CONSTITUTION ALTERATION (ABORIGINALS) BILL 1967

Bill—by leave—presented by **Mr Harold Holt**, and read a first time.

Second Reading

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 The Government continues to believe that this section should be repealed.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.

CONSTITUTION ALTERATION (PARLIAMENT) BILL 1967

Second Reading

Debate resumed (vide page 262).

Mr WHITLAM (Werriwa—Leader of the Opposition) [9.8]—The Opposition supports the Bill. It endorses the arguments put by the Prime Minister (Mr Harold Holt) in moving the second reading of the Bill. I can assure honourable members and all our fellow citizens that my Party, in the Parliament and outside the Parliament, will support this Bill and the referendum without reservation, equivocation or qualification.

Mr Harold Holt—There should be more of it.

Mr WHITLAM—I hope the Prime Minister can give as full an undertaking on behalf of both the Government parties outside the House. It is impossible to emphasise too strongly that this is not a device simply to secure more politicians. It is a proposal for the better representation of the people in their National Parliament, a proposal for a more effective and representative National Parliament. An argument used in many newspapers and by a few members of political parties when a similar Bill was passed by this House unanimously in November 1965 was that this was a device to create more politicians, and that Australia already had too many politicians. The fallacy of this kind of argument has been exposed by the very people who make it. They now say that there is a way of achieving an increase in this House as long as there is half that increase in the Senate. The few opponents of this proposal say: 'We do not want more politicians' and then say in the next breath: 'You do not need to alter the Constitution because you can get the same increase in the House of Representatives as would be permitted by this referendum as long as you increase the Senate by another six'. They want it both ways. In fact, some members of one political party really wanted an increase in the Senate since that is the only place where they could secure parliamentary representation. Their prospects of securing representation would be enhanced, under the proportional system of voting, if the number of senators were increased.

Since then they have been more explicit: they have come up with this idea of having eleven senators from each State. The system they propose is very complicated. Under the Constitution there has to be equal representation in the Senate from each original State and we still have only the original States. To minimise the chances of even division between Government and Opposition parties and thus a stalemate on all legislation in the Senate, an extraordinarily complicated system is proposed. It amounts to maintaining the equal representation of the States by instituting a system of unequal terms of office for the additional senators.

Nobody really believes that it is necessary to have an increase in the Senate in order

to make that chamber more effective. The United States Senate—the most powerful legislative body in the world and the only legislature which really initiates legislation—has two senators from each of the fifty States. Some of those States, such as California, New York and Texas, each has a greater population than the whole of Australia. We all agree in this place that it would be easier for us to carry out the duties which our constituents expect us to perform and which governments still permit us .o perform if there were more members in the House and if we consequently represented fewer persons outside it. The Prime Minister made, as he often does, a gracious reference to my own situation. By the next general election I will represent 250,000 souls. Because of the attractions of my electorate for migrants and young married couples I would have in my electorate easily a larger number of minors and aliens than any other honourable member. We agree that there should be more members in this House. We agree that it is not necessary to have an increase in the number of senators from each State. Still less should it be necessary to have this cumbersome, intricate proposal that has been advanced by the opponents of the referendum for increased representation in the Senate.

At the moment there is no constitutional limitation on the number of persons in this House except that it must be as near as possible twice the number in the Senate. As long as we maintain this ratio we can increase our numbers by legislation without any reference to the people. For the first time the Australian people are being given an opportunity to put a ceiling on the number of members permitted in any of their legislatures. The ceiling which the Prime Minister has proposed in this Bill is 85,000 electors, on average, for the electorates in each State. No State Parliament has any limitation on its numbers in either of its Houses. I believe that no other national parliament has a limitation on its numbers. For the first time, there will be a limitation in the case of the Australian National Parliament.

Perhaps we might compare our situation with that of other countries with which in other respects we often compare ourselves. I know it is not easy to compare the number of elected persons in a federal system with that in a unitary system but, of course, in a unitary system you very often have much more powerful local government bodies than is the case in federal systems. In the United Kingdom, for example, it is commonplace to have local government bodies with the great range of powers which in Australia we find in Brisbane alone. So I will confine myself to a few comparisons with other national parliaments. Already in this House we represent considerably more people than are represented by the members of the British House of Commons, the Canadian House of Commons or the Italian Chamber of Deputies. We represent, on average, almost three times as many people as do the members of the Parliaments of the Netherlands and Sweden and almost four times as many as do members of the Parliament of Norway. We should not believe that in Australia we are necessarily more effective in representing numbers than are our peers in those countries with which we compare ourselves.

I have said that my Party, inside and outside the Parliament, is wholeheartedly in support of this proposal. Firstly let me refer to the situation in the Parliament. In 1956 the former Prime Minister moved that the Constitutional Review Committee be appointed. That Committee comprised equal numbers of members from the Government Parties and the Opposition Party. It consisted of proportionate numbers from those Parties in each chamber. The Committee's recommendation was in favour of the current proposal with the single exception that the minimum number of electors recommended was 80,000. Many other recommendations were made by the Committee in 1958 and the full reasons for all of its recommendations were given before the end of 1959. We would have preferred that some accompanying recommendations also be put to the people: in particular, in the light of legislation of a couple of years ago, the provision that would ensure one vote one value in the various electorates; that there should be not only a proper balance of representation between the States but also a proper balance of representation between electorates.

We would also have hoped that the people would have the opportunity of including in the Constitution a provision

for solving deadlocks between the Houses by joint sittings before and without a double dissolution. Nevertheless if this referendum is carried it does not make it any more difficult to have these other recommendations put at a later time. These steps are supported by us on their intrinsic merits.

The Opposition members on the committee which recommended this alteration in 1958-59 were my predecessor and myself, the then Leader and Deputy Leader of the Opposition in the Senate, the former honourable member for Lalor and the late honourable member for East Sydney. It will be appreciated that all the Labour Party's members on the committee held high office in the Party at the time. Four of them had held ministerial office in this Parliament and two had held ministerial office in the Parliament of Victoria. Mr Pollard in fact had held ministerial office in both Parliaments. It can be seen that they were men of considerable constitutional and political experience. They recommended this proposal back in 1958-59. On several occasions since then my predecessor, the honourable member for Melbourne (Mr Calwell), has moved, on behalf of the Party, resolutions which would in fact have given effect to this proposition, among others. Let me recall them to the House. On 13th April 1961 my predecessor moved:

> That this House is of opinion that the recommendations of the Joint Committee on Constitutional Review . . . be submitted to the people for their approval.

On 12th April 1962 he moved an urgency motion on the Government's failure to submit to the electorate any of the proposals of the Joint Committee on Constitutional Review. On 30th October 1964 he unsuccessfully moved two amendments to the Representation Bill to secure a referendum on the breaking of the nexus. On 1st April 1965 he moved:

> That this House is of opinion that the recommendations of the Joint Committee on Constitutional Review . . . particularly those recommendations with respect to the . . . number of Senators and Members of the House of Representatives, the division of States into electoral divisions and disagreement between the Senate and the House of Representatives, should be submitted to the people for their approval.

In November 1965 the members of my Party in both Houses unanimously supported the Bill introduced in this place by the then Prime Minister. It will be seen quite clearly that in this Parliament, senior members of my Party have supported, and all members have unanimously supported, the very referendum which is proposed in this Bill.

So far back as 1961 the Federal Conference of the Australian Labor Party resolved to support all the proposals of the Constitutional Review Committee and it also supported any such proposals to be submitted to a referendum by the present Government. There can be no question that we will do our best to see that the people know the arguments in favour of this referendum in which we strongly believe. Can this be said about the Government Parties? I believe that the Liberal Party will support this. One would hope that the Country Party would, too. I do not know who is to speak tonight on its behalf. When similar legislation was last debated the only Country Party speaker was the honourable member for Gwydir (Mr Ian Allan). He was not as enthusiastic as the Prime Minister or my predecessor, but he did support it and all the members of his Party supported it. On this occasion there are Country Party Ministers in the House. Two of them in fact were present at the recent meeting of the Country Party's Federal Council which passed the resolution stating that it would be unwise to proceed with the referendum. I believe that the members of the Country Party who are in the Cabinet will show proper Cabinet solidarity. I believe that all members of the Country Party will support this Bill—will vote and be recorded as voting in favour of it. Can we be assured that the Country Party organisation will work in favour of this referendum as the Liberal Party organisation and the Labor Party organisation will do? I repeat, we are glad indeed that the people will be given this opportunity to make a more effective House of Representatives and that for the first time they will have an ascertainable ceiling on the numbers in their legislature. We believe, inside the House and outside the House, that this referendum should be supported because it will make for a more effective Parliament for this country.

Mr TURNER (Bradfield) [9.27]—The House has witnessed tonight a very rare spectacle—the Prime Minister (Mr Harold

Holt) and the Leader of the Opposition (Mr Whitlam) singing a duet. This is rare, and will never be seen again. Certainly the populace which sometimes listens on the air has been excluded. I have not heard loud cheers from the corner benches. I am sorry, in the midst of such unique harmony, to strike a discordant note. The first thing to which I want to object is that this matter has been brought on for debate tonight. Nobody on the Government side knew anything about it until this morning. I do not know how much the Opposition knew of it.

Mr Harold Holt—I made a statement last week in which I said that it would be brought forward.

Mr TURNER—I see. Well, I stand alone. It is not the first time I have stood alone and I am very happy to be in that position, because I have no doubt whatever that what I have to say is worth saying and ought to be noted. It is absolutely basic in the Standing Orders of this House, and indeed of any Parliament, that when notice is given of a Bill on one day and the second reading speech is delivered, that matter is not debated until at least the next day and usually, in the case of an important Bill, until the next week. There are few things that Parliament can do—almost nothing. The Executive controls everything, but the simple thing that the Parliament has sought to do is to be able to debate proposals brought before it by the Government. It can talk. It can do nothing else. Thanks to rigid party discipline a government can ensure that every i it dots and every t it crosses shall go through just like that. But Parliament can talk. In the past it has been able to talk and, as drops of water on a stone erode it away, if Parliament keeps talking and the government persistently does things that ought not to be done and does not do things that should be done, sooner or later that government goes out of office. The sole remaining right of Parliament is to talk. For this reason it is basic in the Standing Orders of this House that when a proposal is put before the Parliament it is not immediately debated. Members should have the opportunity to study it so that they may debate it, so that they may talk, so that they may do the only remaining thing Parliament can do—talk about something of which it has had some notice.

