

REFERENDUM LEGISLATION AMENDMENT BILL 1999

Address by the Hon Gareth Evans QC MP to the House of Representatives, Canberra, 23 March 1999 (*Hansard* pp 3458-61).

Mr GARETH EVANS (Holt)(6.23 p.m.) - The legislation before the House, the Referendum Legislation Amendment Bill 1999, is expressly designed to facilitate the passage, among other things, of the referendum on the preamble later this year. And it is on the subject of the preamble that I want to confine my remarks here tonight. The task and the test facing a Prime Minister, a poet or anyone else trying to draft a new preamble for the Australian Constitution can be very simply expressed. How do you capture in a few memorable words the essence of this country's past, present and future? I think most people would agree that a new preamble needs to be short and taut, it needs to be learnable and quotable, and it needs to touch the chords that really matter—the basic ideas that are at the heart of the kind of country we want to be and which cry out for expression.

The style in which it is all expressed really does matter. Any constitution is, in a sense, its country's autobiography. It is a nice expression that—'the constitution is the autobiography of a nation'. I could not find in the library who said it first. Cheryl Saunders was kind enough to suggest that it might have been me about 20 years ago—that is the penalty you pay when you have been interested in these issues as long as I have. But the point is if you think about the Constitution as an autobiography in which we all ought to be able to find something of ourselves mirrored it is crucial that it be well and appropriately written.

As with any such work, it helps if the first lines are compelling and captivating. The present Australian Constitution is never going to make a good beach or fireside read. In literary terms what appears there—after any preamble—is already pretty much a lost cause. But that is no reason not to give a new flying start to the Constitution. In terms of content the starting point should continue to be the recommendations of last year's Constitutional Convention, which reached consensus, after all, around 10 core ideas. They included recognition of our cultural diversity, affirmation of the rule of law and representative democracy, respect for our unique land and environment and acknowledgment of the original occupancy and custodianship of Australia by Aboriginal peoples and Torres Strait Islanders. Those ideas—the whole list of 10, and I have only read a few—should be embraced one way or another in the new preamble. Unless that happens—it does not have to be in precisely the same words or in as many words—the preamble will not deserve wide community support and it will not win that wide community support.

What kind of preamble have we got in mind? Mr Beazley, the Leader of the Opposition, put to the Prime Minister a couple of weeks ago a draft which was the product of quite a wide degree of consultation by me in particular not only with people on our own side but with people on the opposite side of this chamber and in the other House, indigenous leaders, leadership of the republic movement and people from the Australian constitutional foundation, who been doing a lot of work on this issue. So it is not simply, in any sense, a partisan document. It is the product of a lot of consultation. What we have in mind is something like this:

"Having come together in 1901 as a Federation under the Crown, relying on the blessing of Almighty God, and

The Commonwealth of Australia being now a sovereign democracy, our united people drawn from nations across the globe,

We the people of Australia

Proud of our diversity

Loving our unique and ancient land

Recognizing Indigenous Australians as the original occupants and custodians of our land

Believing in freedom and equality, and

Embracing democracy and the rule of law

Commit ourselves to this our Constitution."

Maybe we can do a lot better than that, and with further thought, consultation and ideas—which I am perfectly happy to engage in a debate about—I am sure we probably can. But I think probably we have made a better fist of it with this kind of document, unfortunately, than the Prime Minister seems to have with the preamble that was put into the public domain today. Unhappily—and I say `unhappily' very genuinely because we would have wished it were otherwise—the document that has come to public attention today really falls short on every one of the kinds of tests that I have mentioned. There are some good individual phrases—as you would expect from the involvement of a poet of Les Murray's stature—but I have to say the overall effect is like wading through porridge. Some of the text is simply unintelligible. The first sentence, for example, states:

"the Commonwealth of Australia is constituted by the equal sovereignty of all its citizens."

the second sentence—

"The Australian nation is woven together of people from many . . . arrivals."

You sort of get the drift of what is intended here, but this is no language known to man or woman, and it is certainly not the English language. Moreover, other parts of the preamble, not least the treatment of our indigenous heritage, are deeply flawed in ways that I will come to when this debate resumes. Many of the specific content recommendations of the Constitutional Convention are simply missing. It all has to go back to the drawing board with a much wider process of consultation this time around.

Sitting suspended from 6.30 p.m. to 8.00 p.m.

