Speech by

Hon. PETER BEATTIE

MEMBER FOR BRISBANE CENTRAL

Hansard 22 July 1999

AUSTRALIA ACTS (REQUEST) BILL

Hon. P. D. BEATTIE (Brisbane Central— ALP) (Premier) (12.20 p.m.), in reply: There have been a number of responses over the last day and a bit and I will endeavour to go through them and respond to the issues that were raised. Firstly, I thank everyone for the excellent contributions they have made, particularly speakers from my side of the House. They were certainly intellectually empowering—there is no doubt about that—and the contributions that were made will become very much a part of the constitutional history of this great country. I will deal very seriously with a number of issues that have been raised by those opposite. These are not necessarily in the order that speakers raised them; I will deal with the issues as they appear.

The member for Caboolture indicated that he was not supporting the Bill. He raised the issue that recognition of the Bill is recognition of the republic model as presently proposed by the Commonwealth. He has implied that it is a defective model. That is a matter for him. The Bill that was introduced is a response to the Commonwealth referendum. The purpose of the Bill is to ensure that, if amendment to section 7 of the Australia Acts 1986 is to occur, section 15(1), and not section 15(3), of the Australia Acts 1986 is relied upon. That is it. It is very simple. The Commonwealth Constitution Alteration (Establishment of Republic) Bill 1999 already provides a means of changing section 7 of the Australia Acts 1986. That deals with the issues raised by the honourable member for Caboolture.

The member for Toowoomba South said that he needs assurances that we are not exposing States' rights. That is, are we reducing States' rights? The answer is no, no, no, no and no. The use of section 15(1) and not section 15(3) will not affect States' rights. The use of section 15(1) is a promotion of States' rights. That is what this is all about. This is about the States telling the Commonwealth what they want done. It is about this Parliament asserting its right as a Parliament to demand that the States' considerations be taken into account. This is about the States and not the Commonwealth determining how this is done. There is no exposure to a lessening of States' rights.

What happens if the Commonwealth referendum fails? The member for Toowoomba South wants an absolute assurance about the status of the Bill in these circumstances. The answer is really very, very simple. There is an amendment proposed to be moved, and I think this explanation will cover it. If the referendum in November fails, the Bill will then only commence clauses 1 and 2. The operative request clauses will not commence and the shell of the Bill and Act could then be repealed. In other words, the Act does not have any effect.

Another question asked was: does section 53 prevent this Bill receiving assent? The answer is no. I intend to deal with the advice from the Solicitor-General and Crown Solicitor in a moment. If the republic issue gets up in the referendum, then further legislation would be required to sever the links with the Crown. This further Bill would call into play the new section 7(6) of the Australia Acts 1986 and would have to comply with the section 53 mechanism set out in the Constitution Act 1867.

I will deal generally with a number of issues raised. What happens if the Commonwealth Republic Act does not receive royal assent? I think I have probably covered that. What happens to the Bill if it becomes a Queensland Act? The answer is that clauses 1 and 2 of the Bill would commence on assent—clause 1, the title or citation clause, and clause 2, the commencement provision. That relates to section 15C of the Acts Interpretation Act 1954. The other clauses would never commence. I have partly covered this, but I will say it again because a number of speakers raised it. The other clauses would never commence—that is, clauses 3 and 4. They are linked with the Schedule. The Bill, if passed and if given assent, will only bring clauses 1 and 2 into play. The Bill if enacted would, if the Commonwealth Republic Act does not receive assent, have to be repealed by another Act, for example the Statute Law (Miscellaneous Provisions) Act. The Act would be an historic piece of legislation.

An automatic repeal clause is not recommended, as the Act would be inconsistent with the other templates passed in the other States. I know that the honourable member for Bulimba is interested in this, as is the Deputy Leader of the National Party because this deals with his amendment. If we changed it in the way the member opposite wants, the Act would be inconsistent with the other templates passed in the other States. As he was a Minister for 30 seconds, he would understand the need for cooperation between the States and would understand that when there is template legislation then the States agree. There is no detriment in it because the major clauses simply do not come into effect. The use of a future repeal is the appropriate mechanism to deal with this eventuality and it would be in one of those general Bills.

