



Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

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AUSTRALIA ACTS (REQUEST) BILL

Mr FENLON (Greenslopes—ALP) (4.38 p.m.): I have great pleasure in rising to support the Bill before the House. In doing so, I wish to indicate my continuing interest in this issue, particularly from the point of view of my chairmanship of the Legal, Constitutional and Administrative Review Committee, which has recently undertaken the exercise of consolidating the Queensland Constitution. I personally welcome the gesture of the Premier this morning, when he tabled the consolidated Constitution in draft form for public consultation. That is indeed a very major step forward in this process of reforming our Constitutions. It is also a backdrop to the very significant exercise of moving towards a republic at the Commonwealth level and ultimately at the State level.

I would like to comment on a number of issues. Firstly, I would like to put this debate into a more helpful context and, secondly, I would like to raise the important issue of public awareness and education in relation to the State Constitution and the broader exercise of moving towards a republic. This Bill and the other matters associated with moving towards a republic must not be seen as a radical gesture. It is not a radical gesture because all participants in the process to date—from the national convention through to the moves made at a Federal level to prepare for the referendum Bill—have taken a minimalist stance. In that sense, we see very little change to the fabric of our Constitution and to the fabric of our true power relations in Australia. When I refer to our "true power relations", we must acknowledge that the Governor-General in Australia has been at the pinnacle of exercising power as the head of state.

On the radical and conservative fringes of this debate we find some very strange paranoia. Some of that paranoia was enunciated by the member for Caboolture this afternoon. We saw some very perverse mental contortions. Because the High Court has found that Britain is a foreign power, we are told that that somehow excuses us for having the Queen as our head of state. I cannot follow the logic of the statement that that somehow allows us to retain a foreign sovereign as our head of state.

The sovereign is our head of state and the Governor-General exercises power on behalf of the sovereign in Queensland and in Australia. On the radical side of the debate we have people who want to go beyond the minimalist position. This view may or may not be supported by the Australian community, but it is not helpful for our present purposes. Through this exercise we need to achieve something that is conservative. We must maintain the integrity of our current constitutional structure in its present form while we go through this difficult process. Perhaps later we can debate some further changes.

In the meantime, let us get through this exercise in a minimalist fashion and ensure that our constitutional status is well protected. At the moment our constitutional status is dependent upon the Crown's continued existence in the British Isles—a nation on the other side of the world. We are dependent upon the stability of a foreign country and the status of the sovereign of that country. We have moved a long way from reliance on that situation. It cannot be countenanced today as any sort of option. That is the situation with regard to Australia and the individual States.

I would like to turn to the constitutional convention which was held recently in Gladstone. I had the pleasure of attending that conference and giving one of the keynote addresses. It was one of the highlights of my political life to be involved in such an historic process.

I would like to pay tribute to the participants in that convention who came from all walks of life in Queensland and participated in the convention with goodwill and in a constructive manner. All participants, from the Chief Justice down, contributed a great deal. I hope that history will look favourably at that convention in terms of the communique which was tabled in this House this morning by the Premier.

I would like to reiterate one of the issues that I felt it was necessary to convey at that convention. There needs to be more public awareness of and public education in relation to our Constitution and to the unique process upon which we are embarking at both a Federal and State level. I refer to the transformation of our Constitutions and the creation of a new head of state—a Queenslander as head of state in Queensland and an Australian as head of state of Australia.

There is a substantial amount of evidence which indicates that public awareness of these issues is abysmal right across our society and across all age groups. I invite honourable members to conduct a brief sample—as I have done—at their family barbecues on the weekend. Honourable members would find that even many professional and well educated people—of whom one might expect better—are simply not aware that Queensland has a Constitution. This highlights an abysmal deficiency in our education system. We must address that issue.

In 1993 the Queensland Electoral and Administrative Review Commission— EARC—undertook a survey which found as follows—

"Generally speaking, public thinking is uninformed, if not confused, about the nature and purpose of our constitution. There is a lack of awareness that two constitutions apply in Queensland—those of the State and the Commonwealth— and the fundamental differences between them."

We have a wonderful opportunity to address these issues during the forthcoming year in terms of the debate about the Federal Constitution. At a State level we have an opportunity to address these issues pertaining to the State Constitution, not only in a technical sense but in a social and community sense. This will ensure that the community can be aware of our Constitution and can be part of it. It is an important exercise. I welcome the Premier's gesture this morning as a very important and historic first step in the process of addressing this great deficiency.

