Speech by

Mr TERRY SULLIVAN

MEMBER FOR CHERMSIDE

Hansard 21 July 1999

AUSTRALIA ACTS (REQUEST) BILL

Mr SULLIVAN (Chermside—ALP) (4.13 p.m.): This Bill sets out the mechanism by which a constitutional issue can be addressed if and hopefully when on 6 November this year Australia votes at the referendum to become a republic. Though the Bill is being debated before the House today and will be voted on in Parliament, the Bill will not come into force unless the referendum on 6 November is passed.

Australia has come one step closer to having an Australian as its head of state. This occurred when the two referendum Bills were introduced into the Federal Parliament last month. The first, the Constitutional Alteration (Establishment of Republic) Bill 1999 sets out the constitutional changes we will vote on in November. The second, the Presidential Nominations Committee Bill 1999 establishes the committee which will invite nominations for the office of president. These Bills are now being reviewed by a parliamentary committee and must report back to Parliament by 9 August, and the Parliament must pass the Bills by 20 August if the referendum is to be held on the Government's preferred date of 6 November.

This Bill before the House today and its sister Bill, the Constitutional (Request) Bill 1999, will ensure the smooth passage of Australia into a republic. I believe Australia should be a republic as we shall not complete our journey to full independence in the community of nations until we have our own as our head of state. We are still akin to an adult child living at home with our mum.

Australians saw Britain as a mother and, while we may have gained adulthood in 1901, as I said, we are still living at home with mum. For Australia, our Constitution did not complete our process of independence; it began it. That process is not quite finished. Under our system of government—the Westminster system— there are three separate arms of government: the Parliament, the Executive and the Judiciary. As at 1901 and Federation, all three arms did not have the power to operate wholly independently from Great Britain. The Parliaments of Australia gained full legislative power in three steps.

The first was in 1901, when the Federal Parliament was created and the Constitution set out the areas of responsibility for power between the Commonwealth Parliament and the State Parliaments. The second step occurred with the Colonial Conferences after the First World War and the passing by the British Parliament in 1931 of the Statute of Westminster. This British law permitted full legislative power to invest in the Australian Parliament, and this was acted upon in 1942 by the Federal Parliament. The third and final step occurred in 1986 with the passing by each Australian Parliament and the British Parliament of the Australia Act. Only then did the Parliaments of the Australian States gain complete and unfettered power, unconstrained by old British colonial laws.

For the Executive Government, the story is similar. It was not until the 1930s that Australia had its own Foreign Affairs Department. Until then, all international relations for Australia were operated under the British Diplomatic Service. The reliance on Britain to run our international affairs continued well beyond the 1930s. For instance, it was not until 1966 that Australia enacted its own laws dealing with the extradition of suspected criminals back to Australia. The infamous Skase extradition attempt relied on a treaty between Australia and Spain signed only in 1987. Prior to this, our extradition arrangements with Spain were based upon a Spanish/British treaty signed in 1878.

Complete judicial independence from the United Kingdom also took place gradually. Substantial restrictions on appeals to the Privy Council were approved by the Australian people in the referendum on the draft Commonwealth Constitution, but these were rejected by the British Government. It was as if our mum did not think we were big enough to handle the decisions on our own.

The final decisions were then compromised. It was the High Court itself that limited the practical ability to appeal to the Privy Council on issues of Federal and interstate relations. In 1968 the then coalition Government abolished appeals to the Privy Council on matters of Federal jurisdiction. In 1975 the Labor Government abolished all appeals from the High Court. The last avenues of appeal to the Privy Council were closed in 1986. So while Federation was the start and the most important act towards independence, actual legislative and judicial powers have been achieved in steps—very gradual steps.

At the apex of all arms of Government is our head of state. The steps to achieve full independence of this office are the subject of the republican debate and the move towards Australia becoming a republic. An Australian head of state would reflect our status as an independent and autonomous nation and would mark the culmination of the process of change, which I have already outlined. It is symbolically important. It is a symbol which tells ourselves and the world a lot about our beliefs and what we stand for.

Australia is a diverse nation, consisting of people from many countries and many cultures but who are now fully part of the Australian nation. Our governmental structures should reflect this and it is just unacceptable to have the ultimate public office which by law cannot be held by persons from a large number of backgrounds within our society. In fact, the position cannot be filled by an Australian at all.

Our present head of state is an hereditary monarch, which is fundamentally undemocratic and at odds with the basic norms of human rights. In contrast to the American Constitution, which is concerned with proclaiming human rights, our Constitution through its creation of the head of state sends out the opposite message. The rules which govern who shall be Australia's head of state are contained in the laws of royal succession. These rules are utterly inconsistent with current community values and the laws of Australia.