Tonight this Bill has been brought in and the debate has proceeded immediately. I want to register my protest against this procedure. I could have registered it in a rather effective way when Mr Speaker asked, as he was bound to ask, whether the House was prepared to go on with the debate tonight. I could have said no, in which case this debate would not have gone on tonight. I was persuaded—against my better judgment, I think—by the Leader of the House (Mr Snedden) to content myself with the protest I am making now, but I have to make it clear that this matter is absolutely basic and that I will not be silent if an attempt is made again to adopt this kind of procedure, that is to say, to bring in a Bill and immediately debate it without the House having had an opportunity to study it.

I said I stand alone on this and I am very happy to do so. This is a basic principle, and I stand on it. Of course this is, as we have been told, only a little matter, a formal matter, a matter that has been before us on an earlier occasion. Indeed, there was unanimity some little time ago on a similar Bill. But in my view this is a Bill of some consequence. It is designed to amend the Constitution. If it succeeds in doing so—which I doubt—then this is something which will stay with us for a long time, perhaps for all time. So the Bill is not really unimportant. There was a party room debate on this matter this morning by those on this side of the House. I reveal no secrets when I say that it took an hour and a half to discuss various matters relating to this Bill. I put that in evidence to show that there are certain matters that could have been debated in connection with this Bill tonight. There are perhaps many more than were debated this morning, but I repeat that it took an hour and a half to talk about some of these things this morning in one quarter.

The alterations, of course, are just small alterations as compared with those in the previous Bill that was before this chamber —just one or two words. Well, some times one or two words can make a big difference. For example there is an injunction: 'Thou shalt not commit adultery'. Omit the word 'not' and that does make some difference. Yet that is simply a change of one word.

I also remind the House that some time has gone by since the last debate on this matter, and when time goes by public debate tends to ensue. Even if a proposition is in a certain form at one stage and then in the same form at a later stage—I say that in this instance there are certain differences—with the passage of time debate occurs and people change their views, so that it cannot be said that because there was unanimity at a certain time there will again be unanimity later. There has been some public debate and, if I may say so, I think that the result may be that this proposal will not be accepted.

We have among us a score or so of new members. It would not be casting any aspersions on them to say that perhaps they have not followed every detail and have not understood every facet of this matter. Indeed, I think there may be some older members who do not understand every aspect of it. Such members are at a grave disadvantage. Yet the matter has been proceeded with without any attempt to enlighten them. Why would they matter? They are all on the Government side of the House; they are all good votes. The attitude is: do not bother to explain it to them or to anybody else.

Then there is the question of public education. It is true that our proceedings tonight are not being broadcast, and to this extent there is a certain lack of public education. There may be plenty of public education necessary before this proposal is carried, and it would not have done any harm if we had provided a little of that education tonight. It could have been provided if we had been on the air or if this matter had not been rushed through in this fashion. ' 'Twere well to be done quickly' appears to be the slogan. Indeed I feel a little like Macbeth myself. I have lived too long; I have seen too much of this sort of thing. We use the Latin word 'nexus'. It may be that some members would understand better the French word 'liaison'—we could refer to a liaison between the two Houses—but on the other hand they might misunderstand it. Now the Prime Minister comes along with another word—'link'. It reminds me of the Communist Manifesto. 'We have nothing to lose but our link'—I think it was 'chains' in the original. But again I say that some public education might have been provided tonight.

Far be it from me to enter into the intricacies of this matter, into questions of whether we increase the number of Senate members by six or by twenty-four. In the latter event, there would be another forty-eight members in the House of Representatives. Far be it for me to go into matters such as that. If I did I would be treating the subject seriously, whereas of course everybody knows that this is just one of political expediency. I think the Leader of the Opposition has made this very clear. There are party considerations connected with the size of the Senate. But let me pass on. I would not treat this seriously, athough it would be interesting to reflect on what would happen if this referendum were defeated.

I said before that there is one function left to the Parliament—or there was yesterday. Whether there will be tomorrow or after this, I do not know. That function is to talk about matters about which the Parliament has some foreknowledge. But besides that, what are the functions of the Parliament? Returning again to some remarks of the Leader of the Opposition, members have a very difficult task of representation. I think the population of the electorate of the Leader of the Opposition himself is about a quarter of a million. Other members have even larger electorates. Of course the Leader of the Opposition has a staff, as has the Leader of the House. They have large numbers of people in their electorates, but they have staffs to help them, and this is something denied to, say, the honorable member for Mitchell (Mr Irwin). But what I am concerned with is this: it seems to be accepted more and more in this community—and I am glad that my days in this House are numbered—that the sole duty of a back-bencher here is to make himself a front-bencher by a variety of means which it is not material to go into at the moment or, if he remains a back-bencher, to see that poor old Mrs Jones has a pension form properly filled in. Indeed, when I first came from a State Parliament, where we dealt with little things, to this great Parliament where the great affairs of the nation are discussed, my first task was to make representations to the Minister for Trade about the importation

of a prize Pekinese bitch. I assure honourable members that that is the fact. I am incapable of invention or telling an untruth, and that is the plain and simple truth. My point is this, and it is a serious point—I leave lighter matters aside: if this Parliament is to function effectively members must have something more to do than make representations about prize Pekinese bitches, or any other breed.

The whole purpose of this legislation is to increase the membership of the Parliament. If members were put to work to do a job worth doing, a job that ought to be done, a job that the people would expect them to do, then I would be entirely in favour of increasing the number of members. But simply increasing the numbers so that more members may sit here to have their votes recorded and attend to Mrs Jones's pension form does not appeal to me in the least. I said I am glad that my days in this House are numbered, because I would hate to see the Parliament descend to such a level. But this is the concept the public has of Parliament, it is the concept that the Government has, and, saddest of all, it is the concept that many back-benchers have. The concept is that this is all that back-benchers have to do, and this is the basis upon which an increase in membership of this Parliament has been sought. The Government has been most unwilling, and the Opposition front bench would be most unwilling, to see members put to work on parliamentary duties, making inquiries, informing their minds to the extent of being able to debate important matters of policy brought before this chamber, of being able to make a real contribution to the establishment of policy for this nation. The Government does not want it. The Government knows everything. The Opposition front bench, expecting some day to be in government, does not want it either. Look after Mrs Jones' pension; do not worry about matters of policy. So, I say with scepticism: 'Yes, you may increase the number of members but I should like to see now how this Parliament will work when the number of members is increased before I can be satisfied that you have done anything of value for this nation'.

Mr WENTWORTH (Mackellar) [9.41]—Mr Speaker, I do support this Bill, but I must support to some extent also what my friend, the honourable member for Bradfield (Mr Turner) has said especially in regard to the inadvisability of pushing this legislation through at the one sitting. I think that it would have been better to observe the forms of the House.

Mr. Buchanan—It makes no difference.

Mr WENTWORTH—My honourable friend could not be more right. But there is something that I should like to say although I support this Bill. I want to raise what may seem to be a technical point in regard to it. Perhaps I am at fault for not having seen this technical point earlier, but it only came into my mind today. I think that it is a point of some importance at which, perhaps, the Government might have a look. I am not sufficient of a lawyer to say whether it is a completely valid point. But I believe that it should be looked at and, if necessary, a small drafting amendment might be made in the Senate.

What I have to say may seem small and technical but it goes to the root of the Bill. What is the proper meaning of the phrase 'the people of the Commonwealth' and the phrase 'the people of a State'? This might mean, of course, the whole of the population. But are we to consider for example a transient alien who is in Sydney for one night as part of the population of New South Wales? It might mean all the people who are customarily resident there. It might mean those who are qualified to be electors, or it might mean electors. I submit to the House that the quota provisions of section 24 of the Commonwealth Constitution—this is one of the sections that we are proposing to amend—do not help us in determining this matter. Section 24 provides:

> A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators.

But this section does not help us to determine what 'the people of the Commonwealth' are because statistics are published by the Commonwealth that would apply for example to the whole population; or which would show the population excluding aliens; or which would show by the age groups the number of people who are qualified to be electors; or which would show the number of people who are electors. These are all statistics of the Commonwealth. But section

24 does not say 'published by the Commonwealth'. The section says 'statistics of the Commonwealth'.

There may be some doubt in your mind, Mr Speaker, as to what the Constitution means in this section when it refers to 'the people of the Commonwealth'. I think that doubt can be resolved if one looks at section 7 of the Constitution. I will read the first half of this section to the House. It provides:

> The Senate shall be composed of senators for each State, directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate.

So, it is pretty clear that in this section of the Constitution—namely, the section which relates to the voting for the Senate—the phrase 'the people of the State' means the people who vote.

If honourable members will look at section 8 they will see that the electors are the people who vote for the senators. Now, it is quite clear, I think, that in this section of the Constitution the phrase 'the people of these States' means the people who vote. This is what the Constitution says explicitly it means in these sections which refer to the elections of the Parliament. If one looks at the first part of section 24 of the Constitution—again, this is one of the sections that we are proposing to amend by the legislation we are considering—one finds that it says:

> The House of Representatives shall be composed of members directly chosen by the people of the Commonwealth.

Then, in section 30, the Constitution gives some qualification as to how these electors are to be determined. But it is quite clear from section 24 that in the very section about which we are talking the phrase 'the people of the Commonwealth' means the people who directly choose the members of the House of Representatives. Therefore, they are the electors.

We may not like this. But this is what the Constitution says. I feel very little doubt that if this matter were brought to the High Court this is what the High Court would determine. It is perfectly true that the matter has never been brought to the High Court for the very good reason that up till now it has been of very little significance. If honourable members will look at section 24 of the Constitution as it exists today and not as it will be after we amend it they will see that:

> The number of members chosen in the several States shall be in proportion to the respective numbers of their people. . . .

