is not entrenched, as the numbers on that committee can be altered. In many respects, it gives greater power to the Prime Minister and removes many of the conventions.

As referred to in Sir Harry Gibbs' speech, convention would no longer be applicable with respect to the powers of the Prime Minister and the president. We cannot underestimate the benefits of convention in terms of the operation of the system. The powers of the Governor-General would almost be dictatorial if not for the system of convention. The system of convention is necessary.

At a State level, in these very uncertain political times, when we have had Governments ruling without a majority on the floor of the House, the reserve powers of the Governor have been extremely important. It is important to have an independent arbitrator to determine whether in fact the people seeking to form Government have the confidence of the Parliament. What if there is a deadlock within the Parliament whereby important legislation fails to be passed and the Government of the day refuses to step aside and take that matter back to the people? Under our system, the Governor has reserve powers and can prorogue the Parliament so that a decision can be made by the people. That is a fantastic system. How can we underestimate the benefits of a system that has an independent safeguard whereby ultimately the choice is made by the people?

There is no minimalist approach under what has been proposed. As has also been outlined, all proposals for the republic that have been put forward give more power to politicians. As a politician, it may seem strange that I am arguing in this place for a more democratic process—a process that gives more power to the people. I believe people need to be informed fully as to what happens to their rights in the system when constitutional changes are made. They need to know that the proposal being put forward would remove their rights and do nothing about the fact that their sovereignty has been ceded increasingly to overseas jurisdictions that have nothing to do with the sovereignty of Australian Parliaments—and I am not talking about British jurisdictions. That is the great hypocrisy in relation to the so-called self-determination under this referendum. In respect of some of the real issues we have not even scratched the surface.

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