Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 21 July 1999

AUSTRALIA ACTS (REQUEST) BILL

Mr SPRINGBORG (Warwick—NPA) (3.12 p.m.): At the outset I make it clear—I make this point very firmly—that neither the Australia Acts (Request) Bill nor its companion, the Constitution (Requests) Bill, is fundamental or vital to Queensland or to this Parliament at this stage in the constitutional process now under way within the Commonwealth jurisdiction.

I am not persuaded by the grandstanding of the Premier on the republic question that the Australia Acts (Request) Bill is particularly relevant in the legislative sense ahead of the Commonwealth referendum on the proposed republic to be held in November. That said, the Opposition accepts that the Queensland Government is proceeding in accordance with the timetable proposed by the Commonwealth and adopted by all other States. For that reason alone we are not disposed to unduly delay the passage of the legislation, except on one substantial ground that was curiously absent from the Premier's second-reading speech. On that matter, I understand that there have been discussions between the Liberal Leader, the member for Moggill, and the Premier with a view to allaying some of those concerns regarding the provision of legal advice about the potential impact on section 53 of the Queensland Constitution of interference with section 7 of the Australia Act.

This House is duty bound to protect the Queensland Constitution. That Constitution provides that where a Bill expressly or impliedly in any way provides for the abolition of or alteration in the office of Governor or expressly or impliedly in any way affects sections 1, 2, 2A, 11A, 11B and section 53 of the Constitution Act, it shall not be presented for assent or in the name of the Queen until it has first been approved by the electors. In other words, such a Bill cannot be presented for assent before the Queensland people themselves have decided whether their Constitution should be amended—in other words, by a State referendum.

It is the view of some that this Bill itself implies an alteration in the office of Governor. It is suggested by others that, because of the supremacy of the Commonwealth, section 53 of the Queensland Constitution Act itself cannot be utilised in this context until section 7 of the Australia Act is amended. In other words, there is confusion—that is this Government's benchmark, as we know. The people do not want confusion. They do not want doubt; they want clarity. It is for the Premier to deliver clarity. Today is the day he should provide it. This is an issue in the electorate and I think it is important that we have the substance of the legal advice included in the official record of this House in order to allay the concerns some people have been bringing to our attention.

The provision of that advice by the Premier in his speech in reply to this debate would be most useful, because one of the things we have found as we have gone down the path of legislative reform and some significant administrative reform in Australia and other States over a long period of time is that some things that seem very simple or very administrative to us can be, when couched in bureaucratic language or legislative terms, most confusing and most concerning to people in the general community and can certainly in some cases lead people to believe that the Parliament is doing something that it is in fact not doing. I think we do need that clarification.

To avoid possible challenge to this Bill, or further embarrassment as a result of authoring another piece of defective legislation, the Premier should tell the House clearly today what his advice was on this issue. He should table that advice so that we can all see it and make our own judgments. If he is unable to do this, then he should agree that the debate be adjourned until he can provide it. He certainly cannot answer by saying that this is a "what-if" Bill, although that is most certainly what it is. He

cannot simply duck a plain duty to uphold the Queensland Constitution. He cannot pretend, as he does from time to time when embarrassing things such as gazetted rules and legislated checks and balances get in the way of something he thinks is a good idea, that the provisions of section 53 can be ignored.

Mr Schwarten: Did you write this speech yourself?

Mr SPRINGBORG: I say to the Minister for Public Works and Minister for Housing that, as he knows, constitutional law is one of the things in which I am very much interested and very learned about.

The Premier cannot pretend that a separate State referendum on this Bill itself is an expense Queensland can do without if his advice is that this Bill itself triggers section 53. I note that in his second-reading speech the Premier makes this very point in relation to constitutional change not yet voted on by the Australian people but not, significantly, in the context of this Bill. If under such circumstances the Premier wanted to avoid the additional duty of a special State referendum on this Bill, he should not have introduced it. The expense the people must now bear lies at his door.

To assist the Premier with his decision, I remind him of the requirements of section 53(2), (3) and (5) of the Constitution Act. Subsection (2) requires that—

> "On a day not sooner than two months after the passage through the Legislative Assembly of a Bill of a kind referred to in subsection (1) the question for the approval or otherwise of the Bill shall be submitted to the electors qualified to vote for the election of members of the Legislative Assembly according to the provisions of the Elections Act 1915-73 and of any Act amending the same or of any Act in substitution therefor.
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> Such day shall be appointed by the Governor in Council by Order in Council."

Subsection (3) requires that, when the Bill is submitted to the electors, the vote shall be taken in such manner as the Parliament of Queensland prescribes.

Subsection (5) requires that any person entitled to vote at a general election of members of the Legislative Assembly is entitled to bring proceedings in the Supreme Court for a declaration, injunction or other remedy to enforce the provisions of this section either before or after a Bill of a kind referred to in subsection (1) is presented for assent by or in the name of the Queen.