Title to the British Crown is hereditary, with the line of succession depending partly on statute and partly on customary common law rules. The rules of succession provide that Roman Catholics and persons marrying Roman Catholics are excluded from the throne and that the monarch must be in communion with the Church of England, declare himself or herself to be a Protestant and swear to maintain the established churches in England and Scotland.

The framers of the Australian Constitution determined that it should be made clear that there was no established church in Australia in the way in which a church existed in the United Kingdom. Whatever the historical reasons for the British position, no such considerations were thought appropriate to Australia, even at the time of Federation.

As the Constitutional Commission Advisory Committee on Executive Government observed, that the monarch of Australia must be a member of the Church of England is not appropriate to Australian conditions and seems inconsistent with the spirit of section 116 of the Constitution, which states—

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

In the case of Crittenden v. Anderson, decided in 1950, Sir Wilfred Fullagar was able to point to section 116 as grounds for rejecting an electoral petition which sought to prohibit Catholics from being elected as members of the Federal Parliament. Section 116 prevents the Commonwealth from imposing a religious test as a qualification for any office or public trust under the Commonwealth. If the head of state in an Australian republic were to be regarded as holding office under the Commonwealth, it would follow that the Commonwealth Parliament could not impose on that office a religious test of the kind which currently applies to the British monarch and, consequently, to the Australian monarch.

Under common law, if the reigning monarch has children, sons succeed before daughters. That is, the oldest male child will succeed to the throne in place of older female children. This requirement is difficult to reconcile with Australia's longstanding and proud history of electoral equality for men and women and with the legislative recognition by the Parliament of the need to proscribe discrimination on the basis of sex.

Women have reached the highest offices of the Parliament and they will no doubt attain the office of Prime Minister and thus reach the pinnacle of executive government. There is, of course, no legislative prohibition to a woman holding that office. Equally, women have reached the highest levels of judicial office. Again, there is no constitutional limitation on a woman performing any judicial office within Australia.

The Commonwealth Parliament has, of course, passed a number of major pieces of legislation reflecting the belief that women should be guaranteed equality, the most important of these being the Sex Discrimination Act 1984. In short, it could no longer be contemplated that legislation or practice would see appointment to public office depending on the gender of the person concerned, even for the head of state—and perhaps most importantly for the position of head of state.

It is also difficult to reconcile the current position with the spirit of both the International Covenant on Civil and Political Rights and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women, although there is no suggestion that this could or should lead to scrutiny of our constitutional arrangements in any international forum.

In short, the rules for succession to the position of head of state do discriminate on the grounds of religion and sex. However acceptable the rules may have been in the past, they can hardly be regarded as an accurate reflection of the modern outlook against discrimination. Were Parliament determining today the appropriate rule to establish a head of state, it would not adopt the rules which presently apply to the monarchy. If these rules are unacceptable for any other office under the Constitution, they should not be acceptable as the basis for determining who should be our head of state.

Many Australians remain unconvinced of the need for change or remain strong in their support for a constitutional monarchy. These are views which I respect but do not accept. Nor do I believe that the majority of Australians find hereditary monarchy really acceptable for our nation, although I suspect that many others are fairly indifferent on the issue.

In conclusion, I would like to move from the process to the substance of the republic debate and speak about all those republicans who support direct election of the president and who want to be spoilsports by not supporting the yes vote. If they truly wanted an Australian as head of state, then they would make every effort to put in place the mechanisms for an Australian head of state.

Direct election has immediate appeal and is strongly supported, if public opinion polls are an accurate reflection of public sentiment. The advantage of direct election is the public commitment to the head of state ensured by popular vote. However, the downsides are much more considerable. The head of state should be a person not involved in the party political contest and should be able to be supported by both sides of politics and by minority party interests. Direct election runs the considerable risk of politicising the office. Even if none of the candidates for head of state is a member of a political party, invariably a candidate will gain tacit support of one or the other. This may not always happen, but it is a risk which threatens the support to the office.

At the other end of the scale, a popularly elected president might consider that he or she has a popular mandate to act contrary to the advice of the Government. How would that fit with the fundamental principle of our democracy, which recognises the supremacy of Parliament? A directly elected head of state would need to have powers more precisely defined than currently rest with the Governor-General. The so-called reserve powers would need codification. This of itself may well be a worthwhile constitutional reform, but it potentially places in jeopardy the push towards an Australian head of state by being highly controversial within the party political debate.

The alternative is the parliamentary selection process, on which we shall vote on 6 November. Such a method would ensure bipartisan support for the head of state and only candidates gaining such support would be proposed by the Government of the day. I urge all members to support this Bill but, more importantly, to join the yes vote campaign for an Australian as head of state.
