



Speech by

Mr SANTO SANTORO

MEMBER FOR CLAYFIELD

Hansard 21 July 1999

AUSTRALIA ACTS (REQUEST) BILL

Mr SANTORO (Clayfield—LP) (3.54 p.m.): Before making my substantive contribution, I note that the honourable member for Gladstone was uncharacteristically ungenerous when she said that for the past four years the Federal Government has done the States no favours. During the break, I undertake to do some research and provide the honourable member and all other members with a catalogue of when the Federal Government has done plenty for the States.

Like the companion Constitution (Request) Bill 1999, this Bill has been initiated as a result of the referendum that will occur later this year on whether the Commonwealth of Australia will remain a constitutional monarchy or will become a republic. In rising to speak to the Bill, I do so as a fervent Australian nationalist. I came to Australia as a young boy from Italy. As most members would know, Italy was founded on the great republic of Rome. Modern Italy has been a republic since 1946. In fact, over the past 70 or so years most countries of Europe south of Belgium and the Netherlands have been transformed from monarchies to republics.

However, I address this House as a committed supporter of the constitutional monarchy and all that it stands for so far as our system of government is concerned. I do so not because I am a WASP—a white, Anglo-Saxon, Protestant—who is somehow clinging to the vestiges of an empire long gone. I do not do so because I am part of a perceived social set allegedly clinging to the glory days of a society—a class or perhaps a mode of thinking that has long since gone. I do so because I believe genuinely and very firmly that our system of government, for all of its faults and with all of its imperfections, has worked well and is best suited to take our nation into the next millennium.

In a debate on a Bill such as this I could drag out of the textbooks this or that classic argument on why a constitutional monarchy is preferable for a modern nation-State. However, I choose not to do so because my support for our current system of government goes right to the core of my thinking and it is not based on dry, textbook theories.

When I came to this country, it welcomed me and my family. My family has prospered in this country. It is a great country. It is a free country. It is an egalitarian country. It is fair and it is democratic. It has everything in terms of liberty and individuality that one could ask for. However, more than that, it has the happy combination of both freedom and egalitarianism, mixed with a tradition and respect for law and order, which serves as the basis for any truly liberal, generous society.

What does the constitutional monarchy have to do with this? It is the glue that holds the past with the future. It is stable and tested. It is flexible and amenable to the trends and developments that occur in our society. So far as the process of government is concerned, it has a track record of more than 200 years in this country. In short, when a crisis occurs from time to time, either when a Government falls on the floor of Parliament or when there is an election that produces no clear winner, people can dig out precedents, conventions or the like and the matter is resolved in a way that is acceptable to all sides of politics. For me and many other people who want to see our stable system of government continue unaffected, support for the constitutional monarchy has as much to do with wanting to preserve good government as with anything else.

In comparison, what can a republic offer? Certainly in the short term, some hairy-chested

chauvinism and some introspective and myopic nationalism that somehow we have made it as a nation, overlaid by the mistaken belief that other countries, particularly our Asian neighbours, really care whether we have a governor-general or a president as our head of state! However, where does that lead and what does it prove? Will a republic have the same checks and balances as our current system has? Will it prove malleable and adaptable to changes in society?

Quite a lot of conflicting claims have been made about the move towards a republic, and I use this debate as an opportunity to say one or two personal things. In doing so, I want to emphasise that I respect the views of both my parliamentary colleagues and those in my electorate and the general community who support a republic. I think it is essential that we use this debate as a means of bolstering our nation rather than driving wedges between Australians.

All of us, whether we want to keep the status quo or make a change, are very proud Australians. It is just that we differ on the constitutional forms that signify our nationhood. Let me say this: we are an independent nation. Legally, this may not have taken place in 1901 but may well have been in 1942 or some other time. But in the hearts and minds of Australians we have been truly independent for as long as anyone can remember. The retention of our current system of Executive Government in no way changes that. In fact, our nationhood was built up, developed and cherished under the monarchy. The very Australians who gave their lives at Gallipoli and the Western Front, in North Africa, Syria, Papua New Guinea, Borneo, Korea or Vietnam did so under our flag and our system of Government. Over all of those years, having a constitutional monarchy with the Queen as its head in no way diluted our national pride, nationalism and mateship.

Therefore, I reject absolutely the racist type of argument that the monarchy is not supported by non-English speaking migrants and is therefore out of touch with the many millions of non-British migrants who have made Australia their home since 1945. We have only to look at the very many non-English speaking Liberals who either entered Parliaments around Australia or who were active in business or the community and who were passionate supporters of our system of Government to realise the absolute nonsense that underlines this sort of argument. It would be wrong for me to say that there are not imperfections with the current system of government. There are plenty, but the strengths and benefits of the current system far outweigh the downsides. For those who point to this or that problem with the British monarchy, such as the Protestant succession or the Salic law, I respond by saying that my support has less to do with the personality or the technicalities of the British

monarchy than with the indigenous system built up in Australia based on it.

