Speech by

Hon. K. LINGARD

MEMBER FOR BEAUDESERT

Hansard 27 November 2001

CONSTITUTION OF QUEENSLAND
PARLIAMENT OF QUEENSLAND BILL

Hon. K. R. LINGARD (Beaudesert—NPA) (3.00 p.m.): I apologise for the absence of Mr Horan; he has obviously had to go to Toowoomba because of the sad event that occurred there today. I will present the opposition's comments on his behalf.

It has long been acknowledged that the basis of Queensland's fundamental institutions—the Constitution—needed consolidation. The Commonwealth Parliament has one document that sets out the parameters and operations of our national institutions—the Houses of Parliament, the executive and the courts. This document is the Constitution of Australia. The Australian Constitution is this year celebrating its centenary. In Queensland, on the other hand, we have had over 30 acts and documents, including letters patent, which have set out the basis of this state's Constitution and parliament. There has been no such document in Queensland to which students of our society may refer.

I applaud that finally we are to gain such a document in Queensland. These bills have been a long time in preparation. EARC first looked at this issue in 1993. Since then both PEARC and LCARC have examined this issue. Indeed, these bills are largely based on the bipartisan recommendations that resulted from those reviews.

I am disappointed in one respect, though, and that is that the Constitution Bill of Queensland 2001 could have been an amendment bill of the 1867 Constitution Act, thereby maintaining the original act as the basis of our Constitution and retaining the 1867 date. Instead, we have this modern date which has no connection with the early days of Queensland's history as a self-ruling colony. I understand the argument presented by the government that 2001 is the Centenary of Federation and is therefore a fitting date.

I would also like to comment on chapter 4 of the Parliament of Queensland Bill. This chapter sets out the qualifications of candidates for election to this House. I see in the note attached to section 68 that it states—

Under the Local Government Act 1993, s 224A, a councillor of a local government (which by definition includes the mayor of a local government) ceases to be a councillor if, under the Electoral Act 1992, s 88(3), the councillor becomes a candidate for an election as a member of the Legislative Assembly.

Notes in the text of this act are part of the act. This is very concerning for me because here again we see honourable members opposite attempting to enshrine this discriminatory rule in legislation. Many members of parliament have gained experience in local councils and have moved from being councillors into this House. They had shown their love and passion for working to better our society on council and used it as a springboard into this chamber. Even the Supreme Court agrees. The court struck out the provisions relating to Commonwealth elections as being unconstitutional. Justice Davies states—

These losses (associated to the office of councillor) are imposed...almost immediately upon and in consequence of a councillor undertaking the risk of candidacy. The prospect of losing these benefits in that event is likely to hinder councillors from undertaking that risk.

This act also modernises the language of the provisions. Some of the provisions were written in quite archaic language. I applaud the aim, but I ask that clear statements be made by the Premier restating

that, unless specified, the purpose of this bill is to maintain the intention of the provisions as they existed before this modernisation.

The Constitution of Queensland Bill 2001 has an important feature. It, for the first time, acknowledges some important conventions. The primary objective, obviously, is to enhance public access to, and understanding of, Queensland's Constitution by, firstly, consolidating, as far as practicable, Queensland's constitutional provisions into one act, and, secondly, modernising the drafting style of Queensland's constitutional provisions so that they might be more easily read and understood.

The Parliament of Queensland Bill 2001 has been developed as a companion bill to the Constitution of Queensland Bill 2001 to consolidate the laws incidental to the operation of the Legislative Assembly into one act. I accept that it is necessary to proceed with the Parliament of Queensland Bill 2001 concurrently with the consolidation of the Queensland Constitution because the existing laws pertaining to the Legislative Assembly are linked to the state's constitutional laws and are also scattered across the statute book.

