



NSW Legislative Assembly Hansard Constitution Amendment (Pledge of Loyalty) Bill

Extract from NSW Legislative Assembly Hansard and Papers Thursday 6 May 2004.

Second Reading

Mr PAUL LYNCH (Liverpool) [10.04 a.m.]: I move:

That this bill be now read a second time.

By this bill the allegiance of members of this Parliament will be directed to where it belongs—to Australia and to the people of New South Wales. The legitimacy of this Parliament is based upon the principles of democracy. Sovereignty does not lie with a State or with a head of State but with the country in which we live and with the people of this State. Presently, members state their allegiance to a head of State. That seems to me to have the priorities precisely wrong. Our allegiance is not to a head of State, or even to the State itself, but to the people who elect us and whom we represent.

If we are to go through a process of swearing or giving allegiances, it ought to mean something. Swearing or declaring an oath as we currently do is largely meaningless. It is simply a form of words with nothing really attaching to it. Changing the current declaration to the one that I propose gives it a meaning that has some substance. The fact, of course, that our head of State is an overseas monarch makes the declaration utterly irrelevant. The same objection remains even if the oath and declaration were made to an Australian, even to a republican head of State. That declaration would still be to a head of State. It would not be a declaration of real significance. It would not be a declaration to the source of our legitimacy as members of Parliament. It would not be a declaration to where sovereignty actually resides.

As well as replacing the oath or affirmation to the Queen by members, this bill also alters the oath or affirmation currently taken by members when they become Ministers and members of the Executive Council. The logic and reasoning for this change is the same as that lying behind the change to the member's oath or affirmation. One flows logically from the other. The bill provides amendments to the Constitution of New South Wales—the Constitution Act and the Oaths Act. Section 12 of the Constitution currently requires that no member of either this place or the other place shall be able to sit or vote until they take the oath of allegiance prescribed under the Oaths Act. The second sentence of section 12 of the Constitution provides as follows:

And whensoever the demise of his present Majesty (whom may God long preserve) or of any of his successors to the Crown of the United Kingdom shall be notified by the Governor to the said Council and Assembly respectively, the members of the said Council and Assembly shall, before they are permitted to sit and vote therein, take and subscribe the like oath of allegiance to the successor for the time being to the said Crown.

Stripped of its rather archaic verbiage, that means the New South Wales Constitution currently requires that we have to swear or affirm the oath of allegiance once elected. It means also that if the present Queen were to pass away, business could not occur in either the Legislative Assembly or the Legislative Council until we had all sworn allegiance to Charles III. That, of itself, suggests that the Constitution is in need of some significant alteration. Section 4 of the Oaths Act says that the form of words in the second schedule to the Oaths Act is the oath of allegiance. The second schedule to the Oaths Act sets out the following words:

I ... do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, her heirs and successor according to law. So help me God.

The current section 12 allows an affirmation to be substituted for an oath. The reference to Queen Victoria suggests that it has been some considerable time since anyone has had a proper look at this process. The bill omits section 12 of the Constitution and replaces it with a new section. There will now be no need for reference to the Oaths Act for an oath or pledge by members elected after the bill comes into effect. Apart from its other virtues, that means all of the provisions about a member's pledge will now be contained within the Constitution. One would have thought if the pledge is as significant as it probably is, and certainly ought to be, one should not have to locate it by scurrying from the Constitution to the Oaths Act to a schedule. This proposal, as I say, would have the wording of the pledge contained within the Constitution. The new section 12 provides that members cannot sit or vote until they have taken the pledge of loyalty. The pledge of loyalty is given in this form:

Under God, I pledge my loyalty to Australia and to the people of New South Wales.