Mr GARETH EVANS— Before the dinner break, I was making the point that as much as we might have hoped otherwise the preamble introduced today by the Prime Minister is a deeply disappointing and flawed document, simply not satisfying the criteria that any preamble really needs to of being short, learnable, quotable and really touching the chords that matter in terms of Australia's national aspirations, with a content that also reflects fully the kinds of recommendations that emerged from the Constitutional Convention last year.

What needs to happen now is for this document to go back to the drawing board, the best available process being, we believe, a joint select parliamentary committee of the kind that was foreshadowed by the Attorney-General last month, with an appropriate additional input from the wider community—perhaps, highly desirably, through a group of delegates from the Constitutional Convention, the non-political members of which made a magnificent contribution to the public debate last year and whom it would be marvellous to tap again in this exercise.

In any such exercise, what are the issues that have to be addressed? Let me in the time available talk about four of them. The first need—it was one that was really strongly endorsed by the 1998 convention—is to get a sense of historical continuity into the text of this preamble. The alternative draft—which I read out before and which is our attempt to, after a full consultative process, put some ideas into the public domain—tried to do this in a way that the Prime Minister's draft does not by summarising in its opening two lines not only the significance of our originally coming together in 1901 but the really fundamental changes that have happened since.

One such change, which the Howard draft does appropriately acknowledge—if in slightly

odd wording, occasionally—is in the composition of our people. What was overwhelmingly an Anglo-Irish Australia in 1901 is now obviously a very much more diverse community than that, drawn in fact from nearly every nation in the globe, and it is appropriate, we think, that the preamble reflects that.

The other huge change, which the Prime Minister's draft does not refer to at all, and which the Constitutional Convention wanted referred to and which we believe ought to be referred to, is the reality that we are now, in a way that we were not for the first few decades of this century, a truly independent, sovereign nation. One only has to think back to Sir Robert Menzies' statement in 1939 to have an extraordinary concession of that non-independent, non-sovereign status when he said, you will all remember:

"...it is my melancholy duty to inform you officially that, in consequence of the persistence of Germany in her invasion of Poland, Great Britain has declared war on her, and that as a result, Australia is also at war."

That is the kind of country we were—just following the British sovereign leader and not really being an independent decision maker of our own. That has all changed now. It is a crucially important element of our new identity and it is something that, desirably, ought to be reflected in a preamble which is designed to capture a little bit of our history as well as our aspirations for the future.

The second important thing to get right is the reference to indigenous Australians—Aboriginal and Torres Strait Islander people. We simply have to recognise, generously and warm-heartedly, the debt that we owe to indigenous Australians as the original occupants and the custodians of our land. We have to do more than simply acknowledge that, like our flora and fauna, they were here before we were. If you just do it and leave it at that, as the Howard draft basically does, this demeans and frankly trivialises what is at stake here.

'Custodianship' is really a wonderful word, and it was the consensus choice of last year's Constitutional Convention. It does not open up matters of current divisive controversy to use a word like that. And it does capture at least some of that intensely spiritual and protective way in which Aboriginal and Torres Strait Islander Australians have always related to the land. If he is serious about reconciliation—he says he is—the Prime Minister simply has to be prepared to revisit and rethink this issue.

The third thing we have to do to win and deserve community support for this preamble is to find an appropriate way of referring to the belief in God held by a great many Australians, bearing in mind also the intensity and the centrality of that belief for many people in our community. This issue is a very sensitive one not only for believers but also for unbelievers who point to the problem in principle, in a pluralist society like ours, of

elevating one belief system above others. I also point, incidentally, to the complete absence of any reference to God in the Constitution of the United States, of all countries. I will read into the record the preamble of the United States Constitution, because it once again makes the point about how simple, stark language can be so much more effective than this turgid porridge that we have been bequeathed by the Prime Minister. The United States convention begins:

"We, the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America."

Just a few stark words, which still ring out after 200 years. The language is a little archaic to modern ears, but the content is absolutely clear, very explicit, very attractive, and there is no mention of God. What do we do on this issue? There was a consensus reached at the 1998 convention that the preamble do contain a reference to Almighty God—not a recognition, not an affirmation, although those words were used in other contexts, but a reference.

One possible way of making that reference is to pick up, as the Beazley alternative draft does, the language of the existing covering clauses in our parent United Kingdom act, which refer to those originally adopting our Constitution as 'relying on the blessing of Almighty God'. If you do it that way, as a reference to what moved and stirred those who originally adopted our Constitution, I think you honour the necessity to have a reference to God—a necessity felt by the convention and certainly a necessity felt by a great many people in our community—but you do not do it in a way which a lot of other people in the community find difficult to accept.