Consolidation of the state's constitutional and parliamentary laws has been the source of ongoing examination for over eight years by various independent commissions and parliamentary committees. Those various commissions and committees include: the Electoral and Administrative Review Commission 1993; the Parliamentary Committee for Electoral and Administrative Review 1993-94; the Parliamentary Legal, Constitutional and Administrative Review Committee 1996-2001 and the Queensland Constitutional Review Commission 1999-2000.

The principal Queensland acts containing matters of state constitutional significance include: the Constitution Act Amendment Act 1896; Officials in Parliament Act 1896; Constitution Act Amendment Act 1922; Constitution Act Amendment Act 1934; Constitution (Office of Governor Act) 1987; Parliamentary Papers Act 1992 and the Parliamentary Committees Act 1995.

Unlike the Commonwealth Constitution, very few provisions in the Queensland Constitution are entrenched as needing a referendum to change. Those that are entrenched have the provisions and include: the restoration of an upper house and parliament's legislative powers, the three-year term of parliament, altering links with the Sovereign and the office of Governor and abolishing local government. The restoration of an upper house and parliament's legislative powers, the three-year term of parliament and altering links with the Sovereign and the office of Governor are doubly entrenched, that is, the provision for the referendum can only be changed by referendum. The provision for local government is only singly entrenched, that is, the need for a referendum can be changed by ordinary legislation through the parliament. It is noted that, as the entrenched provisions can only be altered by a referendum, this bill only signposts the directions to the entrenched provisions in the original acts. It is also noted that the provisions are retained in their present form and in their present locations, as well as being attached to the end of the bill.

In examining our constitutional history, consideration must be given to what comprises a constitution. A constitution provides the main rules of government. Some of the rules deal with relations between people and the government, and because these rules are so important, a constitution is usually more difficult to change than other laws—and that is how it must be.

Almost every country has a written constitution. The United Kingdom is a well-known exception. In the United Kingdom, all constitutional rules are found in the Acts of Parliament, the common law or the judicial law and well-established practices or 'conventions' of government. In Australia those sources are important, too, but in addition to those sources, there are written constitutions—one for the whole of Australia and one for each state.

The Australian Constitution originally was necessary to bring all parts of Australia together into a single federation in 1901. Earlier, each state had drawn up its own constitution for its own system of government when it achieved self-government from Britain. The constitutions provide the basic framework for government. They outline who has power to govern, and they also outline the limits of that authority.

The Australian Constitution, for example, describes the composition and powers of each of the three branches of government—the legislature, the executive and the judiciary. Frequently, a constitution will include other matters considered particularly important at the time it was framed. For example, the Constitution of Canada protects language rights; the Constitution of Fiji makes provision for the position of traditional rights; and, until recently, the Constitution of Japan banned the use of armed force.

Between 1991 and 2000, the Constitutional Centenary Foundation sought ways to inform Australians about their respective constitutions and the system of government. In the course of the decade the foundation found out a great deal about what Australians think of the existing constitutional system and of the processes of constitutional review and change. As far as the approach to constitutional review and change is concerned, the foundation observed that Australians overwhelmingly support the referendum as a component of the procedure for constitutional change.

Australians want to decide if change is necessary and want to have the say on how that change will or will not be managed.

An electronic poll undertaken by the Australian Republic Unplugged on Monday, 19 November 2001, at 1900 hours on the question 'Should state constitutions only be changed by referendum?' resulted in a total of 171 hits, with 145 yes votes and 26 no votes. The result was that 84.79 per cent voted yes and 15.02 per cent voted no. Whilst this sample is very small, it is reflective of Australians' desire to have a say and be in control of their own destiny.

Prior to 1859, Queensland formed part of the colony of New South Wales. Following a petition from local residents to the government in London—once again people displaying the desire to have a say—a separate colony of Queensland was established on 6 June 1859 by letters patent under the New South Wales Constitution Act 1855. Sir George Bowen was appointed the first Governor of Queensland and a Queensland Constitution identical to the New South Wales Constitution was approved by Order in Council on 6 June 1859.