The proportions are for all practical purposes the same whether we are talking about the electors or whether we are talking about the whole population—aliens and everybody together. There may be decimal points of difference but, in point of fact, for a State it is more or less the same. This matter has never been of practical consequence until now. There was therefore no reason for anybody to take it to the High Court.

It is true that in the past the Commonwealth Electoral Officer has gone to the total population. But the results that he has arrived at would be exactly the same or almost exactly the same as he would arrive at if he had gone to the electors. So, there has been no practical consequence. But now we are doing something quite different. If we pass this Bill in its present form, we shall be importing into the Constitution the principle of dividing the people of the Commonwealth by a figure of 85,000 in order to arrive at the number of members of this House. Now, if the High Court should hold—as I feel on balance it would hold—that the phrase 'the people of the Commonwealth', as it exists in the Constitution and as it still exists in the proposed new part of section 24 that we are now about to pass, means the electors—and I think the High Court would hold this—then the application of that principle would mean that the number of members of this House would have to be reduced to seventy-five. Once a matter has been passed at a referendum there is no way of undoing it. It has been done.

I am not a qualified lawyer. I just put this point as something that lawyers should try to determine. I have tried to put the argument on as non-technical a basis as I can. I believe that if we pass this legislation in its present form and if it goes to the High Court, as it could on the motion of any elector, then the High Court would determine that the proper number of members of this House would be seventy-five. There are many members who would be unwilling to fight their preselection if the

membership of the next House of Representatives were to be reduced to seventy-five. I can assure you, Sir, that it would be a most uncomfortable kind of performance for a large number of members, and I am not certain that I would be comfortable myself in these circumstances.

This is a risk we should not take. It has been put to me by the Attorney-General (Mr Bowen) that any risk here is obviated by sub-section (4.) of proposed new section 24 of the Constitution. At first sight I was inclined to agree with him, but I ask honourable members to look at the meaning of sub-section (4.). The sub-section reads:

> For the purposes of a law made by virtue of sub-section (2.) of this section——

That is, a law determining the number of members of this House—

> the respective numbers of the people of the States shall be taken to be the numbers declared by that law to have been those numbers, according to statistics of the Commonwealth, at a date specified in that law, . . .

I think that the High Court—again I express some doubts about this—in looking at the application of this sub-section would ask, in effect: 'What are the people of the States?' And it would determine that, I feel fairly confident, on the principles I have suggested. The people of the States are the electors. The Commonwealth law must therefore declare, according to the statistics of the Commonwealth, what those numbers of electors are; and the Commonwealth law, purporting to substitute for the numbers of the electors the numbers of the total population would, I feel, run a very grave risk in the High Court of being declared invalid. These are all technical points. I put it to honourable members that I should perhaps have thought about them earlier; to my shame I did not. If we had had a little more time it might have been possible in conference to have resolved them with the officers concerned. As it is, all I can do is to put these points to the Government. I am not going to press them as an amendment here, because I do not feel qualified to do so, but I would suggest very strongly to the Government that when the matter is in the Senate it might consider making these small technical amendments in the Bill to put this matter beyond question. They are quite small amendments. They are verbal amendments only, which do not go to the root of the Bill.

Could I suggest that they would be along these lines? In sub-section (3.) in place of the words 'number of the people of the State' one simply writes 'the total population of the State'. If that is done then you get outside the provisions of the Constitution which refer—this is almost a phrase of art in this part of the Constitution—to 'the people of the States' and 'the people of the Commonwealth'. A couple of small consequential amendments would be required in sub-section (4.). I am not suggesting anything which goes to the root of the Bill. I am not even certain of my law, but what I do feel certain of is that there is some uncertainty, and I do not think we dare take this kind of risk with the High Court. I do not think that we dare take this kind of risk when we have nothing to lose by following my suggestion. There is nothing to lose by making this small technical amendment which would simply make plain the purpose of the Parliament. This would give the undoubted force of law to the practice which has obtained in the past and which we all want to obtain in the future.

As I have said, this matter has come in with a rush. We have not had the opportunity to consider it at our leisure. I admit that this Bill in something of the same form was before us some months ago in a previous House. I admit that I should have seen these matters there, but I did not. If we had had another day to think this over perhaps I would not be speaking about these problems. Perhaps I would have come to some arrangement after argument with the staff of the Attorney-General who would perhaps have set my mind at rest on this matter. But at the present moment I feel that there is a risk. It may be a small risk, but it is a real risk, that if we pass this Bill in its present form, even with the safeguard which is put in in sub-section (4.) of proposed new section 24 of the Constitution, the High Court would determine that the membership of the next House of Representatives would be seventy-five under a law passed by this House, endorsed by the people at a referendum and put into the Constitution and therefore unchangeable without the mechanics of another referendum.

Is it worth while taking this risk? Would it not be better to make the thing plain by just that small change of phrase which, even if it gains nothing, at least would lose nothing and cause no embarrassment to anybody at all. I put this to the Government. I am not going to press the amendment here, because I feel that my mastery of legal technicalities is not sufficient for that. But I do ask the Government to have a look at the risks involved and consider the possibility of this small verbal amendment which would not affect the substance of the Bill—which I support—when the matter is being considered in another place.

Mr ANTHONY (Richmond—Minister for the Interior) [9.57]—The Leader of the Opposition (Mr Whitlam) draws me to my feet when he challenges the loyalty of the Australian Country Party or the solidarity of the Government. Solidarity is no doubt a word that he dreams about when he lies in bed at night. Before answering some of the challenges of the honourable gentleman I would like to refer to some of the comments of the honourable member for Bradfield (Mr Turner). He said that we have brought this Bill hastily into the House and that members have not had time to digest it and to deliberate on it. This Bill was brought before Parliament in 1965. It was debated and every member of this House accepted it. Last week the Prime Minister (Mr Harold Holt) made a statement on this very matter. It has had a great deal of publicity during the past week. I think that any member should be ready and fit to talk about the Bill if he sees any points in it to which he objects.

The honourable member for Bradfield rose tonight and did nothing more than object to the procedure adopted. He did not challenge the content of the Bill whatsoever. It saddens me also when I hear him making critical remarks about the duties of private members of this House. I believe that the capacity that a private member in this House applies to his duty depends upon himself alone, and that if he gives all his effort and time to his constituents and to his duties in this House his time will be more than fully occupied. This is the very reason that this Bill is brought before the House. We believe that there is a need to increase the numbers of members of Parliament to try to ease the heavy burden on those genuine members who are trying to do their duty.

Mr Turner—Genuine members do other things besides looking after Mrs Jones, you know.

Mr ANTHONY—The honourable member for Bradfield thinks that there is something belittling in a member looking after his constituents, in being what might be termed a social worker. I think probably the most honourable work that a member can do is that of looking after the little problems of people in his electorate. That alone is a very big job in itself.

I come back to the point. When the Parliament was last increased in 1949, the size of the electorates was about 66,000. I am just talking off the top of my head now. By the time the next election is held, the size of the electorates will be about 96,000, an increase of almost 50%. Surely this is justification for considering an increase of the size of the Parliament. Since 1949, the responsibilities of the Federal Parliament have grown enormously. The weight of work and the volume of legislation that has come before the House and is on the statute book has grown tremendously. This is why we believe that the size of this chamber particularly needs to be increased. How are we to do it? It has been fully explained that there is a link between the two chambers—the nexus which prevents us from increasing the size of this chamber without increasing the size of the Senate by half the number. This has been looked at closely and it is thought that the Senate can continue to do a satisfactory job in protecting the rights of the States if it is kept at the present level of ten senators to each State. However, the duty of preparing legislation and of looking after individual electorates has increased and there is a need to increase the size of this House.

The clean and satisfactory way of increasing the size of the House of Representatives is to break the nexus with the Senate. To do this we must hold a referendum to permit us to alter the Constitution. I have always supported the view that the nexus should be broken. The Australian Country Party has never had any firm policy on this matter. The platform of the Party does not express any policy as to what should be done on this point. However, the last time that similar legislation

was before us, every honourable member of his own volition supported it, and I should think the majority would do so now. But honourable members are free to express their point of view however they wish. Only one other Parliament in the world has a nexus such as this and that is the Parliament of Norway. I do not know whether our founding fathers took the idea from Norway, but it is the only other Parliament in which a nexus exists. The nexus does not exist in other Parliaments where there is a federal system. Canada, for instance, has 102 senators and 265 members of its House of Representatives. The United States of America has a completely different system. The Senate there is restricted to two senators only from each State, but the size of the House of Representatives moves with the growth of population.

A lot of publicity has been given in the Press to this subject. Political writers have tried to read sinister motives into anything that the Government does or considers. The Federal Council of the Australian Country Party debated this subject at a conference. Some of those present were right against the idea of breaking the nexus. They thought that to do so would dilute the rights of the States. Others did not like the idea of increasing the number of members of Parliament. But the majority of delegates thought that the referendum had little chance of success and that it was unwise to spend money on it. Until that time, almost every major newspaper in Australia had opposed the referendum. The Council issued a statement; and it needs to be analysed closely to understand the full impact of it. The statement was that the Council considered it unwise to have a referendum to break the nexus as a means of increasing the size of the Parliament.

Mr Turner—I wonder what their real motive was.

Mr ANTHONY—I know that the honourable member for Bradfield would not believe anything I said; he seems to want to run around with sinister ideas about political parties other than his own. The Country Party members of the Parliament are not bound by the views expressed by the Federal Council of the Party. This is far different from the situation of honourable gentlemen opposite. The basic objective of this legislation is to increase the size of this House. On the last occasion a similar Bill was before Parliament, it was suggested that the only other practical way of increasing the size of the House of Representatives was to increase the size of the Senate by twenty-four. This would mean an increase of the size of this House by forty-eight. The Governor-General in his Speech said that the Government would look at this question again. It did so and it considered all the possibilities. As the Prime Minister has said, one possibility was to increase the size of the Senate by one senator from each State—that, is from ten to eleven. However, it was not thought that this was a very satisfactory method, because it would tend to create deadlocks in the Senate. It does show that there is an alternative if the Australian people reject the idea of breaking the nexus. What are we to do in this chamber? Do we accept that there will never be any increase in the size of this chamber? Will the Australian people say that, even if the population of Australia increases to 25 million, there will never be an increase of the size of this House? Or must we increase the size of the Senate whenever we increase the size of the House of Representatives? I think the practical and sensible way to meet the situation is to break the nexus between the Houses.

