COMMONWEALTH OF AUSTRALIA

SPEECHES

BY

The Rt Hon. HAROLD HOLT, M.P.,

ON

CONSTITUTION ALTERATION PARLIAMENT) BILL 1967

AND

CONSTITUTION ALTERATION (ABORIGINALS) BILL 1967

Second Reading

[*From the 'Parliamentary Debates', 1 March* 1967]

CONSTITUTION ALTERATION (PARLIAMENT) BILL 1967

Mr HAROLD HOLT (Higgins—Prime Minister) [8.42]—I move:

That the Bill be now read a second time.

As I informed honourable members in my statement in this House last week, the Government has decided to proceed with the referendum proposals that were embodied in the two Bills passed by both Houses towards the end of 1965 and to add a further proposal with respect to section 51 (xxvi). Because of the requirements of section 128 of the Constitution relating to alteration of the Constitution, the Bills that were passed in 1965 with a view to their submission to a referendum have lapsed and fresh Bills must be passed before the alterations they propose to the Constitution can be submitted to the electors. The Bill now before the House is, in its substantive provisions, identical with the Bill on the same subject passed by both Houses in 1965, except in one significant respect. That is the substitution of '85,000' for '80,000' in sub-section (3.) of proposed new section 24. I will come back to this alteration later.

This Bill, as honourable members will be aware, is the Bill to break the present link between the size of this House and the size of the Senate. This link or nexus is provided for by section 24 of the Constitution, the first paragraph of which reads:

> The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth, and the number of such members shall be, as nearly as practicable, twice the number of the senators.

Unless the requirement that the number of members shall be, as nearly as practicable, twice the number of the senators, is deleted from section 24, any increase in the House of Representatives must be accompanied by an increase of half that number in the Senate. While this provision is not to be interpreted with exact mathematical precision—indeed the present House consists of slightly more members than the 120 that results from a strict doubling of

the number of Senators—it is nevertheless clear, and it has been the consistent view of constitutional advisers over many years, that it is not open to the Parliament to increase the size of this House except by a very small number without at the same time increasing the number of senators. Such a limitation is not imposed on other parliaments, and it is, I believe, the view of a large majority of this Parliament that, whilst the substantial growth in population will make some expansion of this House necessary and desirable, it should not follow that the number of senators be increased proportionately.

Unless some measures are taken soon to increase the size of the House of Representatives, it will became impracticable for members adequately to perform the functions on behalf of their electors that are expected of them. As Sir Robert Menzies said when introducing the corresponding Bill in November 1965:

> . . . The problems being looked at by honourable members today are three or four times more weighty and more complex than they were when I first came into this House. I know this at first hand. I am not an idler; I have worked all this time and I know what it means . . . We have the supreme duty to represent our people and to represent them effectively. To represent them effectively, there must be a proper proportion between the number of members of this House and the number of the electors in the nation as a whole.

I shall illustrate the point a little further. If the Constitution remains unamended, by 1969 the existing number of members, or very close to the existing number, will have held for twenty years. The last change of significance was made in 1949. It is estimated that the population of Australia will have risen from just on eight million in 1949 to twelve million, or thereabouts, by the end of 1969. There will be this increase in population of approximately 50% since the last change was made. Anybody who has been in this place for any number of years will appreciate the force of what Sir Robert said as to the range of matters which have to be dealt with compared with the more limited jurisdiction which the Parliament took to itself in those earlier years.

As I mentioned in the House last week, there is, I believe, agreement among all members of both Houses that, because of the disproportion which has developed in the numbers represented in certain electorates, a redistribution should be made before the next general elections. Some electorates in the same State have less than 40,000 voters, while others have in excess of 100,000, and the disparity will have widened by the time of the next election, whenever that may be. It would clearly be imprudent to set in motion a redistribution until we had ascertained the views of the people on the question of breaking the nexus. Further, not only has the number of voters in some electorates now become very large but, as suggested by Sir Robert Menzies in the speech from which I have just quoted, the burdens of members have increased considerably. Government in Australia today is active in many more fields, and the range of problems which this has created has had a significant impact on the duties of the people's representatives.

Additionally, our population contains growing proportions of young people and of migrants. The future of our country lies to a significant extent in these people, and they have therefore been the subject of special attention by the Government and its agencies, through social services and other means. The Commonwealth has increasingly been drawn by the will of the electorate into fields that were originally the province of the States. We have seen this occurring in health and education, to give only two illustrations. Although the young people and many of our migrants have no vote, their welcome presence in the community has the effect of adding significantly to the burdens of those who represent the electorates in which they live. I know that this strikes a responsive chord in the Leader of the Opposition (Mr Whitlam), who has told me on more than one occasion not only that he has an electorate with a very large number of voters but also that a very considerable number of migrants have settled in it.

Mr James—He told the right honourable gentleman that in confidence.