The Australian Constitutions Act 1850 passed by the imperial parliament in London made basic provision for the government of new colonies. The 1859 letters patent and order-in-council contained more specific provisions and a number of powers were reserved to the Queen, notably the power to disallow any act of the Queensland parliament. Upon becoming a separate colony, Queensland's system of law included both the English common law and statute law as well as New South Wales common law and statute law. Following a royal commission appointed in 1866 to revise the statute law in Queensland, the Constitution Act 1867 was enacted which consolidated the existing constitutional provisions and the 1859 letters patent and order-in-council as well as various enabling provisions which appear in New South Wales and imperial acts of parliament.

The Legislative Assembly Act 1867 was also passed by the Queensland parliament that same year. The Federation of the Commonwealth of Australia on 1 January 1901 united all the colonies as states under the Commonwealth of Australia and established a Commonwealth Constitution as part of an act of the imperial parliament. The states also retained their own separate constitutions. Federation had no immediate impact on the structure of government in the states. The Commonwealth Constitution especially provided that the state constitutions were to continue until altered in accordance with the constitution of the states. However, many of the powers previously available to the state parliaments were transferred to the Commonwealth parliament. Where laws of the Commonwealth parliament were inconsistent with the laws of the state, the laws of the Commonwealth were to prevail to the extent of the inconsistency.

Australia's constitutional process and development as an independent nation-state has been gradual. The Imperial Conference of 1930 accepted that the sovereign would appoint the Governor-General of Australia on the advice of the Australian Prime Minister. In 1985-86 joint legislative action by the Australian states, the Commonwealth and the United Kingdom parliaments known as the Australia Acts 1986 finally established the Commonwealth of Australia as a sovereign, independent, federal nation. Since the passage of the Australia Acts, the only significant constitutional links to the United Kingdom which remain unaltered are the appointment of the Governor-General by the sovereign on the advice of the Prime Minister as well as the appointment of state governors by the sovereign on the advice tendered directly by the relevant state Premier. The Australia Acts ended British governmental authority over any part of Australia and ended the right of appeal to the Privy Council. The acts were also historic in setting self-government powers and status on the states.

The next significant event in the constitutional evolution of Australia was a Commonwealth referendum which took place in November 1999. As all honourable members are aware, Australians exercised and voiced their democratic rights and overwhelmingly voted to maintain the status quo. In democracies, constitutions have additional significance if they draw directly on the authority of the people. The idea that a constitution draws its authority from the people is an important principle. It is important in practice, too—that is, where the constitution can be changed only with the approval of the people.

The latest United Nations human development report indicated that on a wide range of measures—life expectancy, adult literacy, education and GDP based on the purchasing power of the relevant currency—constitutional monarchies were outstanding. In fact, the first five countries listed on the United Nations human development index were all constitutional monarchies. Those countries included Norway, Australia, Canada, Sweden and Belgium. Constitutional monarchies were amongst the most stable and democratic countries in the world. Of the first 10, seven were constitutional monarchies. The others were the United States, Iceland, the Netherlands, Japan and Finland. They were followed by Switzerland, Luxembourg, France, the United Kingdom, Denmark, Australia, Germany, Ireland, New Zealand and Italy. In none of the republics was it easier for the Prime Minister to dismiss the president than his cook, as the Australian republicans proposed in 1999.

Presently, the National General Assembly of Local Government 2001 is under way. It is interesting to note that on the agenda are three resolutions from the Australian Local Government

Association itself, the Western Australian Municipal Association and the city of Whitehorse in Victoria, all seeking constitutional recognition of local government. It is impossible to predict how the constitutional debate will unfold in Queensland or in Australia in the future. Whatever happens, it is certain, and there is widespread recognition of the fact, that the people have the right and should have the opportunity to understand their own constitutional system and be engaged in decisions about its future. This level of understanding and involvement will continue and can be expected to grow. The people's voices, rights and wishes must be respected. In acknowledging the people's voices, rights and wishes, a government can truly show its understanding of responsible government, accountability and democracy.