The decision of the Government to alter the minimum number of people in each electorate, forming the quota, shows our sincerity. It shows that we do not want an extravangant increase in the size of the Parliament. We want the size of the House of Representatives to be increased by twelve or thirteen. When a similar Bill was before the Parliament on a previous occasion, the minimum number was 80,000. We have increased it to 85,000. This shows that we sincerely want only a small increase that will keep pace with the growth of population. I want to allay any thoughts that there may be in the minds of the public that members of the Australian Country Party, for devious or sinister motives, want to prevent the referendum being held or will vote against it.

Mr CREAN (Melbourne Ports) [10.8]—The fact that the Minister for the Interior (Mr Anthony) spoke shows that the Bill

has the blessing of all parties in this House —the Liberal Party, the Australian Country Party and the Australian Labor Party. Tonight the House is deliberating a matter of fundamental importance to a democratic community. The Bill has two parts. It authorises a referendum to alter the Constitution so that the number of members of the House of Representatives may be increased without necessarily increasing the number of senators. In view of the way in which the population of Australia is increasing, surely nobody would maintain in 1967 that a member of the Parliament is able to represent effectively more people than a member of the Parliament represented in 1949. In that year the number of members was increased from 74 to 121, that is, by approximately 60%. There has been no variation since 1949 and in that time the population of Australia has increased by about three million people. At the moment we have an absurdity because there has been no redistribution. I do not propose to argue why there has been no redistribution in terms of the recent census, but in seats such as mine the member represents 33,000 people.

Mr Harold Holt—Electors.

Mr CREAN—With all respect the term 'souls' sounds odd to me. I represent 33,000 people over the age of twenty-one years who are entitled to be enrolled, whereas the honourable member for Bruce (Mr Snedden), who sits opposite, represents nearly four times that number. He may think that he is four times as good as some other people; nevertheless he does feel some difficulty in representing that number. I believe that the average Australian has not the same sentiment for the Senate as he has for individual representation.

This Bill at least endeavours to get over this difficulty of trying to represent sensibly. I do not think anybody in a democratic community would try to specify how many people he can represent effectively. I believe that about 35,000 to 45,000 adults—rather than the term 'persons entitled to be enrolled'—is the ideal number that any person can effectively represent. I do not think that in 1967 the sentiment for the balance between the two Houses is quite the same as it was in 1901. After all, achieving federation is a difficult enought process at any time. It tends to be a compromise between all forces, and the solution in 1901 of the House of Representatives having as nearly as possibly twice as many members as the Senate was one of the compromises necessary to have the States enter into the Federal compact. In 1967 we have progressed somewhat further in this process and the fact that all three political parties have joined together to support this measure is indicative of that progress.

I was rather surprised at the honouable member for Bradfield (Mr Turner) who seemed to be against not only the Country Party but also the country. He is one whom I have admired in the past. This evening he has talked about a more effective Parliament. I suggest that he should weigh the consideration of whether the Parliament will be more effective if it has fifteen or twenty more members.

Mr Turner—It could be.

Mr CREAN—I am glad that the honourable member admits that. I can agree with him to some extent that it is not a good thing that a Bill should be introduced and debated immediately. I think he has a point in what he has said in that regard, but I remind him that this is not a new Bill; it is one which was agreed to in principle some months ago by both sides of the House. I hope that tonight he has been getting certain things off his liver rather than raising any fundamental objection to a relative enlargement of the House of Representatives.

Mr Turner—It will take a long time before I get the reform of Parliament off my liver.

Mr CREAN—That may be, but I hope the honourable member will live longer than he suggested this evening. I hope that we will be enlightened by his normally enlightened differences from the relatively unenlightened people with whom he lives most of the time. Be that as it may, it seems to me that this evening there is general agreement that the House of Representatives ought to be enlarged. I suggest that it becomes an exercise in democracy. We have certainly progressed a long way since the time when a member could claim in any individual sense to represent a town, a city or a constituency. Whether the ideal number to represent is 35,000, 45,000 or 60,000 can be arguable,

but I doubt the second principle, on which we have heard no argument this evening, that the Senate should contine to be as nearly as practicable half the size of the House of Representatives. The measure is a conjoint one which allows us to increase the number of members of the House of Representatives without increasing the size of the Senate. There seems to be general agreement that there should be an increase. If this proposal has the support of all the political parties in the constituencies, I hope that it will be successful. There seems to be a kind of cynical idea that Australia has too many members of parliament. I can suggest some other places to start when it comes to reducing the numbers of parliamentary members.

Mr Killen—Where would the honourable member start?

Mr CREAN—I would start with some of the upper Houses in the States because I believe that they represent in 1967 entrenched resistances to the processes of democracy. Begin by abolishing the legislative councils, as Queensland did about forty years ago. These people who suggest that there are too many members of parliament could begin with several places that I can think of: the Legislative Council of South Australia; the Legislative Council of Western Australia; the Legislative Council of Tasmania; and, finally, in the State from which I come, the Legislative Council of Victoria. If those chambers were abolished at least 100 members of parliament would be eliminated without doing much damage to the process of democracy. In my view, we endanger the processes of democracy if we do not allow this House, which ought to be the most significant chamber in the whole parliamentary system of Australia, to grow progressively as the population of Australia grows. As I suggest, one can argue as to whether the honourable member for Mackellar (Mr Wentworth) can represent in 1967 fifty times as many people as his great great grandfather could represent 100 years ago. There are historical and other precedents but I suggest that anybody who is to represent in 1967 the constituency with even the smallest number of persons has problems. The member with the smallest number of constituents is the honourable member for the Northern Territory (Mr Calder). If he believes that it is an easy job to represent his 15,000 people, let him stand up and say so. I have one of the smallest constituencies in terms of numbers. This is one of the great problems which arises in our society because of urban development and for other reasons. There is no good reason why it happens, but it does happen.

I would not like to represent 100,000 adult persons. I avoid the word 'souls' which has been used here this evening. It is all very well to talk about persons, but to my mind the thing that counts is the number on the roll. I believe that once a member tries to represent more than 50,000 people he will be in some difficulty. All I hope is that the House will agree to this measure and that when the matter of a redistribution is raised honourable members will regard it as essential in a democratic community that one does not represent anything other than people. A member of the Parliament does not represent area. He does not represent cows. He represents people. Some members may be happy to represent cows, but I prefer to represent people.

Mr King—What about Tasmania?

Mr CREAN—Well, Tasmania is an honest enough compromise. Again it is part of the original Federal contract that a member does not represent area.

Mr Holten—What about the Kalgoorlie electorate?

Mr CREAN—I would be prepared to give full voting rights to the member for the Northern Territory, who sits almost directly behind the honourable member for Indi (Mr Holten), who will have the opportunity in the next few weeks to support such a proposition. The member for the Northern Territory should have full rights in this House and be able to vote for or against any proposition as readily as is any other member.

By and large, in a democratic community there is no argument against the proposition that one person, whether he lives in the country or in the city, has the same entitlement as anybody else. That is not the issue this evening. It is something that will come later and I hope honourable members will think about it. At least there is general agreement this evening that the size of the House of Representatives ought to be increased without necessarily increasing the size of the Senate.

Mr BOWEN (Parramatta—Attorney-General) [10.22]—Mr Speaker, I rise simply to discuss shortly a point of interpretation raised by the honourable member for Mackellar (Mr Wentworth). I always listen to his remarks on legal subjects with considerable interest, though not always with growing conviction. The present section 24 of the Constitution refers to the number of members chosen in the several States having to be in proportion to the respective numbers of the people of the States. The point made by the honourable member for Mackellar is that the word 'people' does not mean 'population', which I think everyone reading the section would think was its prima facie meaning. It means those qualified to vote—electors. Over the past sixty-six years this has not been discovered to be its meaning. We have always acted over the years on the other view. Indeed, in Quick and Garran's work 'The Annotated Constitution of the Australian Commonwealth', which has been accepted as a work of some authority from the earliest days of Federation, in notes 110 and 111 'people' is clearly interpreted as meaning peop'e, not electors. Honourable members may think that in adopting the old law and repeating it in a slightly amended section, we would be taken to be adopting the previous interpretation which had been accepted for the last sixty-six years. Even though the Bill has been under the consideration of the honourable member for Mackellar in one way or another since a similar measure was before the House more than fifteen months ago, this point, apparently, has not occurred to him as a possible interpretation until today.

May I just say that the interpretation of the word 'people' as electors would not be adopted unless there were some strong context to compel one to take the word in this rather unusual sense. I do not want to engage in a long legal argument. Let me just draw attention to two or three obvious points. If one looks at the immediate context one finds that existing section 24 of the Constitution states:

> A quota shall be ascertained by dividing the number of the people of the Commonwealth, as shown by the latest statistics of the Commonwealth, by twice the number of the senators:

Surely the phrase 'people of the Commonwealth, as shown by the latest statistics of the Commonwealth' means 'population'. Again, in section 30, where the founding fathers meant electors they used the word 'electors'. That section provides:

> Until the Parliament otherwise provides, the qualification of electors of members of the House of Representatives shall be . . .

It then goes on to set out the qualifications. Where the founding fathers meant electors they used that world. Where they meant population they used the word 'people'. One other section with which we may have time to deal this evening when the other Bill is before the House—section 127—states:

> 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.

Does that refer to electors qualified to vote? Of course not. It refers to the population of the Commonwealth and excludes a section of that population.