Mr HAROLD HOLT—I do not think so. He has made no secret of the fact that he represents a substantial part of the Australian electorate, at least in his own constituency, even though I cannot attribute

the same merit to him with respect to the electorate at large. I am sure that my colleagues, the honourable member for Lalor (Mr Lee), the Minister for Immigration (Mr Snedden), who represents the electorate of Bruce, and the honourable member for Mitchell (Mr Irwin), will confirm the point that I have made. I have singled them out because they come readily to mind.

The points that I have mentioned all suggest the need not only for a redistribution but also for power to make increases deemed appropriate in the size of the popular House. Unless the nexus is removed, a significant increase in the size of the House of Representatives cannot be made unless the number of senators also is increased proportionately. To enable the Senate to continue to operate on a basis similar to that on which it is operating at present—that is, with an uneven number of senators standing for election on every occasion in each State—the minimum increase is twenty-four. This would mean increasing the size of the House of Representatives by some forty-eight members. No-one in this Parliament—nor any member of the public—would want this result. Nor do we as a government.

There have been suggestions—and no doubt they will be made again—that the object of the proposed changes in section 24 of the Constitution is to permit an excessive increase in the number of members in Parliament. Nothing could be further from the truth. The purpose of the proposal is to seek from the electors approval to alter the Constitution so that, as the growth of the Commonwealth's population demands, this Parliament can legislate for a modest increase in the size of the popular House without having at the same time to increase the size of the Senate. If carried, our proposals will permit the smallest increase that we consider to be consistent with effective representation. Indeed, as I shall explain later, there will for the first time be introduced into the Constitution a provision which will have the effect of placing an upper limit on the number of members of the popular House.

The Government, I may say, has considered other suggestions that have been brought forward to effect an increase in the size of the House of Representatives and at the same time enable an increase in the size of the Senate, but without having the considerable jump in numbers that would follow if we maintained the present system of voting. However, we have concluded—as indeed Sir Robert Menzies concluded—that none of them offers a wholly satisfactory solution, under the system of proportional representation—a system which experience has shown to be the best that has so far been devised. We have looked in particular at a proposal that the Senate be increased by a total of six, with one additional senator for each State, making eleven senators for each State. This would mean that at alternate elections there would be six senators voted for on one occasion and five on the other. It might prove necessary to have six senators elected in some States and five in others at the same election. The possibility of a deadlocked Senate could be increased, and there are other factors which, in the view of the Government, make this a less desirable course than the more simple and clear cut proposal to increase the House of Representatives to the required extent without the requirement of a corresponding increase in the Senate. I think I should observe that, even if the proposal that the size of the Senate be increased by six were adopted—and this could be done without a constitutional amendment at all—the result would be that we would be faced with an increase of some eighteen members and senators in all. In other words, to provide for the addition of twelve or thirteen members of this House—if that were the number considered necessary—six senators would have to be added to the National Parliament, even though it might be generally agreed that at the time there was no adequate reason for increasing the size of the Senate.

There are two things that I want to say about the position of the Senate. The proposed amendments of section 24 of the Constitution will not, in the view of the Government, in any way erode the role of the Senate. Nor will they preclude a future increase in the size of the Senate, should that at any time be considered desirable. As to the first matter, we believe that the Senate, as at present constituted, is well able to discharge—and to discharge effectively—the role designed for it by the Constitution. We are well aware that some fears are held that the prestige and authority of

the Senate may in some manner be diminished as a consequence of this proposal, and that the role it can perform as a house of review and custodian of the rights of the smaller States may be weakened. We do not accept these views as having practical force. The good sense of the electorate and of the Parliament will, I believe, provide effective safeguards against any such weakening of the position of the Senate.

Moreover, two protections of the position of the Senate will be afforded by the present proposals. Firstly, State representation will be protected by guaranteeing to original States—that is, all the existing States—a minimum of ten senators, in lieu of six senators guaranteed under the Constitution in its present form. Secondly, as a guarantee against excessive increases in the size of the House of Representatives, the Bill provides that the number of members of this House shall be ascertained by dividing the number of people of the States by a number determined by the Parliament, but not being less than 85,000. The 1965 Bill provided that the number of people was to be divided by a number not less than 80,000.

On reflection, the Government has decided that the minimum figure is to be preferred. Adoption of 85,000 as the population quota would permit a total increase of thirteen or fourteen members by about 1969. This, I stress, is a maximum increase, not minimum increase. I recall that, at the time of the First Parliament in 1901, the average population per electorate was about 50,000. By 1947 it had risen to over 100,000, and the size of this House was then increased from 74 members to 121 members. By the 1949 elections the average population per electorate was some 67,000; by 1969, we expect, the average would rise to a figure in excess of 94,000. I point out that, if the Government's proposals embodied in this Bill become law, it will be the first occasion on which the Constitution has imposed an upper limit on the total number in the popular House.

