

Australia Bill [H.L.]

HL Deb 16 January 1986 vol 469 cc1166-80 1166

§ 3.33 p.m.

§ *The Minister of State, Foreign and Commonwealth Office (Baroness Young)*

My Lords, I have it in command from Her Majesty the Queen to acquaint the House that Her Majesty, having been informed of the purport of the Australia Bill, has consented to place Her prerogative and interest, so far as they are affected by the Bill, at the disposal of Parliament for the purposes of the Bill.

I beg to move that this Bill be now read a second time.

Relations between Australia and the United Kingdom are of the greatest importance. The Bill before this House will confirm the United Kingdom's formal recognition of Australia's status as an independent nation. **As such the removal of the old residual constitutional links** is not a cause for sadness but rather a cause for satisfaction.

This Bill before your Lordships is at the request and with the consent of the Parliament and Government of the Commonwealth of Australia. This request and consent has been expressed in the Australia (Request and Consent) Act 1985, enacted in December 1985 by the Commonwealth Parliament in Australia. That legislation was itself enacted with the concurrence of all the states of Australia, expressed in legislation enacted in September and October 1985 by each state legislature. In its passage through the state legislatures and the federal Parliament, the legislation was supported by all Australian political parties.

The purpose of the Bill is to remove the remaining constitutional links which still exist between the United Kingdom and the Australian states. It may surprise some noble Lords to know that such links still exist at all. They stem from the way the Commonwealth of Australia was established in 1901 as a federation of what were until then several separate British colonies. On federation certain powers and functions were conferred upon the Commonwealth authorities, but, subject to that, the several states retained their previous powers and functions: in law, in effect, they retained their status as colonies of the United Kingdom. **As such, they remained subject to restraints and to control from the United Kingdom** which, with the development of Australia to independent statehood, became inappropriate.

The quasi-colonial **status of the Australian states meant that**, in respect of those states, **Her Majesty was Sovereign in right of the United Kingdom. Accordingly, in exercising her powers in relation to the states, Her Majesty has hitherto been formally advised by her United Kingdom Ministers.** Under the Bill, Her Majesty will continue to be Sovereign in respect of the states, but no longer in right of the United Kingdom. **In her Australian capacity, she will be advised—in accordance with the provisions of the Bill—by Australian state Premiers** just as, in relation to Australian Commonwealth matters, she is advised by her Australian Commonwealth Ministers. **The Bill makes no other change in the position of Her Majesty as Queen of Australia.**

*As regards the powers and functions of Her Majesty and governors in respect of states, clause 7 makes new provisions. Her Majesty's representative in each state continues to be the governor. It is the governor alone who will exercise the powers of Her Majesty, **except on the appointment or the termination of the appointment of a governor**, and at times when the Queen is personally present in the state.*

On those two matters, the Bill provides for the Queen to act on the advice of the Premier of the state concerned, although when she is personally present in a state, any such advice to the Queen would be tendered only in accordance with the mutual and prior agreement between the Queen and the Premier. That arrangement was agreed between the Australian federal and state authorities and the Palace.

Mr. Donald Anderson (Swansea, East)

I thank the Minister for his clear and helpful speech. It is obvious that the Government have not materially altered their position since Baroness Young outlined the Bill in another place on 16 July.

In no way will the Opposition seek to delay or amend the Bill. On the contrary, we shall do everything that we can to speed its passage through the House in the hope that Her Majesty the Queen can proclaim its coming into force when she visits Australia early next month.

*On one level, it would in any event be quite unrealistic for us to raise obstacles. It would be inappropriate to seek unilaterally to amend matters which have been **agreed by all Australians**, and which should properly be within their competence. We note the unanimous approval in Australia, the passage through the state legislatures in September and October last year and the Royal Assent in Australia on 4 December. **It has been agreed by all parties in Australia,***

With such unanimity of approval, how can we oppose the Bill? It is the recognition of a change in relationship from the time of the establishment of the Australian Commonwealth in 1901—the residual element of that quasi-colonial relationship whose very existence contains at least a chance of potential conflict between the Crown, our legislature and Australia.