We have a system of Government that is as democratic as we will get. What is the difference between what we currently have and what is on offer? The people will not be picking the head of state under the model we will be voting on. To all intents and purposes, those arguing for a republic suggest that the real difference is that we will have an Australian as a head of state rather than the British monarch; that, in effect, it will be the ultimate expression of Australia's nationhood and entry into the community of independent nation states. If the matter was as simple as that, we could argue all day about the benefits or otherwise of a hereditary system, about political stability, about the symbolism of a family as the ongoing head of our nation and many other classic arguments. However, the debate we are engaging in is far more important and complex than that.

I would like to record in Hansard the following comments of former Chief Justice of the High Court Sir Harry Gibbs, who said—

"A real concern, whatever course is suggested, is that the creation of the office of President will substantially increase the power of the Executive, which has already grown at the expense of Parliament and shows every sign of increasing further."

Mr Reeves: Tell us what Zelman Cowan is saying.

Mr SANTORO: The honourable member opposite, who is not sitting in his correct seat, asked me why I do not quote the words of Sir Zelman Cowan. If the honourable member wishes to place on the record in this debate his own opinions or those of Sir Zelman Cowan on the issue of a republic, he should write a speech or ad lib and stand up in this Chamber. As I said, I respect the views of the honourable member and those of honourable members who disagree with me in relation to this issue. This debate should be all about how to bring a nation closer together, rather than dividing it. The inane interjection from the honourable member, who was not even sitting in his proper seat, is not worth considering any further.

Sir Harry Gibbs went on to say—

"If the President were a mere figurehead, the reallocation of the power now possessed by the Governor-General could well have the result of strengthening the position of the Prime Minister. To increase the powers of the Executive is to increase the possibility that sooner or later those powers would be abused for Partisan purposes."

Sir Harry also outlined the dangers if the president were not a mere figurehead. I quote Sir Harry to highlight my major concern about a change in our head of state. At the moment the Governor-

General and the Governor of this State are constrained by hundreds of years of precedents. As late as 1985, the Australian Constitutional Convention attempted to codify some of these gubernatorial conventions. I might add that this attempt was supported by the Queensland Liberal and National Parties. If we move to another form of Government, we move away from these conventions. Who knows what may happen in the future when a constitutional crisis arises? Certainly, none of the so-called experts who have rushed to print have put forward any plausible or very satisfying explanations. I think that anyone contemplating the forthcoming vote on the republic should keep very firmly in the forefront of their thinking the issue of constitutional stability and certainty.

The current system is well tried. We know its limitations and strengths. We know the limits of the power that can be exercised. We know that at the end of the day, if all else fails, the Queen can intervene, remote as this is. On the other hand, if we move to a republic, the centuries of conventions and conventional behaviour will be put at risk. This is not just some mere conjecture by me but an expression of real concerns held by many eminent constitutional experts, Sir Harry Gibbs being just one them. We should approach the republican referendum not emotionally but quite dispassionately. We need to carefully weigh up what is best for Australia. We need to cast our votes as Australians thinking of what is in the best interests of Australia. A change in the head of state may have some symbolic importance for a great many voters. However, I urge these fellow Australians to think about the implications of their vote for the future of constitutional governance. As I said before, a feeling of Australian pride in having an Australian head of state is far outweighed by the risk that change in our constitutional structure may bring about, particularly when effectively we do have an Australian head of state. Let us not do this the hard way, throw out the baby with the bathwater and live to regret our decision the next time a constitutional problem arises.

It is in this context that I approach this Bill. I know that some people, both within and outside of this place, have reservations about it and I can understand some of those reservations. However, I have looked closely at the Bill, particularly overnight, and have come to the conclusion that, subject to the advice that the Premier will be proffering in this place in his summing-up remarks, it is an appropriate Bill and does not in any fundamental way weaken the capacity of the people of Queensland to make the final decision as to whether, irrespective of whether the Commonwealth becomes a republic, Queensland voters can determine whether our State should continue to have links with the Crown.

As one respected Australian constitutional expert said, although the prospect of a Federal

republic composed of a series of constitutional monarchies might seem at first glance absurd, there is no reason in constitutional logic why such a hybrid state could not exist or, for that matter, survive. I cited that quote not to signify my concurrence but simply to make the point that at the end of the day in Australian States such as Queensland, New South Wales and South Australia, where the links to the Crown are entrenched, whether directly or indirectly, it is up to the people of those States to make the final decision. If they decide not to abandon their links to the Crown, there is no reason why the current arrangements could not continue irrespective of what happens at a Federal level. In fact, if anyone were to argue seriously with that proposition, they would be arguing against the inherent right of Queenslanders to determine the future of their Governor, which since 1977 is a right that has been vested in them by referendum.