The section provides that the words "under God" can be omitted, meaning that the current alternatives about

swearing an oath or affirmation are retained in this proposal. The section makes clear that it applies only to members elected after the commencement of the legislation. The bill also proposes a new section 35DA in the Constitution, and consequently omits provisions in the Oaths Act dealing with the Executive Councillor's oath. The new section requires of new Executive Councillors and Ministers a pledge of loyalty in the same terms as a member's pledge. The bill also provides for an Executive Councillor's oath to be set out in the legislation. Amongst other virtues, the new oath removes some of the archaic language contained in the present oath. The present Executive Councillor's oath is contained in schedule 5 to the Oaths Act and reads as follows:

I ... being chosen and admitted of Her Majesty's Executive Council in New South Wales, do swear that I will to the best of my judgment at all times when thereto required freely give my counsel and advice to the Governor or officer Administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, that I will not directly or indirectly reveal such matters as shall be debated in council and committed to my secrecy, but that I will in all things be a true and faithful councillor. So help me God.

There is of course an alternative affirmation. The provision in the bill that will replace that oath reads as follows:

I ... being appointed as a member of the Executive Council of New South Wales, do swear that I will perform the functions and duties of an Executive Councillor faithfully and to the best of my ability and, when required to do so, freely give my counsel and advice to the Governor or officer administering the Government of New South Wales for the time being for the good management of the public affairs of New South Wales, and that I will not directly or indirectly reveal matters debated in the Council and committed to my secrecy, but that I will in all things be a true and faithful councillor. So help me God.

There is of course an alternative affirmation. That has, I think, two particular virtues. One, it has an important oath within the Constitution, rather than in the Oaths Act; and, two, it updates some of the language, which I think is an improvement. This is not the only part of Australia that has moved in this direction. In the Australian Capital Territory the Oaths and Affirmation Act 1984, section 6A, sets out the obligation of members of that Assembly to undertake an oath or affirmation. Schedule 1A sets out one of the alternative oaths as:

I, A.B., swear that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law. So help me God!

An alternative affirmation is also possible. Interestingly enough, legislation dealing with these issues was introduced last year to the Western Australian Parliament. The Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2003 of Western Australia provides, in schedule E:

I ... swear, according to the religion and the beliefs I profess, that I will faithfully serve the people of Western Australia as a member of the Legislative Council/Legislative Assembly.

As I read the Western Australian Parliament *Hansard*, that debate concluded on 20 April in the lower House, where that proposal was adopted. It still has to be debated in the upper House. The particularly interesting thing, from reading the Western Australian Parliament *Hansard*, is that the legislation that was before that Parliament had a number of provisions of which this was simply one, and it was the other provisions that generated the controversy and the excitement. To the people of Western Australia, moving to a pledge or declaration seems to have been taken as a commonplace and ordinary thing, and did not seem to generate much opposition from conservatives or others in the Western Australian Parliament. A number of years ago the Australian Citizenship Amendment Act altered the pledge of commitment to be taken by new Australian citizens. The pledge, for about a decade now, has in accordance with Federal legislation, read as follows:

From this time forward, under God, I pledge my loyalty to Australia and its people, whose democratic beliefs I share, whose rights and liberties I respect and whose laws I will uphold and obey.

I should note that about a decade ago there were similar proposals to introduce in New South Wales legislation dealing with those types of issues. The Oaths and Crown References Bill was introduced as a private member's bill in 1993 and reintroduced in 1995. I note a number of significant differences between this bill and those earlier pieces of legislation. First, the actual pledge in this legislation is lengthier and I think it is better than in the 1993 and 1995 versions. Critically, this bill, as opposed to the earlier attempts in this Parliament, refers to the people of New South Wales and not just to Australia. Second, this bill is much more restricted than the earlier legislation. The 1993 and 1995 bills referred to a whole plethora of offices and positions for which oaths would be altered. This bill refers only to members and Ministers. The earlier legislation was consciously seen as part of a republican agenda, whilst this bill is not.

