



NSW Legislative Council Hansard

Constitution Amendment (Pledge of Loyalty) Bill

Extract from NSW Legislative Council Hansard and Papers Thursday 2 March 2006.

Second Reading

The Hon. PETER PRIMROSE [3.55 p.m.]: I move:

That this bill be now read a second time.

With the passage of this bill the allegiance of members of this Parliament will be directed 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 swear their allegiance to a head of State. 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 declaration as proposed gives it a meaning that has some substance. Of course, the fact that our head of State is an overseas monarch makes the declaration utterly irrelevant. The same objection would remain even if the oath and declaration were made to an Australian, even to a republican 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 members' oath or affirmation to the Queen, the bill also alters the oath or affirmation 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 members' oath or affirmation. One flows logically from the other. The bill amends the Constitution of New South Wales—the Constitution Act and the Oaths Act.

Section 12 of the Constitution 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. Stripped of its rather archaic verbiage, the second sentence of section 12 of the New South Wales Constitution requires that we 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, and possibly Camilla I. That, of itself, suggests that the Constitution is in need of some significant alteration. Section 4 of the Oaths Act provides 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 successors according to law. So help me God.

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 proposed 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 is enacted. Apart from its other virtues, that means that all of the provisions about a member's pledge will now be contained within the Constitution.

One would have thought that 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. As I said, this proposal puts the wording of the pledge within the Constitution. New section 12 provides that members cannot sit or vote until they have taken the pledge of loyalty, which is given in the following 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 making an 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 form as a member's pledge. The bill also provides for an Executive Councillor's oath to be set out in the legislation. Among other virtues, the new oath removes some of the archaic language contained in the present oath. The present Executive Councillor's oath is in schedule 5 to the Oaths Act 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.

This has, I think, two virtues. One, it puts this 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 State or Territory of Australia that has moved in this direction. In the Australian Capital Territory Oaths and Affirmation Act 1984, section 6A sets out the obligations of members of that Assembly to undertake an oath or affirmation. Schedule 1A sets out one of the alternative oaths as:

I ... 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 this issue was passed in the Western Australian Parliament only late last year. The Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2005 of Western Australia provides:

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.

The particularly interesting aspect of the debate in the Western Australia Parliament *Hansard* is that when the legislation was before that Parliament it 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. For about a decade now, in accordance with Federal legislation, the pledge has 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 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 pledge in this bill 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.

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 a hereditary monarch—with allegiance to Australia and the people of New South Wales. That is, the pledge itself is neither monarchist nor republican; it 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, such as legislation to remove the Royal United Kingdom coat of arms and have it replaced by the New South Wales State Arms. That legislation commenced as a private bill. 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.

In 2004 the Country Women's Association [CWA] voted to abandon the royal anthem. As I understand it, 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 that year 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 that:

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.

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 the bill. One objection might be that we should pursue the Australian Capital Territory model, which has an oath similar to the pledge I am proposing but also allows an alternative of allegiance to the Queen to be chosen at the election of members. I guess that has the advantage of compromise, but it seems to be wrong in principle. It seems that if there is to be a pledge, there should not be mixed or confused allegiances. If we go to the trouble of making an allegiance, all of us should be making it to the same entity. So while I can understand the political process that gave rise to the Australian Capital Territory results, I think 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 our allegiance to something else. It is silly to go through the process of having a pledge and having mixed allegiances.

Another alternative would be to pursue the Queensland variant. As often happens in constitutional matters, Queensland has a completely different model: it 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 the pledge 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. Therefore, I have one objection to the Queensland model on that basis. I also think it is susceptible to the same criticism that can be made of the Australian Capital Territory model in that it has mixed allegiances, that is, one pledge offering allegiance to two different things. I think that is confusing and wrong, and it defeats the entire purpose of having a pledge. As I said, we should not have mixed or conflicting allegiances.

One other argument is that it is simply a matter of constitutional law that we must pledge allegiance to the head of state. It is true that as a matter of constitutional law at present we must pledge our allegiance to the head of state, and the bill does amend the constitutional law. Yet another 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; for example, that the only part of our heritage worth acknowledging is the Queen. Our heritage is a lot more complicated than that, including the heritage of the people who were here before royal forces arrived. I can but refer honourable members to the Wik decision if they would like more erudite points on this issue.

The final argument that has been put up against the proposal is that we should not debate this matter or make any constitutional change until we have introduced a republic. This was the Opposition's position when this matter was debated in the other place. They do not understand the proposal. As I have said a number of times, the 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.

The proposal in the bill is moderate, reasonable and almost modest. It can hardly be described as radical. It simply means that members of Parliament 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. The 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 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.