Dr Craven, the expert I have just quoted, also made the following observation—

"There are virtually no questions in Australian Constitutional law and theory more complicated and perplexing than those that surround the process by which the monarchy might be abolished."

As a Parliament, the vast majority of us as non-lawyers find that Bills of the nature we are now debating are difficult to deal with, because they go to the very heart of our Constitution and raise profound legal questions. In these circumstances, irrespective of who forms a Government, we rely upon the formal legal advice presented to the Government by either the Crown Solicitor or the Solicitor-General or, in some cases, the Solicitor-General of either the Commonwealth or another State where there is cooperative uniform legislation. I accept the advice of the Premier that this Bill is part of a uniform legislative exercise and has been adopted by the Parliaments of Victoria and New South Wales—one, of course, dominated by the coalition and the other by Labor.

Before rising to speak on the Bill, I spoke to various lawyers to obtain their views on the possible implications of this Bill for the Australia Act and the Queensland Constitution Act 1867. First, since 1977 the Queensland Constitution has contained a number of provisions which have been entrenched. That means that, before they can be repealed or amended, they must first be subject to what is called manner and form requirements. In Queensland, the manner and the form is the holding of a referendum. To put it in common parlance, before the links between the Queensland Governor and the Crown can be severed, there must be first a referendum, and a majority of electors voting must approve of that break in our constitutional arrangements. It is very important that we keep this point in mind.

I recall how the member for Yeronga and the member for Murrumba jumped up and down during the debate on the Public Service Bill, arguing that before a clause in that Bill was passed the Parliament had to be certain that we had not breached another section of the Constitution Act, which was entrenched by the 1977 amendments. The member for Yeronga demanded that action be instituted in the Supreme Court so that we would be certain that the obligations to have a referendum imposed by section 53 of the Queensland Constitution had not been activated. So in considering this Bill, a similar duty of care applies to this Government.

Having introduced this Bill the Premier must be in a position to satisfy the House that the referendum trigger in section 53 will not be activated by it. We all know that some members of the community have strong views on this point and I think that, having regard to the senior and well respected legal advisers that the Government has, this point should be addressed and any residual doubts in the minds of some concerned citizens put to rest.

My contribution is based on the assumption that this Bill does not trigger the referendum obligations imposed by section 53 and that the Premier can assure the House by the provision of independent and authoritative legal advice that this, in fact, is the case. Assuming that that be so, the second principle is that since 1986 any residual constitutional links between Queensland and Britain have been severed by the passage of the Australia Act. This is an enactment of the British Parliament and, like the Commonwealth Constitution Act, is part of the fundamental law of Australia.

Section 7 of the Australia Act proposes that there will continue to be a link between State Governors and the Crown. If section 7 is not amended in the manner outlined by the Premier, the strange situation could arise whereby Australia votes for a republic and Queensland has a referendum under section 53 and chooses to become a republic, yet section 7 prevents the will of the people being given effect to.

As I said, I am a very strong believer in and supporter of our current system of Government and of our links with the Crown. However, at the end of the day, we all are—or at least should be—democrats and respect the will and the wishes of the people. If a majority of Australians and Queenslanders vote in successive referendums to sever our links with the Crown, then no matter how much I would regret that, if it is the will of the people, then that will must be respected.

In short, if section 7 is not amended, a strange and possibly undemocratic clog to allowing the people of Queensland to determine their destiny would be in place. It is for this fundamental reason that I support the Bill, subject to the reservation that I expressed. Also, as the Premier explained, it is better that the States unanimously request the Commonwealth to amend the Australia Act under section 15(1) than the Commonwealth attempting to bypass the States and hold a risky referendum by relying on section 15(3).

This Bill is conditional on the Australian people voting in the affirmative for a republic later this year. I have to say that, in the circumstances, I think that it would have been better if the States had considered this Bill after that event. At the moment, we do not know how the people will vote. My feeling is that they will reject any change in our constitutional arrangements. I certainly hope so. So I fail to see why there is any need to rush Bills of this nature through State Parliaments. It is not as if State Parliaments will not pass a uniform Bill. So any argument about the Commonwealth needing to utilise section 15(3) of the Australia Act is, in fact, misplaced. However, I accept that this is what has to be agreed to and, in the spirit of promoting sensible debate on this important matter, I will not focus on this point unduly.

This Bill is just part of a range of measures that flow from the decision to hold a referendum on the republic. I sincerely hope that all Australians—no matter what their point of view—look carefully at the various arguments put forward and, when they vote, they vote sensibly and logically and that their judgment will not be clouded by any unjustified emotion.