*The tide has passed, and, as the Minister said, it is quite anachronistic that, for example, **Her Majesty the Queen, in exercising powers in the Australian states, acts on the advice of United Kingdom Ministers.** When the Bill becomes law, in exercising such functions the Queen will act on the advice of Australian state premiers. Another example of an anachronism is that this House should have certain functions in respect of legislation for the states of Australia.*

*My only slight criticism of the Bill is that our negotiators have not done a tough enough job, because there is no reciprocity. **Perhaps, as a swap for giving the Australians their constitution,** we should have insisted that Alan Border remain in this country for five years.*

*Clause 7(5) reads: **The advice to Her Majesty in relation to the exercise of the powers and functions of Her Majesty in respect of a State shall be tendered by the Premier of the State**", which means that no longer will honours have to be filtered through the Foreign and Commonwealth Office. **From now on they will be recommended by the state premiers to Her Majesty, who in her capacity as the Queen of Australia will confer honours on her Australian people.***

Mr. Bruce George (Walsall, South)

In 1982 the Daily Telegraph carried a story written by Nicholas Comfort, a perceptive analyst, in which he said: Politicians at Westminster are bracing themselves for a Bill to make changes in the Australian Constitution, in the hope that it will arouse less controversy than last winter's debates on Canada's. About that time I opened a file on Australia, and four years later the file is thin because the contrast between the Australia Bill and the Canada Bill is enormous. I suspect that Australian politicians, seeing how badly the issue of patriating Canada's constitution was handled by the Canadian Federal Government, resolved to ensure that when, eventually, legislation was introduced for Australia, it would not be subjected to the same intense debates.

If the public was asked whether it appreciated that Britain still had a residual responsibility for Australia, many people would be as bemused as hon. Members were in the late 1970's when it was pointed out that we had a significant residual responsibility for Canada.

Lord Cledwyn of Penrhos,

As the noble Baroness pointed out in her speech, one of the interesting but anachronistic features has been the separate relationship between the states and the United Kingdom. Her Majesty the Queen is Queen in the Australian states, not as Queen of Australia but, as the noble Baroness, the Minister, has just said, as Queen in right of the United Kingdom, and therefore, technically at least, could be advised on state matters in Australia by United Kingdom Ministers and not by Australian Ministers. That is a curious relic which the Bill now abolishes. It is of course of the first importance to realise that the Queen will in future act as Queen of Australia and be advised by her Australian Ministers, and that is covered by Clause 7 of the Bill.

Earl Grey

My Lords, we on these Benches also heartily welcome the Bill which is designed to end the formal colonial status of the Australian states by breaking the residual rights of the United Kingdom Parliament over the legislation of the states.

Baroness Gardner of Parkes

Personally, I am delighted, and I am sure that I echo the feeling of every Australian, that the status of the Queen in Australia remains unchanged. That was the one pang that people had in relation to this degree of independence; they were concerned over any threat to the status of the Queen, because her Majesty is dearly loved by the people of Australia. I believe this Bill makes it clear that that will continue

Lord Denning

This is the end of an era that began many years ago in the colonial time with New South Wales. Sir Robert Menzies once said to me, "You must remember that the first people in Australia were picked by the best judges of England".

That is how New South Wales came into existence—with Botany Bay and the like. **That colonial era existed until 1900 when the Commonwealth of Australia Act formed the Federal Government of Australia with the states below it.**

There is this great residual satisfaction that the Queen here—the Queen of England; the Queen of the United Kingdom, if you please—the Queen of Australia there, **is the link which remains.** **This is the link which will still bind us together,** and we hope that this link will continue forever. **We wish this new constitution under the new Australia Act well.**

Lord Elwyn-Jones

My Lords, this is an historic and in some ways a moving occasion in that the residual constitutional links that remain between the United Kingdom and the Australian states are now to be broken.

I am delighted today that two notable and learned Lords of Appeal have taken part in this debate. **It is not a debate; it is a universal acclamation of approval.**

We welcome the Bill and we wish every happiness and enjoyment of **the fact that the final judicial decisions in Australia now go to Australians themselves and are theirs by right.**

I welcome the Bill and wish Godspeed to the Australian people.