There is one point of context to which the honourable member for Mackellar referred and which perhaps I should not sit down without mentioning. He referred to section 7 of the Constitution, where the Senate is described as having to be composed of senators for each State directly chosen by the people of the State, voting, until the Parliament otherwise provides, as one electorate. That is a rather loose context. The honourable member said that that section shows that when the founding fathers used the word 'people' they meant electors. May I point out that this is a general proposition which, as is explained in Quick and Garran's work, was inserted in the Constitution to distinguish the method of electing the Senate—a method based on a vote by the people—from two other systems that were considered at the time of the Federal Conventions, namely, nomination by the Governor-General or election by an electoral college, or, if one likes, by both Houses sitting together. In contradistinction to the last two methods mentioned, section 7 asserts that the Senate is to be directly chosen by the people. I believe that in that context the section does not assist the honourable member for Mackellar in the argument that he put.

Mr Wentworth—I also referred to the first part of section 24. The Minister will see that his argument does not apply to that part.

Mr BOWEN—All that I would say, apart from throwing my own personal opinion into the scales for what it is worth against that of the honourable member, is that he suggests that in the existing section 24 it makes no difference at all whether one reads the world 'electors' or the word 'people'. Of course it does. On the question of the remainder, it would alter the quota at once.

Mr Wentworth—I wish to make a personal explanation, Mr Speaker. If the Attorney-General (Mr Bowen) will do me the kindness to look at the 'Hansard' proofs when they are available he will see that I did not say that reading the word 'electors' for the word 'people' in section 24 would make no difference. I said that it would make very little difference.

Mr SPEAKER (Hon. W. J. Aston)—Order! That is a matter for the Attorney-General.

Mr SNEDDEN (Bruce—Minister for Immigration) [10.29]—There have been said in this debate tonight some things which were spoken of by my colleague, the Minister for the Interior (Mr Anthony). I would like to say that certain things said in relation to the activities of members of this House are not statements with which I agree. My experience has been that a back-bench member of this Parliament is almost 100% occupied in the interests of his constituents while away from this place and fully occupied in the activities of this House while it is sitting and in committee work at other times. My own belief is that every member of this Parliament plays well and adequately the democratic role of representing the people of Australia. I hope that, so far into the future as we can see, the democratic process which we know and respect so well in this country will be maintained in this National Parliament.

Question resolved in the affirmative.

Bill read a second time.

Third Reading

Leave granted for third reading to be moved forthwith.

Motion (by **Mr Harold Holt**) proposed:

That the Bill be now read a third time.

Mr SPEAKER (Hon. W. J. Aston)—As this is a Bill to amend the Constitution, the provisions of section 128 of the Constitution must be observed. I therefore direct that the division bells be rung.

(The bells having been rung)

Mr SPEAKER—The question is: 'that the Bill be now read a third time'. As there is no dissentient voice, I declare in favour of the Ayes. Although there is no dissentient voice and a division has not been called for, it is desirable that the names of those members present agreeing to the third reading should be recorded. I therefore appoint the honourable members for Ballaarat (Mr Erwin) and Wilmot (Mr Duthie) as tellers.

(The following names were then recorded)

(Mr Speaker—Hon. W. J. Aston)

Adermann, C. F.
Allan, Ian
Anthony, J. D.
Armstrong, A. A.
Arthur, W. T.
Barnard, L. H.
Barnes, C. E.
Beaton, N. L.
Beazley, K. E.
Benson, S. J.
Birrell, F. R.
Bonnett, R. N.
Bosman, L. L.
Bowen, N. H.
Bridges-Maxwell, C. W.
Brownbill, Miss K. C. M.
Bryant, G. M.
Bury, L. H. E.
Cairns, J. F.
Cairns, Kevin
Cameron, Clyde
Cameron, Donald
Chaney, F. C.
Chipp, D. L.
Clark, J. J.
Cleaver, R.
Collard, F. W.
Connor, R. F. X.
Cope. J. F.
Corbett, J.
Costa, D. E.
Courtnay, F.
Cramer, Sir John
Crean, F.
Cross, M. D.
Curtin, D. J.
Daly, F. M.
Davies, R.
Dobie, J. D. M.
Drury, E. N.
England, J. A.
Failes, L. J.
Fairbairn, D. E.
Fairhall, A.
Forbes, A. J.
Fox, E. M. C.
Fraser, J. R.
Fraser, Malcolm
Freeth, G.
Fulton, W. J.
Gibbs. W. T.
Gibson, A.
Giles, G. O'H.
Graham, B. W.
Gray, G. H.
Griffiths, C. E.
Hallett, J. M.
Hansen, B. P.
Harrison, E. James
Hasluck, P. M. C.
Haworth, W. C.
Hayden, W. G.
Holt, Harold
Holten, R. M.
Howson, P.
Hughes, T. E. F.
Hulme, A. S.
Irwin, L. H.
James, A. W.
Jarman, A. W.
Jessop, D. S.
Jones, Andrew
Jones, Charles
Katter, R. C.
Kelly, C. R.
Killen, D. J.
King, R. S.
Lee, M. W.
Luchetti A. S.
Lucock, P. E.
Lynch, P. R.
Mackay, M. G.
Maisey, D. W.
McIvor, H. J.
McLeay, J. E.
McMahon, W.
Minogue, D.
Munro, D. R. R.
Nixon, P. J.
O'Connor, W. P.
Opperman, H. F
Patterson, R. A.
Peacock, A. S.
Pearsall, T. G.
Peters, E. W.
Pettitt, J. A.
Robinson, I. L.
Sinclair, I. M.
Snedden, B. M.
Stewart, F. E.
St John, E. H.
Stokes, P. W. C.
Street, A. A.
Swartz, R. W. C.
Turnbull, W. G.
Turner, H. B.
Uren, T.
Webb, C. H.
Wentworth, W. C.
Whitlam, E. G.
Whittorn, R. H.
Wilson, I. B. C.

Tellers:
Duthie, G. W. A.
Erwin, G. D.

Mr SPEAKER—Order! As 114 members have agreed to the third reading I certify that the third reading has been agreed to by an absolute majority as required by the Constitution.

Bill read a third time.

CONSTITUTION ALTERATION (ABORIGINALS) BILL 1967

Second Reading

Debate resumed (vide page 264).

Mr WHITLAM (Werriwa—Leader of the Opposition) [10.45]—The Australian Labor Party supports this Bill. It will support the Bill in the other place and all members of the Party in both places and all of their colleagues outside the Parliament will support the referendum. In view of comments made earlier it seems that one should refer to the fact that on behalf of my Party I have facilitated all stages of the Bill being discussed today. Naturally an Opposition, consisting as it does entirely of private members of Parliament, is jealous of the rights of Parliament. But, frankly, we do not believe that our rights have in any way been infringed by this matter being debated through all stages today. We are well acquainted with its provisions. They are identical with those which passed through both Houses of the Parliament fifteen months ago. They are identical with those which the Prime Minister (Mr Harold Holt) promised a year ago to bring to the Parliament. They are identical with those which the right honourable gentleman outlined six days ago to this House.

The repeal of section 127 of the Constitution was recommended by the Constitutional Review Committee in 1958 and 1959. The words concerning Aboriginals in paragraph (xxvi) of section 51 of the Constitution have been in our minds and have been brought by us before the House for many years past. We are not taken by surprise by the terms of this legislation. In one case we have had a decade in which to consider them. In the other we have brought them before the House and discussed them within our Party for seven years.

Let me put the record quite clearly. As I said earlier tonight, on 13th April 1961, 12th April 1962 and 1st April 1965 my predecessor, the honourable member for Melbourne (Mr Calwell), introduced resolutions to put to a referendum all of the recommendations of the Constitutional Review Committee, including of course that portion of this Bill which provides for the repeal of section 127. Again, as far back as 8th August 1962 the honourable member for Fremantle (Mr Beazley) initiated a debate, as a matter of urgent public importance, on the need for the Parliament to legislate for a referendum to delete the words 'other than the aboriginal race in any State' from paragraph (xxvi) of section 51 of the Constitution. Further, on 14th May 1964 my predecessor introduced a bill for a referendum to repeal both of the passages in the Constitution which are covered by the Bill now before us.

When in November 1965 the original referendum Bill to repeal section 127 was before the House we unsuccessfully urged that its terms should be widened to include the repeal of the words in paragraph 26 of section 51. When the honourable member for Mackellar (Mr Wentworth) had his Bill before the House on 10th March last year we supported it. We wanted to have a vote on it. It is quite clear therefore that as far as the Parliament and the processes available to parliamentarians, including debates on matters of urgent public importance, amendments to government bills, private members bills and general business debates, are concerned, in all cases members of the Labor Party have used all the facilities available to private members to have the people of Australia given the opportunity to delete the references to Aboriginals in our Constitution. Therefore we are not caught by surprise.

We support this Bill in its entirety. We do not think that any honourable member, whatever his position in the House, can say that he has been caught by surprise, that his rights have been abridged and that as a representative of the people he has been denied his opportunities. The arguments put by the Prime Minister are cogent indeed. I agree in particular with his reasons for just deleting the words from paragraph (xxvi) of section 51 of the Constitution and not substituting other words for them. I agree with him that whatever form of words one inserts to guarantee what we may regard as human rights usually results in greater benefits to

lawyers than to litigants. This has been the case in this country. It has certainly been the case in the United States of America. Powerful rights have been written into the United States Constitution since the eighteenth century: in fact they are still the subject of litigation. I believe that to keep the position simple as it is will enable members of the National Parliament to carry out their duties.