I think my responses to some of the issues have already covered a number of matters raised by the honourable member for Gladstone. Without the Bill, would the Commonwealth be impeded in ensuring that the States can sever their links with the Crown? The Commonwealth Bill has a proposal to enable the States to seek to avoid the effect of section 7 of the Australia Acts 1986. That relates to section 7 of the transitional provisions for the establishment of the republic. If the Bills are not passed, the Commonwealth will rely on the section 15(3) power in the Australia Acts 1986. However, this proposal will increase the constitutional certainty by using section 15(1) of the Australia Acts 1986 and include the States in the process of revising section 7 of the Australia Acts 1986.

To answer the question of the honourable member for Gladstone, this again is about empowering the States. This is about protecting our position. This is about making sure we have a role. This is about making certain that the Prime Minister and the Federal Government do not ride roughshod over the States. That is what this is all about. That is why all the States agreed to do this. That is why there was a unanimous view amongst the States that we should do it.

Has section 53 of the Constitution Act 1867 been complied with? I will come to the opinion from Keane and Dunphy in a minute. The advice of the Government is that section 53 will not be infringed. This is so as there is no implied effect in terms of the abolition of or alteration in the office of the Governor.

The member for Maroochydore asked why the legislation is necessary. I think that is pretty clear. This is about the States asserting their responsibility. What commitment has been given to the other States to pass this Bill? There was unanimous support by the States to progress the section 15(1) option. This support was from both sides of politics. The States of Australia are evenly divided—three all—between Labor and non-Labor Governments and all State Governments agreed unanimously. The Prime Minister has written to the Premiers, advising that he will accept a section 15(1) approach if he is requested to do so by all the States. It is that simple, and that is why we need to pass this legislation. That is why it needs to go through the Parliament.

Will the passage of the Bill in any way diminish the need or ability of the Queensland Government to hold a referendum to amend its Constitution? The answer to that is no. The passage of this legislation will not in any way amend the Queensland Constitution. The current requirement is that the Queensland Constitution's entrenched provisions need to be changed by a referendum.

I understand that there was some debate this morning on ABC radio in which the National Party was alleging that we were in some way taking away people's rights to a referendum, which is a nonsense. We are not. These issues have to go to a referendum. Had we been given a chance to respond on ABC radio, we would have given the facts and set out the truth of this situation—that is, the people have to decide these things by referendum. If the Federal referendum is carried and if Queensland decides to change to a republic, the State can do so without the current impediment in section 7 of the Australia Acts. It is that simple. That is the heart of it all.

So we really come down to this point: this is a request of the Commonwealth. Which is the best way to proceed? Section 15(1) is there to protect State rights. That is why we are doing it. At the Committee stage, for the reasons I have outlined, we will be opposing the amendment of the Deputy Leader of the National Party that proposes the insertion of a new clause 5. There will be a small amendment that I will move, and that relates to the Preamble. We will be changing the words "proposes to introduce" to "has introduced", because the Commonwealth has, in fact, now introduced the Bill. At the time this was introduced, that had not been done. It is very much a technical amendment. There are no major or dramatic changes to it.

I made reference to a legal opinion. I just want to make it clear that when I refer to this opinion from P. A. Keane, QC, Solicitor-General and B. T. Dunphy, the Crown Solicitor of 21 July 1999, the convention is that Crown Law advice is not tabled in the Parliament. The convention is that, in specific terms, it is not referred to. I have had a brief discussion with Barry Dunphy, the Crown Solicitor, about this. While we understand that there may well be conventions, in circumstances where there is an overwhelming view on both sides of the House—and I think there is on this occasion—that the House would benefit from this opinion, it is appropriate to refer to it. I want to make it absolutely clear that this is not to be taken as a precedent. It is not to be taken as the way in which the Government will behave in relation to these conventions, because we respect them. We believe that they are important. We will not be, as a matter of precedent, tabling such opinions in the House, but I will refer to it.