Whilst I am certainly a republican, and happy to proclaim that, and whilst I would expect that all republicans who are serious about being republicans would support this bill, a whole range of people who are not republicans would, I think, support the bill, and certainly should do so. I say that because this bill does not replace loyalty to the Queen with loyalty to a president. It replaces allegiance to a head of State, who at the

moment happens to be an hereditary monarch, with allegiance to Australia and the people of New South Wales. That is, the pledge itself is neither monarchist nor republican; the pledge is about democratic theory and about accepting that our real legitimacy comes from Australia and from the people of New South Wales, not from someone who happens to be a head of State.

It is worth noting that there have been a number of similar changes and developments of this type in recent years. This Chamber recently debated legislation to remove the Royal United Kingdom coat of arms and have it replaced by the New South Wales State arms. That commenced as a private bill in the upper House, of course. I note that the recent mini-budget contained some announcements that all State-held land that is currently being held in the name of the Queen, her heirs and successors will be known as State land, that is, land held on behalf of the people of New South Wales, rather than as Crown land.

Additionally, I note some quite interesting developments of late in the Country Women's Association [CWA], which recently held its annual conference at Queanbeyan. The front page of yesterday's *Daily Telegraph* had the wonderful headline "Can't save the Queen: Country women vote to abandon the royal anthem". As I understand the media report, the annual conference of the Country Women's Association rejected a motion by some pro-royal branches to enshrine the royal anthem in the CWA's rules. A radio report of 3 May indicated that the association would consider changing its constitution so that allegiance would no longer be pledged to the Queen and Australia. The outgoing president, Ruth Shanks, was quoted as saying it was a sign of the times and:

The changes to the constitution are in effect just changing not what the CWA is all about but the administration and how we run the organisation and making it relevant for the 21st century.

I do not for one moment suggest that the Country Women's Association would necessarily agree with everything I have ever said. Nor do I suggest that the CWA is a particularly radical organisation. I think the significance of this issue is that the association is making some sensible and reasonable comments about something that, frankly, should not generate a whole lot of excitement any more. As the association's outgoing president said, it is a sign of the times. This country has moved to the point that a colonial pre-democratic oath of allegiance is completely inappropriate. I turn briefly to some of the possible arguments against this bill. Some of them have been highlighted in the media of late. One objection might be that we should be pursuing the Australian Capital Territory model, which has an oath similar to the pledge I am proposing but also allows an alternative to be chosen at the election of members, for allegiance to the Queen. I guess that has the advantage of compromise, but it seems to be wrong in principle.

It seems that if one is pledging an allegiance one should not have mixed or confused allegiances. If we go to the trouble of making an allegiance all of us should be making it to the same thing. So while I can understand the political process that gave rise to the Australian Capital Territory result, I think that it is probably wrong in principle. If we are to pledge our allegiance to something, we cannot have half of us pledging our allegiance to one thing and the other half pledging allegiance to something else. It is silly to go through the process of having a pledge and having mixed allegiances. Another alternative might be to pursue the Queensland variant. As often happens in constitutional matters, Queensland has a completely different model that includes a pledge of allegiance to both the Queen and the people of Queensland. I have two problems with that.

The inclusion of a pledge of allegiance to the Queen is wrong in democratic theory because it should not be to the Queen or to the head of State, be it a president or the Queen. It should be to the people of New South Wales and to Australia; it should not be to a head of State. So I have an objection to the Queensland model on that basis. I also think it is susceptible to the same criticism I just made of the Australian Capital Territory model in that there are mixed allegiances, that is, one is pledging allegiance to two different things in that one pledge. I think that is confusing and wrong, and defeats the entire purpose of having a pledge. As I said, we should not have mixed or conflicting allegiances.