It is true that this may mean that they will pass laws inconsistent with State laws, and so I believe they should do, because whatever we may say about possible gerrymanders in this place and whatever we may think about the undemocratic basis upon which the Senate is constituted—one State having as many representatives as another State which has eleven times the population—the fact is that this Parliament is more representative of the will of the Australian people than any of the State Parliaments. Some of the State Parliaments are so constituted, because of the distribution of electorates, provinces or districts or in the case of some upper houses are so limited, that the rights of Aboriginals have been denied. In some States there are still laws which should be overridden, to put it bluntly. Since I want to be dispassionate on this occasion I do not want to specify the political party to which those obdurate members of State Legislative Councils give their allegiance. There are not only Acts of Parliament but also industrial awards, including awards of the Commonwealth Conciliation and Arbitration Commission, which should be overridden. It will be possible for the people's representatives in the national Parliament to see that in social and industrial matters Aboriginals are at least given an opportunity and that some of their disabilities are removed—that awards and State Acts are overridden by inconsistent and therefore dominant Commonwealth laws on concurrent matters.

I do not want it to be thought that we support this Commonwealth power purely from a negative or overriding point of view. The fact is that with the excision of the words from paragraph (xxvi) of section 51 the members of this Parliament will be able for the first time to do something for Aboriginals—Aboriginals representing the greatest pockets of poverty and disease in this country. The incidence of leprosy, tuberculosis and infant mortality is higher among Aboriginals than among any other discernible section of the world's population and, as we know, the opportunities for Aboriginals even to have education—and certainly to pursue a calling after they have left school—to enjoy good housing conditions and to enjoy good public hygiene are less than those of other Australians. Hitherto it has been impossible for the Commonwealth to do these things directly itself. Hereafter it will be possible for the Commonwealth to provide the Aboriginals with some of that social capital with which most other Australians are already endowed.

Mr Birrell—The Commonwealth wants to follow the lead of the South Australian Government.

Mr WHITLAM—My friend refers to the difficulties of the States. We know that Aboriginals are mainly to be found in Western Australia and Queensland among the States and after that in South Australia and New South Wales. One of the advantages of repealing the paragraph (xxvi) words will be that the Commonwealth will be able to assist those very extensive States—the three largest States in Australia—which have not the financial resources to deal with this problem. The Commonwealth can at least bring the resources of the whole nation to bear in favour of the Aboriginals where they live.

The other advantage as regards the States comes from the repeal of section 127 of the Constitution. Hitherto it has been to the disadvantage of Queensland and Western Australia on more than one occasion in their representation in this House that Aboriginals have not been able to be counted in the census upon which the number of electorates in each State is computed. Queensland and Western Australia more than once have been deprived of a seat in this place which they would have enjoyed if their Aboriginals had been able to be counted under section 127. There is apart from these internal matters—the question of the welfare of an identifiably deprived portion of our community, and the representation of the States equitably in this House—the very serious external matter of the attitude that other countries take towards Australia because of these sections in our Constitution.

It has been impossible on many subjects to convince international bodies that the Australian Government is genuine when it pleads its Constitution. In fact the Federal alibi is regarded as a joke in most international bodies. This has been the case in relation to Aboriginals as well as regarding many other matters which arise in international discussions. There are International Labour Organisation and United Nations Educational, Scientific and Cultural Organisation conventions which we have not hitherto adopted and which we have said we could not adopt because the Commonwealth did not have the power to apply them itself and it had to wait until the States passed legislation or made administrative decisions. This is very doubtful: one would imagine that the High Court would effectuate Commonwealth laws under many of these conventions which the Commonwealth says it has not the power to implement itself. But hereafter there will be no such excuses because if any international convention touches the position of Aboriginals it will be possible for the Commonwealth forthwith and directly to implement the obligations which it has undertaken and which only the Commonwealth Government can undertake internationally. The States have no international standing at all. They do not even have any standing, usually, within the Commonwealth of Nations. In some respects they are British colonies, but as regards other members of the Commonwealth of Nations they have no standing. The Commonwealth Government has to negotiate on behalf of Australia in all these matters. Now the Commonwealth will, as regards Aboriginals, be able to implement the undertakings that it gives on behalf of Australia.

This is a very valuable Bill. There can be no question of our attitude as a party in the Parliament or outside it. It is sufficient for me to say that back in 1959 the Federal Conference of the Australian Labor Party made it Party policy to repeal both section 127 and the relevant words of paragraph 26 of section 51 of the Constitution. I apprehend that there will be no opposition in the Parliament to this Bill or to this referendum, and, while we can never take such things for granted, we will certainly hope that for the honour of this country and the welfare of the Aboriginal citizens of it this referendum proposal will receive overwhelming acceptance. I trust that all members of this House will fulfil their duty in the public arena by urging an overwhelming vote in favour of this referendum proposal.

Mr WENTWORTH (Mackellar) [11.2]—The last words of the Leader of the Opposition (Mr Whitlam) were well said, and I hope they will be echoed right around this House and, indeed, right around this country. He is quite right when he says that this Bill has bi-partisan support. I think we should acknowledge the long-standing support that the principles embodied in this Bill have received from members of the Opposition. I refer particularly to the honourable member for Fremantle (Mr Beazley) and the honourable member for Wills (Mr Bryant) who have—I think not alone in their Party but perhaps most prominently in their Party—supported the principles of this Bill. I find myself very strongly in support of it. As the House will remember, the honourable member for Ballaarat (Mr Erwin) and I introduced into the last Parliament a private member's bill dealing with these matters. I believe that our drafting was perhaps better for the Aboriginal people than is the present drafting. But I think the present drafting gives at least three-quarters, and probably more than three-quarters, of the substance that we were seeking for the Aboriginal people, and I for one will most certainly give it in the country and in the House any support that I am able to give.

I think we in this Parliament should realise our responsibilities to the Aboriginal people. If the referendum proposal is adopted and this Bill becomes law we will have to realise that responsibility even more fully. When the Leader of the Opposi- said that this measure would give us powers to do things for the Aboriginal people we should have reminded ourselves that we have for long had the power to do these things for about half the Aboriginal people of Australia, namely those of the Northern Territory. I think it would be right to say that the policy of the Federal Government in regard to those Aboriginals in the Northern Territory has on the whole been at least as beneficial as, and I would think more beneficial and more substantial than, the policies adopted by any of the States.

That is not to say that our policy has been perfect. Indeed, there are many aspects of it in relation to which I should think that we are not yet taking a sufficiently far sighted view.

Some people say—I think wrongly—that no discrimination is necessary in regard to the Aboriginal people. I think that some discrimination is necessary. But I think it should be favourable, not unfavourable. I am speaking not so much about the problem in Sydney as about the problem in the far north as it relates to those people whom I have come in contact with and who are living in much more primitive conditions. I believe that these people need some discriminatory legislation which is in their favour. It is not right to say to these people: 'We will treat you as we would treat any other Australian'. To do this would submerge and destroy their culture. It would throw them as individuals into a maelstrom in which they are still incapable of swimming. I do not mean to say that they are worse people than we are. What I am saying is that they have a background which is different from ours. Ours is the dominant background in Australia and they are compelled, as it were, to fit into it. However, this objective cannot be achieved in one generation, or perhaps in even two or three generations.

These people need help. They need a secure title to their lands. Here I think the Commonwealth could give a lead. In Arnhem Land we still have tremendous reserves. I was up there recently; I spent five or six weeks going through that country. There is great wealth there potentially. There is sufficient to provide adequate permanent land for the Aboriginal people. I hope that this land will not be alienated from them. Proposals have been advanced which would enable this alienation to take place in perhaps five, six or seven years time. In my view, such proposals are still out of place. It is still necessary to secure lands for these people in such a way that it cannot be alienated from them or their descendants for at least some time and certainly not until they are more ready than they are today to survive the stresses of our type of economy.

These are observations which perhaps it would be better to make at another time. So I do not intend to detain the House any stricted or inhibited the Commonwealth's port the Bill and that in the electorate I shall give the proposal all the support that I can when it is submitted to a referendum.

Mr BRYANT (Wills) [11.7]—Although there are some points in relation to which congratulations should be offered tonight, we still ought to steel our resolution. When all is said and done, this is only the first of three steps that will have to be taken. The proposal must first be passed by the Parliament. Then we must get the support of a majority of the people in a majority of the States. Then we as a Parliament and as individual members must take up the challenge on behalf of the Aboriginal people and recover the last 180 years. Tonight to a certain extent we have taken the first step towards carrying out an instruction that was issued 180 years ago. This instruction was given to Governor Phillip in the commission of 1787:

> You are to endeavour by every possible means to open intercourse with the natives and to conciliate their affections.

Then, in relation to the taking of a census he was told:

> You will endeavour to procure a count of the numbers inhabiting the neighbourhood of the intended settlement and report your opinion to one of our Secretaries of State.

But for 180 years the Aboriginal people have been pushed into the background. None of us has a clear conscience in this matter. No political party, no parliament and no government is able to say it that it has performed its duty in the way an Australian government ought to do. Tonight therefore this is an historic time for many of us. I came across the problem of the Aboriginal people not long after I entered this Parliament. Tonight is the culmination in a large measure of a campaign that was started here some ten years ago. I am not going to complain of delays or to be presumptuous enough to say that the campaign started with the arrival of people like myself or with the establishment of the organisation of which I am an executive officer and which has taken up this case.

To most people the Aboriginal people have been on the edge of the nation. Most people are quite unaware of the position in which the Aboriginal people find themselves. Because the Constitution has restricted or inhibited the Commonwealth's

activities there has been an almost unavoidable tangle of State laws which, to the credit of the country, have been amended over the last eight or ten years. It is interesting to note that in all the social legislation in Australia this was the field in which there was the least amendment. If honourable members look back over the Acts that were passed in South Australia they will find that nothing has been altered for twenty years. In Queensland the position was much the same. Ten or fifteen years ago the only State in which there were no restrictions placed on Aborigines was Victoria; and I think it was a conservative government which amended the law and brought about that position.

The position had been reached where an Aboriginal in Australia almost needed a staff of three to travel around the country with him. He needed a geographer to tell him in what State he was, an anthropologist to tell him whether he fitted into the definition of Aboriginal, and a legal retainer to tell him what was his position under State laws. This situation, fortunately, has been gradually remedied by State governments, but by bringing the Commonwealth into the field we shall be able to get greater clarity on the matter. Australia, I suppose, established the egalitarian nature of humanity and equal rights before almost every other country, yet a large section of the community—those of Aboriginal ancestry represent almost 1%—has been placed in a position of complete inequality, whether in respect of housing, administrative attitudes or education. There are about four or five Aboriginals in the universities of Australia. During the last year or two the number might have increased a little. That represents one in every 20,000 of them, I think, whereas in the community at large the figure is one in every 180 or 200. In other words, the average white citizen has had 100 times the opportunity of getting to a university than has an Aboriginal person.

