



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 25 August 1999

COMMUNITY-BASED REFERENDUM BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (10.25 p.m.): The Government opposes the Community-Based Referendum Bill, as it would tend to erode parliamentary democracy. The law-making function of this Parliament is central to the democratic process, which relies upon majority rule and minority rights. The Bill currently before the House is similar in a number of respects to an earlier Bill introduced by the member for Nicklin, but differs in certain respects. The current Bill is longer and contains substantially more detail than the earlier Bill. However, it does share a number of characteristics. It establishes a law-making process which is additional to and separate from the traditional parliamentary process. This process commences with the registration of a legislative proposal sponsored by members of the community. A stipulated level of community support, evidenced by the signatures of a prescribed percentage of the Queensland voting population, must then be obtained within a 12-month period, failing which the proposal lapses. If the prescribed level of community support is obtained, the legislative proposal, drafted in the form of a Bill, must then be submitted to a referendum of Queensland voters. If passed by a majority of voters in a majority of electorates, the proposed law must be presented to the Governor for assent.

The Constitution Act 1867 is to be amended to stipulate the new process as one of the means by which legislation may be made in Queensland. The Constitution Act 1867 is to be further amended so as to entrench the new process; in other words, to require that any later parliamentary legislation to amend or terminate this process be first endorsed as a referendum.

The differences of substance between the current Bill and the earlier Bill are: the current Bill does not attempt to restrict Parliament's power to amend a citizens initiated referendum—or CIR—law, whereas the previous Bill, which I will refer to as the CIR Bill, purported to preclude amendments to CIR laws for 12 months after their enactment. The current Bill requires that the Premier advise the Governor to assent to a CIR proposed law, whereas the CIR Bill provided that the Governor was not bound to consider the advice of his or her Ministers and should instead consider the will of the electors as expressed at the preceding referendum about the proposed law.

This question goes to the whole issue of the role of Parliament in a democratic Westminster system. On the one hand, the argument is advanced by the member for Caboolture that direct voter participation in the law-making process would tend to enhance democracy. However, the genius of the Westminster system is its capacity to accommodate different interest groups while respecting at the end of the day the will of the majority. There is a real danger with legislation of this sort allowing for citizens initiated referendums, or in this case community-based referendums, that such legislation would lead to social divisiveness and the tyranny of the majority. This is a particular concern in a State such as Queensland, where the majority of people live in the south-east corner and where a majority thus formed may have substantially different interests from those of the minority in the remaining parts of the State. There is also a real concern that the oversimplification of complicated policy problems may lead to unintended consequences. There would be a tendency for so-called popular measures to be well supported, for example, reductions in taxes and charges, with a concomitant reluctance to adopt necessary harsher measures, thereby leading to financial irresponsibility and a lowering of community support for disadvantaged sectors. There is moreover a danger that well-funded lobby groups would be able to use the CIR process to further their own agendas.

Let us examine a couple of aspects of this Bill in detail, because there is a major divergence between the Bill on the one hand and the Explanatory Notes and introductory speech on the other hand. The member for Caboolture seems to state that the Governor's assent depends on the advice of the Premier and that a referendum vote "is not formally binding on the Premier to advise assent". His words in full on this point are as follows—

"Proposed legislation can become law only with the assent of the Governor, which presently depends on the advice of the Premier to assent to any Bill, and the passage of this Bill would not change that situation. If, however, the electors approved at referendum an amendment to the Constitution to require the Premier to recommend the giving of assent, that would be a different matter.

The Bill will enable the community to address matters it considers important. Notwithstanding that the clear vote of the community is not formally binding on the Premier to advise assent, It would be a brave Government indeed to ignore a successful referendum."

Similarly, when the explanatory memorandum construes clause 32 of the Bill it explicitly states that a "proposed law approved by the electors may be submitted by the Premier to the Governor for assent, but there is no requirement for the Premier to do so under this Bill." Both the introductory speech and the explanatory memorandum appear to specifically contemplate that it will require a future referendum amending the State Constitution to oblige the Premier to follow a positive referendum result when advising the Governor before the Premier is under any such legal obligation. However, the Bill does not reflect this. Rather, it appears to specifically provide for the exact opposite. The Bill states in clause 32(9) the following—

"If the electoral commissioner presents an approved proposed law for assent, the Premier must, within 14 days after the presentation, advise the Governor to assent to the law."

This language appears to indicate that the Premier has no discretion in the matter but is bound by a positive referendum result to advise the Governor to assent to an approved proposed law. The member for Caboolture may care to explain to the Chamber whether we should rely upon the words of the Bill itself or upon what he says in his second-reading speech and in the explanatory memorandum—what he intended—because the two are, frankly, in conflict.

There is another anomaly in the Bill in that, in common with the CIR Bill, the present Bill seeks to amend doubly entrenched provisions in the Constitution Act of 1867, namely, sections 2, 2A and 53.

Mr Lucas interjected.

Mr FOLEY: I thank the honourable member. A referendum is required by section 53 of the Constitution Act 1867 before such a Bill can be presented for assent, and the present proposal does not address this requirement. So there is a constitutional problem with the Bill.

There is a problem of conflict between the express words of the Bill and the words of the honourable member in his second-reading speech and in the explanatory memorandum. That may simply be as a result of confusion on the part of the honourable member but, in any event, the Parliament is left with a frank conflict between the two which would result in the clear words of the Bill prevailing to the effect that the Premier must, within 14 days after the presentation, advise the Governor to assent to the law notwithstanding what the honourable member said.

This Bill, in common with the CIR regime it promotes, is fundamentally flawed and would not work for the benefit of the community. The system of representative and responsible Government has served our State well since 1859 and has helped to ensure a stable and productive society in Queensland. There is, of course, no room for complacency in the area of parliamentary democracy. It is important that Parliament should reach out, for example, through the parliamentary committee system. It is important that the institutions of Government should reach out, as is being done, for example, through the Community Cabinet process engaged in by the current Government. That is important because it is all too clear that many people feel alienated and estranged from the institutions of the democracy. However, we do not solve that problem by creating further problems.

Our system of Government puts in place checks and balances to prevent the agenda being hijacked by organised sectional interests who have no concern for the welfare of all sectors of our community. Like it or not, when one enters into the arena of parliamentary politics, one has to take on board the interests, the ideas, the aspirations of different people and try to ensure an outcome which is just for all. That is the genius of the Westminster parliamentary system. It is the basis of our democracy. It is for that reason that the Government will oppose this Bill.