I shall briefly go through some of the other arguments, which I will no doubt deal with in greater detail in my reply to the debate. One argument—and this was put to me by a fairly intellectually inadequate radio journalist earlier this week—is that it is simply a matter of constitutional law that we must pledge allegiance to the head of State. It is true that it is a matter of constitutional law that presently we must pledge our allegiance to the head of State, and that is why I am moving an amendment to the constitutional law. I must say that at that stage the radio journalist simply turned my microphone down; it was all a bit too hard for him to cope with. There has also been the odd claim that we should not be worrying about this because it is simply a diversion. Those who make that argument are simply unable to confront the substance of the arguments I have put up.

If people want to claim that this is a diversion they first need to argue the substance of the issue because it is a significant issue that needs to be dealt with. To say that it is a diversion is also nonsense. This week we spent half an hour debating that and many hours debating a whole lot of other things. So if it was intended as a diversion it has clearly been unsuccessful, and it could never have been successful in that sense. The fact that we have this debate does not stop us from having a whole host of other debates. As I have said to some people, most of us can actually chew gum and walk at the same time. It is also worth noting the history of this

matter. I first put this item on the agenda of the Labor Party caucus as long ago as December of last year. It was debated in caucus in February of this year, and it then went of to the Parliamentary Counsel.

I received the draft bill a couple of days after Easter, and I gave notice of the bill at the first available sittings after I had received the draft. So the suggestion that this has been plucked out of the air for no good cause or legitimate reason is simply nonsense, as that history suggests. There are a couple of other arguments that people will no doubt throw up. One argument is that it is our heritage and we are overturning our heritage. That argument does not have a lot going for it because it assumes many things about our heritage. It assumes that the only part of our heritage worth acknowledging is the Queen. Our heritage is a lot more complicated than that, including the people who were here before the Queen's forces arrived.

I also do not think that heritage is a sufficient argument to say that we should still be swearing allegiance to a head of State rather than to the people of New South Wales. If it was appropriate at one stage to have a colonial, pre-democratic oath, that time has well and truly passed. The final argument that has been put up against the proposal is that we should not be debating this matter and we should not be making any constitutional change until we have introduced a republic. I note that the Leader of the Opposition made that comment on Sunday. That is susceptible to two major criticisms. One is that he does not understand this proposal. As I have said a couple of times, this proposal is not specifically republican. While I would expect every republican who is serious about being a republican to support it for obvious reasons, it still institutes an oath or pledge that I think is appropriate, whether we are a monarchy or a republic.

Another criticism is that one must wonder what sort of republican the Leader of the Opposition is. In his case, saying that we cannot make any constitutional change until Australia becomes a republic is simply an excuse for him to do nothing. It gives him an excuse to oppose something that should not be opposed. It also suggests that he is simply a pretend republican, that is, he pretends to be a republican but as soon as he is asked to do anything about it he runs at a million miles an hour. There was an extraordinary bit of felicitous timing to this issue. It first appeared in the media last Sunday. On that day the Leader of the Opposition was quoted in some detail by Michelle Grattan in the *Sun-Herald*, telling us all that he is a direct-election model republican, that he is absolutely committed to a republic and so on.

Given that the Leader of the Opposition said that and he wants to oppose this bill, one can only assume that he is either a hypocrite—that is, he has a series of beliefs that he talks about but then is not prepared to do anything about them—or a coward, that is, he does believe in the republican cause but will not allow himself to take on people in his own party to do anything about it. He is happy to talk about being a republican but he is frightened to vote that way. The proposal in this bill is moderate, reasonable and almost modest. It can hardly be described as radical. It simply means that as members of Parliament we express our allegiance in the way we should.

In a democracy our allegiance should be to the people, not to a head of State. It should be an allegiance to the people we represent, not to the person at the top of the tree or structure. My allegiance is not to someone who lives thousands of miles away; it is to the people I represent, the people who elect me. This bill is not about a republic or a monarchy; it means that as members of Parliament we pledge our allegiance not to a head of State, be it a monarch or a president, but to the sovereignty and source of our legitimacy. It pledges our loyalty where it is truly owed: to Australia and the people of New South Wales. I commend the bill to the House.