I hope that that will be accompanied by educational initiatives. The importance of this debate is illustrated by the fact that at the moment there is no real technical reason why the Australian state could not remain in its current form with the sovereign as the head of state. If we can imagine that situation, with the ensuing confusion and constitutional debacle that it would cause, we can see the importance of going through a coordinated process of introducing this legislation into Australian State Parliaments to ensure consistency in our Constitutions at both a Commonwealth and a State level.

If we are going to ask the Australian people to vote for a republic at a Commonwealth and a State level, we need to ensure that they are aware of the current constitutional arrangements and how they will be changed if Australia becomes a republic. That is the real challenge: for everyone in the community to be engaged and educated in relation to this important issue at a State level. Information must be timely and effective so that the public can be informed about any changes to the State Constitution so that they can participate in the constitutional debates in a meaningful way. Indeed, such a course is particularly appropriate given the history of the evolution of our Constitutions. This is a very important point. Unlike most countries, whose constitutions were born out of action from the people—historical events, revolutions, major social upheavals—Australia's Constitutions are essentially God given. In that sense, we can say that the divine right to rule reached its highest form in its manifestation in the Australian Constitutions. There is no other clearly accessible historical primer for the genesis of state power. We have only that lineage, as it were, going back through Great Britain to the God-given power, the divine right.

Mr Lucas: Dieu et mon droit—by God and my right.

Mr FENLON: Indeed. I take that interjection. However, the public's understanding of our history is cast in a vague haze of images that go back to our primary school education—back to Captain Cook, Captain Phillip and Federation in 1901—rather than in any lineage that will enable us to understand our Constitutions at both a Federal and a State level. I believe that surveys have shown that young Australians—Australian schoolchildren—have a greater knowledge of the American Constitution than of our own Constitution. What a tragedy! That revelation is cast with the fact that people have an absolute absence of knowledge that we have a State Constitution.

The fact that we have such little knowledge of our State Constitution is no surprise. That is why our recent consolidation exercise has been so important and that is why the Premier's draft for public consultation is so important. We have not had a clear, single document that we can call our Constitution. Our Constitution is also archaic and difficult to follow. Many of the provisions are scattered throughout various Acts of Parliament. The fundamental powers of our Constitution that relate to

peace, welfare and good government are buried deep in our Constitution and are hard to find, as are the various legislative apparatus that surround those fundamental principles. Recently, the Legal, Constitutional and Administrative Review Committee reported on that exercise and advocated the separate documents that are set out in the Premier's document for distribution to the community.

The committee also recommended that a number of steps be undertaken to improve citizens' awareness and understanding of the State Constitution and how it relates to other laws, particularly the Commonwealth Constitution. We recommended that if and when the consolidated Queensland Constitution is passed by the Parliament, that the Premier prepare an explanatory booklet to accompany the Constitution and that both documents be distributed widely throughout the State. Similar recommendations were made to the Education Minister.

A consolidated Queensland Constitution also provides a sound foundation upon which any constitutional reform, whether or not it is brought about as a result of a change to a republic, can now proceed. It will provide a clear framework that brings together those sometimes archaic and scattered provisions of the Constitution in one place. That will allow us to address in one place in the Constitution in a concise and systematic way issues such as the status of the Governor—where, when and if that needs to be done. Although the consolidation exercise has been undertaken against the backdrop of an assumption that it will be completed before any vote is taken as to whether or not Australia should become a republic, there are now a number of ways in which that matter can proceed, and they are contained in the document that the Premier tabled this morning.

The consolidation exercise also highlighted other issues of importance that must be considered in the future, such as the entrenchment of the Constitution, a review of the status of local government, the independence of the judiciary and whether there should be constitutional rules defining the scope of Executive power. As a backdrop to many of these matters, including the prospect of whether the Constitution should have a preamble, is the issue of dealing with rights—whether there are inalienable rights that should be included in the Constitution in the future. They were the subject of a previous report of the Legal, Constitutional and Administrative Review Committee.

Our Constitution should be regarded internationally as a shining example of what Constitutions should be. It has stood the test of time, and we must give great credit to our forebears, such as Sir Samuel Griffith, who had great foresight in those turbulent days late last century and who ensured that our constitutional structure stood the test of time and enabled us to today address effectively these very difficult matters.