The Opposition recognises the supremacy of Commonwealth legislation and the risk that failure by Queensland and the other States to act, as well as creating a possible administrative and legislative logjam, might also create the opportunity for the Commonwealth to act without the concurrence of the States. I believe that all members of this Parliament should understand and appreciate that particular point.

The matter at issue is that the Australia Act does not deal with the relationship between the Commonwealth Crown and the Crown in right of the various States. Section 7 of the Australia Act deals with the powers and functions of Her Majesty and Governors in respect of the States. Subsection (1) provides that Her Majesty's representative in each State shall be the Governor. In short, without amendment, section 7 implies that there will continue to be a monarchical system at a State level.

Section 15 sets out how the Act can be amended. Subsection (1) provides that it can only be amended, subject to subsection (3), by all of the States requesting the Commonwealth to do so. Subsection (3) provides that nothing in subsection (1) limits the power of the Parliament of the Commonwealth to put to the citizens under section 128 an amendment to the Commonwealth Constitution. That is why the argument is strong that, without such amendment, the Australia Act would be out of kilter with the constitutional position of the States if there were to be a "yes" vote in the republic referendum. That is why, given the supremacy of the Commonwealth in the Federation and its capacity to legislate to override State law, it is proper to act to ensure the continuance of the States' constitutional freedom under any future change to the Commonwealth's constitutional position. And that is why—albeit reluctantly among many on our side of politics—we accept the necessity for the State to act itself to amend its Constitution if there is to be a republic. We recognise that the States collectively, but as sovereign jurisdictions, have entered into an arrangement with the Commonwealth to set in place the framework for responsible State-led change in the event that the Australian people vote for a republic at the referendum in November.

Accepting the need for this legislation does not mean having to accept the reasons for it. Voting to pass this legislation is not a vote for a republic, or even a vote in favour of the idea of a republic. Voting for it now, 15 weeks ahead of a referendum that looks very unlikely to pass given the rules that it must pass by a majority of votes and in a majority of States, does nothing more than put arrangements in place that will not be activated—that cannot under this Bill be activated—unless Australia does vote to become a republic.

But this process must be managed constitutionally. It must be done properly. There is just no excuse for sloppy legislation. There is no reason for defective legislation. The Opposition seeks the

assurance of the Premier that the provisions of section 53 of the Queensland Constitution Act, although subordinate to the Commonwealth Constitution and thus on some readings—not mine—irrelevant in this context, have been given due consideration. We on this side of the House are particularly interested in being advised as to the outcome of that consideration.

It is appropriate at this point to restate the position of the National Party in regard to the debate about changing to an Australian republic. We support continuance in Australia—and in Queensland—of the system of constitutional monarchy that has served us so well through the 140 years of Queensland's existence as a self-governing colony and later sovereign State of this Federation. It is by no means clear that the people will, in fact, vote for a republic at the referendum due in November this year—either here in Queensland or across Australia—in the manner and then to the extent necessary for passage of a federal referendum.

A great many people will remain unpersuaded by republican rhetoric that seeks to assert that this country is somehow less than sovereign. The Australia Act of 1986— passed by the Australian and British Parliaments and taking effect on 3 March that year—made certain constitutional arrangements that, even on the most partisan of readings, ended forever any argument about this country's sovereign, independent, federal status. I believe that members heard some very interesting debate and further concurrence with that view when the High Court resolved the situation and the standing of a Senate candidate who was elected at the last Senate election in Queensland.

Many people nowadays regard the Crown less as the symbol of monarchy in its formal sense than as a means of protection against unrestrained political power. The argument is, of course, far more substantial than that.

Mr Lucas: What do you think Cromwell's revolution was about?

Mr SPRINGBORG: The people of Britain decided what they thought of Cromwell's revolution after a little while.

It goes to our roots as a parliamentary democracy and to the great traditions that seeded the original settlement here of British subjects. In that context, it is worth remembering that no British monarch has refused assent to an Act of Parliament since 1707—69 years before the First Fleet. In that context, too, it is worth recalling that, in the words of Walter Bagehot in his work The English Constitution more than a century ago, the monarch's effective power is to be found in her celebrated rights to be consulted, to encourage and to warn. We note that, in the Australian context, and to our great advantage, this fundamentally valuable non-political public service is performed by the Governor-General of the Commonwealth and the Governors of the States. It goes to the unique and groundbreaking Australian institutions—in government, in the law, in our constitutional arrangements and in our politics—that we have created here over the past two centuries.

There is much debate yet to come on the issue of whether this country and this State should dispense with the objective public service provided by the monarchy. Our task today is to examine the Bill before the House. Matching Bills have been passed by the Victorian and New South Wales Parliaments and have been introduced in three other State legislatures. The Queensland Bill, like these others, requests the Commonwealth Parliament to enact a Bill—in the prescribed form—to amend section 7 of the Australia Act. It is a procedural matter to that extent. It is legislation that will permit the effective transmission of this country to a republican form of government in the event that the Commonwealth referendum decides for a republic. It specifically provides that a State Parliament may make a law providing that section 7 of the Australia Act does not apply to that State and guarantees that, if such a law is passed, section 7 then ceases to apply to that State.