The Bill will give us the opportunity to amend this position. I believe that it is only from the Commonwealth—even with a government such as this—that benefits are likely to flow from the wealth and prosperity of this country. As has been pointed out, the inequalities are largely attributable to the fact that the bigger States with the smaller populations have the greatest burdens to bear, whereas Victoria, which on statistics has been the wealthiest State most of the time, and has the greatest density of population, has the smallest financial burden as far as Aboriginals are concerned to impose upon its Treasury. So Aboriginal people will have a greater measure of equality in future.

This has always been a field of good intention. There are many people who have been doing great work and have had a great feeling for the Aboriginal people. Recently, when doing some research into this question, I was directed to see what the position has been in Western Australia. In the 1890s the British Government, which had always had a greater care for the aboriginal peoples of the various territories of the British Empire, insisted that a certain proportion of the revenue of the State be put aside for the Aboriginal people. The Government of Western Australia objected to this, and in 1897 presented a memorial to the government in Britain in which it said: 'We feel confident that Parliament will cheerfully provide any funds which might be found necessary for the support and welfare of the Aboriginal community in this colony'. I do no think that any State of Australia has done that satisfactorily yet. The Commonwealth has been continually inhibited. The States have been reluctant or have not had the resources.

In my research I found the answer to a question which I put in 1959 to the Minister for Social Services. His reply to my question was:

> The honourable member will know that there are constitutional limitations on the power of the Commonwealth Government to deal with this question.

It is interesting that only a few months afterwards a way was found around it. Here tonight we are bringing to a culmination, one might say, a campaign which started, so far as I am concerned, in May 1957. The first record I could find of a definite attempt to get the Commonwealth to accept responsibility through this Parliament was a petition presented to the Parliament by Mr Haylen, the former member for Parkes, on 4th May 1957, from certain electors of New South Wales praying for legislative action to amend the Constitution to remove the political, social and economic disabilities of Aboriginals. That was almost ten years ago.

A few days after that I proposed an urgency motion, bringing forward the need for the Commonwealth to take action, or deploring the failure of the Government to care for the wellbeing of persons of Aboriginal ancestry, and so on.

Subsequently, there have been other motions and petitions. Similar petitions have been presented almost 100 times. I suppose there have been more petitions on this subject than on anything else since the Commonwealth came into being. There have been motions raising matters of public importance in relation to the subject. The Labor Party adopted the principle as national policy in, I think, 1959 and has subsequently campaigned vigorously for it. I am Vice-president for the Federal Council for Aboriginal Advancement, which has brought to this Parliament on a number of occasions during the last four years leaders of the Aboriginal community in Australia who were cheered by the reception that they got in this House. As a personal observation, I would say that the reaction that flowed from their activities was increasingly favourable over recent years. In 1963 a delegation was brought here to see the former Prime Minister, who treated its members very graciously and listened to them very courteously, but we still did not get very far, although I do believe that the matter came into the forward end of his consciousness at that time more than at any other stage of his career.

To the honourable member for Bradfield (Mr Turner), who seems a little defeated at the position of back benchers in this Parliament and the failure of our endeavours to produce any great result, I would say that I think this at least is a case where the activities of people mostly from the back benches of the Parliament—sometimes some of them have sat on the front benches and have then come back, and so on—have borne fruit. Mostly the efforts have flowed from people in my area of parliamentary activity; we have brought this forward. The Government can rest assured that the organisations that have been campaigning so vigorously for this for many years will now put their shoulders to the wheel. There is at least a ready made organisation to take up the campaign. This is the point that I intended to make to the Prime Minister (Mr Harold Holt) last Thursday when I rose to ask for leave to make a statement. I was about to say that I was gratified on behalf of all these people, that I would like to call them into action with the resources of the Parliament behind them, and that I would guarantee that the organisation would be ready to roll the moment the legislation was passed through the Parliament.

I hope honourable members will realise that it is not sufficient just to hope and pray that this referendum will be passed. We ought, in honour bound, to campaign with the full vigour with which we campaign to return ourselves to the Parliament. I hope that this is a demonstration to the rest of the world that we mean business. It will not be sufficient just to pass the referendum. Eventually responsibility for the housing, education and so on of Aboriginals will lie with this Parliament. I hope that we shall see created something like the Repatriation Department for this purpose. That is, I suppose, Australia's most experienced social services organisation, with its education scheme for soldiers' children, its rehabilitation system, its hospitals, its pensions, its land settlement and so on. That is what I foresee will be the position when eventually we get this through and the people have supported us. I hope that the Prime Minister will be gratified at the fact that at least for once in his long political career he is on the side of right and truth and justice. We will be with him all the way.

Mr CALDER (Northern Territory) [11.19]—I rise to support the Bill. I mentioned the Aboriginal problem in my maiden speech yesterday, but I should like to make just a few comments now. I congratulate the Government on the step it is taking to remove discrimination against Aboriginals. The anomaly is that, though they have a vote, they are not counted in a census. This is a most peculiar situation. For this reason and for many others I support the Bill. Many of the coloured people really do not understand politics. At an election they vote fifty-fifty. The Government is to be congratulated on the work that is being done amongst them and the efforts that are being made to convey knowledge to them. Having spoken on this subject yesterday, I will resume my seat. I support the Bill wholeheartedly.

Mr BEAZLEY (Fremantle) [11.21]—The words 'other than the people of Aboriginal race in any State' must be deleted from the Commonwealth Constitution because under our Constitution very few rights are intrinsic. Unless these words are deleted, the Commonwealth cannot deliberately enact rights for Aboriginals. As a member of the various select committees considering this subject I was constantly confronted by witnesses who insisted that Aboriginals were Australian citizens. We have encountered the confusing words 'Aboriginals are Australian citizens within the meaning of the Nationality and Citizenship Act 1948-1960'. 'Citizenship', if it is a modern way of referring to British subjects resident within the Commonwealth of Australia, is a permissible usage. But the witnesses use the word as if we had in our Constitution the American conception of intrinsic rights.

The Fourteenth Amendment to the United States Constitution says that all persons born in the United States or in any State of the United States are citizens of the United States and of the State wherein they reside, and there are intrinsic rights attached to that status. But citizenship was deliberately excluded from our Constitution. If there were such a thing as intrinsic citizenship rights in Australia, it would be impossible for most people in the States of South Australia and Tasmania to be excluded from voting for the Legislative Council. If we had the American conception of citizenship, which we sometimes use in relation to Aboriginals, it would be impossible for most residents of Melbourne, Hobart and Perth to be excluded from the civic franchise. It is vital to realise that the basic conception in our Constitution is really monarchial. The theory underlying our Constitution is much more akin to the idea that rights are graciously conferred by the Crown than to the republican idea of intrinsic rights. So anything that the Aboriginals are to get must be deliberately enacted by this Parliament. We had to enact deliberately that they had voting rights. If we want to give them land rights or many quite important rights, those rights must be deliberately enacted. If the Commonwealth is prohibited from enacting anything for Aboriginals, the process of conferring the rights cannot continue.

The honourable member for Wills (Mr Bryant) referred to certain historic facts. One saw on the select committee which considered the grievances of the Yirrkala Aboriginal people the collision of two myths. When Cook proclaimed the sovereignty of George III over this country or when Phillip reinforced it with later proclamations, this mystical process of saying that George III owned the country created Crown land. On the Yirrkala grievances committee we encountered the idea that the Aboriginals on their reserves were on Crown land and that it was perfectly competent for the Commonwealth Government to alienate to a company the land on which these people lived. Of course, they themselves had a concept of land ownership which related to their creator heroes—to the fact that people were believed to have been conceived by the earth spirit in certain pieces of land and that all these sites were sacred to them.

So here was the white man's myth that the King owns all this land in collision with their conception of their own origin. Of course, I have no doubt that in both sets of concepts the ultimate theory is that something is owned by God. The King was King by the grace of God, and these creator heroes in the Aboriginal myths went back to the original creator spirit. That gave them, they thought, some rights to land and, in the evidence that they gave before us, they desired, among other things, the preservation of their sacred sites.

Of course, the Commonwealth can enact rights in the Northern Territory and its other Territories, and has done so. But we should recognise that the Commonwealth cannot reach into a State. If a State continues to exclude Aboriginals from voting rights, the Commonwealth cannot do what has been done by the United States Government in relation to States that have attempted to deprive American citizens who happen to be coloured—Negroes—in the southern States of the right to go to universities and so on. It was under the Fourteenth Amendment that Eisenhower and Kennedy moved troops in relation to discrimination against Negroes. We have no power to deal with discrimination against Aboriginals.

I believe that the deletion of these words will increase the Commonwealth Government's power in relation to State Aboriginal policies. The question may well be asked:

should this be done? I believe that there is a world conscience on these issues. It will not be the same in the future as it was in the 1960s. I believe that more and more the independent coloured republics of Africa are being put on trial in respect of their own treatment of one another and that people are beginning to see that what is really involved is not the colour of the skin but the type of conduct. Nevertheless, very few people in the world regard Australia as having a good record in respect of its Aboriginals. They would be very ill informed if they did so because one can almost take it as axiomatic that in what we used to call the British Empire the more self-government advanced the lower the status of the native people became. The present conflict in Rhodesia is a repetition of the old conflict between the white man on the spot who always claimed he knew the native and the government at home.

At one stage this concept of a Crown authority was sufficiently protective for the Red Indians of the western United States to desire to migrate into Canada. The Royal Canadian Mounted Police were responsible to the Crown. Unlike the sheriffs of the American wild west, they were not the instruments of the local population in seizing Indian land or in the maltreatment of Indians. Because this conception of the Crown's responsibility to its subjects existed in Canada, Indians tried to mass migrate to Canada. The United States authorities regarded this as a tremendous and unintelligible insult and sent the cavalry to divert the Indians from migrating to Canada.