The legal opinion of the Solicitor-General of Queensland is dated, as I said, 21 July, which was yesterday. It is joint advice. It is in relation to the Australia Acts (Request) Bill 1999. I had a communique referred to me. It was a communique that was being distributed by the Australian Monarchist League, which claimed a number of things from a Phillip Benwell, the national chairman, who sent a fax to the Leader of the Opposition. In it he made certain claims about what the legislation would provide. The opinion from the Solicitor-General does not agree with the assertions made in the Australian Monarchist League document, which I table for the information of the House for the permanent record. The advice states—

> "We have been asked to advise as a matter of urgency in relation to an issue that has been raised by the Australian Monarchist League ('AML').
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> The AML have suggested that the Australia Acts (Request) Bill 1999 (Qld)... infringes s. 53 of the Constitution Act 1867 (Qld) ('the Constitution'). Section 53 of the Constitution provides as follows"—

and the opinion obviously sets it out. The Australian Monarchists League—

> "... has suggested that the Bill will impliedly effect an alteration in the office of Governor in Queensland.
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> In our opinion, this suggestion is quite misconceived. Section 53 of the Constitution does not operate to restrict, in any manner, the giving of assent to the Bill if it is passed by the Parliament."

It is that simple. But since I promised a fulsome report on this, I will do so. The opinion of the Solicitor-General and Crown Solicitor states—

> "We are of this view for the following reasons—
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> 1. The Bill will become an Act of the Queensland Parliament constituting a request to the Commonwealth under s. 15(1) of the Australia Acts 1986 (Cth.). The Bill will not either on its face or by implication affect any current Queensland law."

That is a matter that I have referred to before. The advice continues—

> "2. The Bill requests the Commonwealth Parliament to amend both the Australia Acts 1986 (Cth.) and the Australia Acts 1986 (Imp.) by inserting new subsections (6) and (7) into s. 7 of those Acts. These amendments, even if proceeded with by the Commonwealth, will not of their own force affect the operation of s. 7(1) of the Australia Act 1986 (Cth.) and the Australia Act 1986 (Imp.) which respectively provide that Her Majesty's representative in each State shall be the Governor. The proposed amendments to s. 7 of the Australia Act 1986 (Cth.) and the Australia Act 1986 (Imp.) would allow a State, at some time in the future, to pass a further law providing that the current provision in s. 7(1) of the Australia Act 1986 (Cth.) and the Australia Act 1986 (Imp.) do not apply to the State.
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> 3. If a State were, in the future, to invoke the operation of s. 7(6) of the Australia Act 1986 (Cth.) and the Australia Act 1986 (Imp.) then such a law would expressly provide for an alteration in the office of Governor. Such a State Act would, no doubt, be an instrumental part of the suite of legislative changes introduced to sever the State's links with the Crown and would only be able to be pursued upon complying with s. 53 of the Constitution."

So there it is. The advice continues—

> "This point has been recognised by State officials for many years and has been accepted by the various bodies that have reviewed the Queensland Constitution in recent times.
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> 4. The only Queensland statute relevant to the enactment of the Australia Act regime was the Australia Act (Request) Act 1985 (Qld.). This Act requested the Commonwealth pursuant to s. 51(xxxviii) of the Commonwealth Constitution to pass the Australia Act 1986 (Cth.). The Australia Act (Request) Act 1985 (Qld.) also requested and consented to the Imperial Parliament passing the Australia Act 1986 (Imp.). Copies of the Australia Act legislation were included in the Schedule to the Australia Act (Request) Act 1985.
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> In our view there is nothing in the Bill that would affect, in any way, any of the provisions contained in the Australia Act (Request) Act 1985. This is because the operative legislative step taken at the time when the Australia Act legislative regime was being put in place simply requested the Commonwealth and Imperial Parliaments to pass the relevant legislation.

In conclusion we reaffirm the view set out above that there is no substance in the contention raised by the AML.

We advise accordingly."

I think that says it all, and I think the matter is therefore resolved. I think that we have dealt with the various issues that have been raised. I do not think there is any matter raised by any member that we have not dealt with in full, agreed with or despatched.