



Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 8 June 1999

CONSTITUTION (REQUESTS) BILL

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (2.37 p.m.): I move—
"That the Bill be now read a second time."

As members will be aware, the people of Australia will be voting on two referendum questions in November this year. These will determine whether Australia is to become a republic and whether a Preamble should be added to the Commonwealth Constitution. As members will also be aware, the Commonwealth Constitution is contained in clause 9 of a United Kingdom Act—the Commonwealth of Australia Constitution Act, which I will refer to as the Constitution Act. Should Australia become a republic, the Commonwealth Constitution Act will need to be amended as it contains in its Preamble and covering clauses a number of references that would be incongruous or absurd to retain.

In addition, most of the covering clauses in the Constitution Act will be unnecessary if the republic referendum is passed. For example, if Australians decide to sever the ties with the Crown, it is considered that it would be completely inappropriate for the document dealing with the establishment of the Australian nation to retain references in its Preamble to the people of the colonies "uniting under the Crown of the United Kingdom of Great Britain and Ireland". I think that is pretty obvious.

Of the covering clauses in the Constitution Act, it is necessary only to retain clause 1—the short title of the Act—and clause 9, which contains the Constitution itself. Clause 2, which provides references in the Act to Her Majesty's heirs and successors in the sovereignty of the United Kingdom, would be incongruous and redundant. So would clause 8, concerning the Imperial Colonial Boundaries Act 1895. Clauses 3 and 4, dealing with the proclamation and establishment of the Commonwealth, are now spent. Clauses 5 and 6 will be unnecessary as the constitutional changes included in the proposed Constitution Alteration (Establishment of Republic) Bill 1999 insert into the Constitution provisions which replicate those clauses. Clause 7, dealing with the Federal Council of Australasia and laws passed by it, no longer has any practical application. It is therefore considered that the Constitution Act must be amended to remove these incongruent and unnecessary references if the republic referendum is approved. The means, however, of amending that United Kingdom Act are not simple or straightforward.

As the Act is not part of the Commonwealth Constitution, it cannot be amended by a referendum under section 128 of the Commonwealth Constitution. The Constitution Act can, however, be altered or repealed by the Commonwealth Parliament if two things happen. First, the limitation in another United Kingdom Act, section 8 of the Statute of Westminster 1931, must be removed. That section has been considered to prevent changes to the Constitution Act as it states that "nothing in this Act shall be deemed to confer power to repeal or alter the Constitution Act of the Commonwealth of Australia." Secondly, the Commonwealth Parliament must be empowered to amend the Constitution Act.

Both of these can be achieved by requests to the Commonwealth Parliament by all of the State Parliaments. The Statute of Westminster limitation can be removed by the Commonwealth Parliament if it is requested to do so by all of the State Parliaments pursuant to section 15(1) of the Australia Acts. Again, we made our view very clear to the Prime Minister on that section.

Once that limitation is removed, the Commonwealth Parliament is empowered by virtue of section 2(2) of the Statute of Westminster to amend the Constitution Act. The Commonwealth

Parliament can also be empowered by a request from all of the State Parliaments to the Commonwealth Parliament pursuant to section 51(38) of the Commonwealth Constitution. That provision allows the Commonwealth Parliament to exercise any power which can, at the establishment of that Constitution, be exercised only by the Parliament of the United Kingdom, such as the amendment or repeal of the United Kingdom Acts, if the State Parliaments request it to do so. The Bill before the House makes those requests.

The Bill will, when enacted, request the Commonwealth Parliament to enact a Commonwealth Act, the Commonwealth of Australia Constitution Act Amendment Act 1999. This is the preferred course, supported by all of the States and argued for very strongly by Queensland at the recent meeting with the Prime Minister at the Premier's Conference. That Act will—

amend section 8 of the Statute of Westminster so that it does not prevent the repeal of sections 2 to 8 of the Constitution Act or the omission of the Preamble to that Act;
repeal sections 2 to 8 of the Constitution Act; and
omit the Preamble to the Constitution Act.

If, as expected, all of the other States make similar requests, the Commonwealth Parliament will be empowered to enact the Commonwealth of Australia Constitution Act Amendment Act 1999. The Bill is to commence on the day after the Constitution Alteration (Establishment of Republic) Bill 1999 receives royal assent. This ensures that if the republic referendum—

Mr Borbidge: If.

Mr BEATTIE: I say to the Leader of the Opposition that I will be campaigning for an Australian republic and for an Australian head of State, and I will let the Leader of the Opposition campaign for the past. This ensures that if the republic referendum fails to pass, the Bill will not operate.

Mr Borbidge: That's right.

Mr BEATTIE: The Leader of the Opposition should relax; it is not good for him to get excited. However, if the people of Australia approve of the republic referendum, the passage of this Bill and similar Bills by the other States will enable the Commonwealth Parliament to complete the task of ensuring that Australia's constitutional documents are appropriately worded for a new Australian republic. I commend this Bill to the House.