I note from the Premier's second-reading speech that the Bill before us does not affect the constitutional procedures necessary for a State to sever its ties with the Crown. It does not remove the requirement of the Queensland Constitution for a referendum to be held before such severance. The only issue at hand, therefore, is whether, in the terms of the Queensland Constitution, this Bill itself impliedly provides for an alteration in the office of Governor and thus falls within the proscription of section 53.

Sitting back over the last few years and watching this republican debate unfold in Australia has been an interesting process for many members of this Parliament and, I believe, for the community at large. We have seen a lot of information imparted to the community from both sides——

Mr Lucas: Are you a republican or a monarchist?

Mr SPRINGBORG: I will come to that.

We have seen a lot of information imparted to the community from both sides of the debate, which can only be described as a little bizarre and irrelevant to ensuring that we have the best and the most knowledgeable outcome.

For the benefit of the honourable member for Lytton—who again interjects from his incorrect seat—I point out that am unashamedly a constitutional monarchist. At least I have thought about why I

am a constitutional monarchist, whereas there has probably been a lack of thought in the member for Lytton's deciding that he is a republican.

I have come to a particular conclusion about our system. I have considered this matter for some time, but probably not as long as others who have a few years on me. We have a very good system of government in Queensland and Australia. It is fair to say that countries which are constitutional monarchies have good and stable systems of government. It is interesting to note that even those countries which have moved to sever their links with the Crown have chosen to remain as part of the Commonwealth. The Westminster style of government has stood our democracy in good stead and has ensured that we have good balance in our democratic system in this State and in this nation.

I must say that I am not a zealot when it comes to this issue. If, in November this year, the Australian people vote to head towards severing our links with the monarchy I would accept that. However, I say to those people who have been advocating constitutional change and, to a broader extent, a change to the Australian flag, that it is a pity we do not see a degree of respect for our institutions and traditions in this country. If we do sever our links with the monarchy at the end of this year, I will toast our president. It is a pity that some rabid republicans do not show the same respect when we are dealing with our current head of state, namely,I the monarch. In this country we probably spend too much time thinking of reasons why we should change our institutions and our traditions. Unfortunately, there is a lot of zealotry in this country.

As we move towards the referendum in November this year, I think we should keep in mind that the referendum process was requested by the delegates to last year's Constitutional Convention in Canberra. We must ensure that the information disseminated to the community in order to allow them to make an informed decision is information which comes from a realistic and sound base. We do not want an extraneous debate, given some of the extremism that we see in this country from time to time.

As I indicated, I am not one who necessarily argues against constitutional change. However, I am conservative about the necessity for constitutional change from time to time. Earlier today we had a debate in this Parliament about the need for constitutional change to overcome the High Court's decision with regard to cross-vesting. Not all constitutional change should be considered unnecessary.

Another important matter to take into consideration is that Queensland's citizens have always avidly, forcefully and very articulately sought to safeguard this State's rights. This has been the fundamental approach taken by Queensland's politicians and political leaders over a significant period. I raised those concerns earlier today about the consequences of the amendment to section 7 of the Australia Acts because of the possible effect on our constitution and the office of Governor in Queensland.

I understand the argument, simply put, that it is far better to have the States of Australia request that the precursors for change are put in place in the event that the Australian people vote to go towards a republic in November this year. We must have this potential protective mechanism to ensure that we do not move the debate into another area. If one State does not go along with this, I understand that the Commonwealth, through its legislation, reserves the ability to take action under section 15(3) of the Australia Acts. I understand the argument about the need to preserve the supremacy of the States in requesting that the necessary mechanisms be put in place to ensure that the will of the people can be enacted.

I understand that there is some concern about this. That is why I have asked the Premier to clarify the matter. In the last few days the point was put to me that, if we are seeking to weaken or do away with section 7 of the Australia Acts, there may be a need to include in the Australia Acts another section which would ensure that concerns about the States potentially being weakened are shored up. If there was a challenge to the referendum as a result of one State not going along with this, it is likely that the High Court would uphold the will of the people. We would then have a situation where it would be seen that the Commonwealth has the ability to move to change these sections of our Constitution without considering the concerns or the rights of the States.

I also understand that section 106 of the Australian Constitution contains a protective mechanism which may allay some of the concerns which have been raised with me. However, I trust that the Premier will address all these matters as we proceed through the debate and into the Committee stage. I will be looking at the advice from Crown Law about the coalition's concerns regarding this Bill and any potential impact it may have on section 53. If the Opposition feels uncomfortable, we reserve the right to ask further questions or perhaps move to do other things as the Bill moves through the Parliament.

In conclusion, the coalition understands the reasons why it is necessary that the Australian States take this action. It is far better that it be requested by the States rather than leaving it to the Commonwealth. However, we would not like to see the fundamental position of the States— particularly Queensland—weakened in any way by any unforeseen consequences of this legislation.