We have the problem that as self-government has advanced in this country, there is no question but that the status of Aboriginals has declined. The original constitutions of the States regarded Aboriginals as British subjects and in all the original constitutions which were conferred upon the States male Aboriginals —and only men of European race had the vote in those days—voting rights in the more popular chamber. In Western Australia when the State Government took away those voting rights in 1904 the Governor, as the representative of the Crown, reserved the legislation for the consideration of the United Kingdom authorities, but found that they no longer claimed responsibility. I have tried at various times in articles to cite the Aboriginal cricket team which in 1867 defeated half the first class counties of England. They played the Gentlemen of England at Lords, a situation which today is quite unthinkable. That is a measure of the decline of the status of Aboriginals in this country as self-government has advanced.

The Commonwealth should have this power because it is the Government which is confronted with the conscience of the world on this issue. I believe that we ought to transform our Aboriginal policies because it is right to do so. I am not speaking about a lot of sentimental policies; I am speaking about policies which are right. There must be some kind of recognition of land rights where people still live in tribal states, for instance. Until last week when the Commonwealth took action in the Northern Territory we were almost the only country in the world which acknowledged no land rights for the original inhabitants. We have the effrontery to stand here and criticise South Africa. I am no apologist for South Africa, but at least the South Africans acknowledged the ownership of 400,000 square miles of South Africa by the original native inhabitants. We would regard Smith as going entirely berserk in Rhodesia if he acknowledged no native land rights at all. But the position in Australia is that we acknowledge no native land rights whatever. We took the lot with our proclamations of sovereignty. The same George III whose sovereignty was proclaimed in what is now called the United States and Canada, at the same time as Cook was proclaiming sovereignty here, was making arrangements where Red Indian tribal titles to land were acknowledged.

I believe that the Government of the Commonwealth, which is exposed to the conscience of the world and must answer to the world on these issues, should have this prohibition on legislating on Aboriginal affairs which is implicit in the words in section 51 (xxvi) deleted from the Constitution. I hope we are not going to get the usual kinds of confusion that occur with referendums. The great hope is that the parties are unanimous on this question. Historically, no referendum opposed by a major

party in Australia has ever been carried. When people speak about the social services referendum as having been carried in 1947 they should remember that this House, except for the late Archie Cameron, was unanimous, so far as the parties were concerned, that the referendum should be carried, but even then 46% of the people voted against it. But I hope that we can form a united front on this question so that the usual confusions of State authority being challenged or the usual kind of argument which is advanced about transference of power to the Commonwealth and the power being dangerous will not be advanced.

I say that the Australian people must be deliberately responsible. I believe their very security is involved in their being able to say to the world that this community will ensure sane and just race relationships. I hope we will not confuse ourselves with other words which have come up in relation to the Aboriginal people. If 'citizenship' is a confusion word and 'reserve' is a confusion word, because the Aboriginals do not own the reserves, another confusion word is 'assimilation'. If an Aboriginal wishes to remain an Aboriginal I hope we are not going to say: 'Without consulting you we have decided that assimilation is the policy'. Actually the only protagonists of apartheid I have met in Australia are the Aboriginals themselves. I do not say all of them are. 'Aboriginal' is another dangerous word and it is one of our words. They do not think of themselves as Aboriginals. They think of themselves as Arunta or Tiwi and all sorts of separate tribes. I remember when we were away with one select committee. Aboriginals brought from central Australia to Melville Island and Bathurst Island were utterly homesick because they were quite isolated from the other Aboriginals there. But assimilation is our word. Many Aboriginals take it as meaning they are to be bred out. They wish to remain a distinctive people. After all, apartheid is always the policy of the minority race that does not wish to be absorbed. In Australia the minority race that does not want to be absorbed is the people we call the Aboriginals. Some of them desire that their reserves be inviolate, that their way of life be inviolate and they be allowed to continue as a separate community. This is apartheid without the emotional overtones for which we attack South Africa. Here there is no superior race connotation.

The desire of the Aboriginals to be a distinctive people is something we should respect wherever it exists. We should acknowledge the economic basis of such a distinctive existence or in other words that they might have some title to the remaining reserves. This is important. There are many things that future Commonwealth Governments may do if these prohibitory words are eliminated. We are grateful that the House is unanimous on this measure. We hope that there will be unanimity in the country and that everybody will put his weight behind explaining to the Australian people the need for this legislation.

Mr KATTER (Kennedy) [11.37]—I want briefly and simply to express my appreciation of the proposal before the House. I am perturbed at the various ways people approach the Aboriginal question. I rise tonight not to sing any sanctimonious hallelujahs, but merely to say that at long last another step is being taken to give these people appropriate status. In my town we simply live with these people. I am 48 years old and I have been associated with them all my life. I have been to school with them, grown up with them and mixed with them. Psychologically we can never see any difference. This may sound a little silly to people who live in the cities but it is perfectly true. At long last they are to be given the dignity of coming at least a little closer to being full citizens of this nation.

I have often wondered about the publicity that is given when an Aboriginal comes before the courts. The offence seems to be something a little worse than when a white person is charged. But in my electorate we think of Aboriginals quite differently. Over the years we have detected in them qualities of comradeship. We see in them a simple loyalty that is always beyond question. They can be very good humourists. I have been a sort of Dorothy Dix to these fellows—and to some of the females at times. It is amazing when you get beneath the skin what lovable qualities they have.

There is consideration of international importance in this legislation. This Bill will do something to counteract the very bad

reputation we have among people overseas who have heard of the white Australia policy. If the white Australia policy were applied in my town, we would be segregated. This is true. We, the white people, would be segregated. So, in effect, discrimination does not really exist. Yet the idea that it does exist is given a lot of publicity. We are showing here tonight that it does not exist. I join with other speakers who mentioned the unanimity of feeling on this issue. We are showing tonight in a very decisive way that we are doing something about the matter. I am very proud to be associated with the House in what it is doing on this issue.

Question resolved in the affirmative.

Bill read a second time.

Third Reading

Leave granted for third reading to be moved forthwith.

Mr HAROLD HOLT (Higgins—Prime Minister) [11.42]—I move:

That the Bill be now read a third time.

I believe that this House can take pride in the quality of the debate that has taken place on this measure this evening.

Mr SPEAKER (Hon. W. J. Aston)—Order! As this is a Bill to amend the Constitution, the provisions of section 128 of the Constitution must be observed. I therefore direct that the division bells be rung.

(The bells having been rung)

Mr SPEAKER—The question is: 'That the Bill be now read a third time'. As there is no dissentient voice, I declare in favour of the Ayes. Although there is no dissentient voice and a division has not been called for, it is desirable that the names of those members present agreeing to the third reading should be recorded. I therefore appoint the honourable members for Ballaarat (Mr Erwin) and Wilmot (Mr Duthie) as tellers.

(The following names were then recorded)

(Mr Speaker—Hon. W. J. Aston)

Adermann, C. F.	Hasluck, P. M. C.
Allan, Ian	Haworth, W. C.
Anthony, J. D.	Hayden, W. G.
Armstrong, A. A.	Holt, Harold
Arthur, W. T.	Holten, R. M.
Barnard, L. H.	Howson, P.
Beaton, N. L.	Hughes, T. E. F
Beazley, K. E.	Hulme, A. S.
Benson, S. J.	Irwin, L. H.
Birrell, F. R.	James, A. W.
Bonnett, R. N	Jarman, A. W.
Bosman, L. L.	Jessop, D. S.
Bowen, N. H.	Jones, Andrew
Bridges-Maxwell, C. W.	Jones, Charles
Brownbill, Miss K. C. M.	Katter, R. C.
Bryant, G. M.	Kelly, C. R.
Bury, L. H. E.	Killen, D. J.
Cairns, J. F.	King, R. S.
Cairns, Kevin	Lee, M. W.
Cameron, Clyde	Luchetti, A. S.
Cameron, Donald	Lucock, P. E.
Chaney, F. C.	Lynch, P. R.
Chipp, D. L.	Mackay, M. G.
Clark, J. J.	Maisey, D. W.
Cleaver, R.	McIvor, H. J.
Collard, F. W.	McLeay, J. E.
Connor, R. F. X.	McMahon, W.
Cope, J. F.	Minogue, D.
Corbett, J.	Munro, D. R. R.
Costa, D. E.	Nixon, P. J.
Courtnay, F.	O'Connor, W. P.
Cramer, Sir John	Opperman, H. F.
Crean, F.	Patterson, R. A.
Cross, M. D.	Peacock, A. S.
Curtin, D. J.	Pearsall, T. G.
Daly, F. M.	Peters, E. W.
Davies, R.	Pettitt, J. A.
Dobie, J. D. M.	Robinson, I. L.
Drury, E. N.	Sinclair, I. M.
England, J. A.	Snedden, B. M.
Failes, L. J.	Stewart, F. E.
Fairbairn, D. E.	St John, E. H.
Fairhall, A.	Stokes, P. W. C.
Forbes, A. J.	Street, A. A.
Fox, E. M. C.	Swartz, R. W. C.
Fraser, J. R.	Turnbull, W. G.
Fraser, Malcolm	Turner, H. B.
Freeth, G.	Uren, T.
Fulton, W. J.	Webb, C. H.
Gibbs, W. T.	Wentworth, W. C.
Gibson, A.	Whitlam, E. G.
Giles, G. O'H.	Whittorn, R. H.
Graham, B. W.	Wilson, I. B. C.
Gray, G. H.	
Griffiths, C. E.	Tellers:
Hallett, J. M.	
Hansen, B. P.	Duthie, G. W. A.
Harrison, E. James	Erwin, G. D.

Mr SPEAKER—Order! As 113 members have agreed to the third reading I certify that the third reading has been agreed to by an absolute majority as required by the Constitution.

Bill read a third time.

House adjourned at 11.52 p.m.