From the very wide range of discussions I have had on this issue I suspect that the kind of approach that we have adopted in this respect, and that I have just described, may be more broadly acceptable than that adopted by the Prime Minister. Just to put it again in context: what we are proposing for debate as an alternative way of doing this is in the first couple of parts of the preamble encapsulating, as it were, the whole history of the nation and doing it in this way:

"Having come together in 1901 as a Federation under the Crown, relying on the blessing of Almighty God, and

The Commonwealth of Australia being now a sovereign democracy, our united people drawn from nations across the globe,

We the people of Australia

Proud of our diversity..."

You can put in an appropriate reference to God in a way that is dignified, that does meet that intense feeling that is out there in the community but also does not make life difficult in the kind of pluralist community we now live in for those who do not share that belief system.

The fourth issue—and it is really a big one, but I will summarise a lot of things together—is to find the right words in which to express a whole series of other basic ideas, ideas about democracy, about the rule of law, about equality, about freedom, about respect for the environment and so on. There does not really seem to be a big issue here about these sorts of core ideas, although I have to note that the Prime Minister's draft in fact contains no explicit reference to the environment or even indirectly in terms of love or respect or affection for our land. That concept is simply missing. Let us give the Prime Minister the benefit of the doubt and say that there is no real issue apparent about a lot of his core ideas. The real issue is rather one about the degree of detail and the colour with which those ideas should be expressed.

The approach that we took in the alternative draft, which was made available to the Prime Minister quite a while ago, was to keep things very short and very simple. We picked up in 83 words all the basic themes that were supported by the Constitutional Convention and added one or two as well. The Howard-Les Murray draft takes twice as many words to say the same, or in fact rather less. It is not helped, I have to say, by a whole bunch of idiosyncratic flourishes in the text, flourishes like being 'free to be proud'. I do not feel the necessity to be 'free to be proud' of my country. I am proud of my country, a point made by Kim Beazley this afternoon. It is very odd terminology—'free to be proud of their country and heritage'. There are flourishes like that.

Then there are unintelligible flourishes like 'equal dignity which may never be . . . invoked against achievement'. As I said earlier on, this is language known to no man or woman. What does it mean? It is peculiar. It is intended to be some sort of flick against political correctness. The Prime Minister conceded that outside. If he is going to have a flick against political correctness, one would hope that he and Les Murray between them would at least be capable of doing it in a form that is intelligible rather than turgid mud as this actually, unfortunately, is.

There is a lot of bizarre language. There are a lot of things missing. You do not have that introductory language 'We the people of Australia'. You have a little reference to 'we, the Australian people' at the end of the document but none of that stuff at the beginning which sets the tone which the Constitutional Convention was keen to have set. As I said, you

have no recognition of respect or affection let alone love for our unique land and environment. You have no element, apart from the very important and helpful reference to our immigrant experience, to the history, constitutionally and otherwise, of our nation this century.

You do have some good language in the Howard draft. One sentence in particular does stand out: 'In every generation immigrants have brought great enrichment to our nation's life.' I also quite like the sentence: 'Our vast island continent has helped to shape the destiny of our Commonwealth and the spirit of its people,' although other people find it a bit irrelevant in the way it is expressed, more of a tyranny of distance statement than an affection for the land kind of statement. That is not bad language. We can find a way, if we work together, of incorporating the best in this particular draft with the best of the other ideas that are in circulation.

Let me finish on this note. The Prime Minister's draft should not be seen as a government fait accompli, some kind of take it or leave it tablet bestowed upon us from the mount. Of course it is never easy—and I agree with the Prime Minister this afternoon—to reach absolute agreement when there are issues of substance and issues of presentation and language as sensitive as those involved here. But let me say to the Prime Minister that if he approaches the task of finding consensus in an open-minded and cooperative way he will have plenty of goodwill from us on this side of parliament and, indeed, the rest of the community.

The intelligent way forward, as I indicated earlier on, would be for that draft to be referred to the joint select committee, which hopefully will be set up shortly to consider the referendum bills generally. It would also be possible—I think particularly helpful—to establish now a representative advisory group from the non-politician delegates to the Constitutional Convention to assist that parliamentary committee in its deliberations. We saw brought together at the Convention a fabulously diverse and lively group of young and older Australians and their voices should be heard again as we work to get the text of this autobiography of the nation right.

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