I commend the Bill to the House. I believe that the proposals contained in it should be approved by the people, and that, if they are, this will constitute a significant advance in the efficient working of our parliamentary system.

Debate (on motion by **Mr Whitlam**) adjourned.

CONSTITUTION ALTERATION (ABORIGINALS) BILL 1967

Mr HAROLD HOLT (Higgins—Prime Minister) [9.0]—I move:

That the Bill be now read a second time.

The purpose of this Bill is to make alterations to the two provisions of the Constitution which make explicit reference to people of the Aboriginal race. One alteration—that proposed by clause 3 of the Bill—is designed to repeal section 127. An identical proposal was passed unanimously by both Houses of the Parliament in November 1965. Section 127 provides that, in reckoning the numbers of the people of the Commonwealth, or of a State or other part of the Commonwealth, Aboriginal natives shall not be counted. The Government continues to believe that this section should be repealed.

The principal reason for including section 127 in the Constitution was the practical difficulty of enumerating the Aboriginal population at that time. No doubt in 1900 this was a very substantial problem. It is, however, no longer a serious difficulty, and the basis for the existence of the section consequently does not now exist. I should emphasise that section 127 does not affect the qualifications of Aboriginals to vote at Commonwealth elections. Section 41 has always guaranteed an Aboriginal the right to vote at elections if he has a right to vote at elections for the more numerous House of the Parliament of the State in which he is a voter, and this Parliament itself has removed all disabilities in respect of voting at Commonwealth elections so far as Aboriginals are concerned. They are now entitled to enrol and to vote and should, in the view of the Government, be counted as part of the population of the Commonwealth, or their State or Territory, for any purpose. The simple truth is that section 127 is completely out of harmony with our national attitudes and modern thinking. It has no place in our Constitution in this age.

The second alteration, which is contained in clause 2 of the Bill, is the deletion of the words 'other than the Aboriginal race in any State' from paragraph (xxvi) of section 51. Section 51 (xxvi) of the Constitution reads:

> The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:—
>
> (xxvi) The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws.

Since the Government's earlier proposals for constitutional alterations were put before the Parliament, a great deal of thought has been given, both inside and outside the Parliament, to the constitutional provisions relating to the Aboriginal people and there has been much activity by Government private members and organisations concerned with the welfare of the Aboriginals. In the light of this activity and the many representations made, the Government has reviewed the position and has decided that an amendment of section 51 (xxvi), as provided for in the Bill, should be put to the people, in addition to the proposal for the repeal of section 127. In coming to this conclusion, the Government has been influenced by the popular impression that the words now proposed to be omitted from section 51 (xxvi) are discriminatory—a view which the Government believes to be erroneous but which, nevertheless, seems to be deep rooted.

An effect of omitting these words will be the removal of the existing restriction on the power of the Commonwealth to make special laws for the people of the Aboriginal race in any State if the Parliament considers it necessary. As the Constitution stands at present, the Commonwealth has no power, except in the Territories, to legislate with respect to people of the Aboriginal race as such. If the words 'other than the Aboriginal race in any State' were deleted from section 51 (xxvi), the result would be that the Commonwealth Parliament would have vested in it a concurrent legislative power with respect to Aboriginals as such, they being the people of a race, provided the Parliament deemed it necessary to make special laws for them. It is the view of the Government that the National Parliament should have this power. If the proposals relating to Aboriginals are approved by the people, the Government would regard it as desirable to hold discussions with the States to secure the widest measure of agreement with respect to Aboriginal advancement.

I think I should say a few words about the suggestion that has been made that we should include a constitutional guarantee against discrimination on the ground of race. Such a proposal was put forward, in particular, by the honourable member for Mackellar (Mr Wentworth) in a private member's Bill. The recommendation to include such a guarantee in our Constitution has the obvious attraction of providing evidence of the Australian people's desire to outlaw discriminatory practices of every kind, but the disadvantages of the inclusion of such a guarantee are so substantial that the Government does not believe that it should be pursued. Such a guarantee could provide a fertile source of attack on the Constitutional validity of legislation which we, at this point of time, would not consider discriminatory. The extent of litigation that has arisen from section 92 provides a serious warning of the ramifications of an apparently straightforward constitutional guarantee. Moreover, such a guarantee would operate only to limit government action. It would not affect actions by individuals. Racial discrimination, if it exists in a community, is the outward manifestation of beliefs rooted in the hearts and minds of some men and women. I do not believe that such beliefs are to be found on any significant scale in this country; but even if it were otherwise, I do not think the position could be remedied in practice by a constitutional guarantee.

Accordingly, the Government believes that the best course, the most effective course, for the Commonwealth to adopt is to seek the amendments proposed in the Bill. It proposes to submit them at the same time as the referendum on the nexus provision—section 24 of the Constitution. I commend the Bill to the House.

Debate (on motion by **Mr Whitlam**) adjourned.

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