

[Tuesday, 5 August 1980.]

THE HON. P.G. PENDAL (South-East Metropolitan) [5.24 p.m.]: In speaking in this House for the first time I do so with a deep sense of pride, tempered with a sense of responsibility; but also with a sense of gratitude to the people of South-East Metropolitan Province who have sent me here. I hope that in the six years I have ahead of me as their representative here, I will discharge my responsibilities to their advantage and to my honour.

It seems customary, or perhaps even obligatory, for a member of this Parliament of my political persuasion to speak at some time during his life here on the time-honoured subject of Commonwealth-State relations. I consciously made it the subject of my maiden speech to underscore its importance in my own thinking. However, I would like to feel that in discussing the matter here today I am not merely raising the problems, for they have been raised and canvassed on many occasions in past years. Rather, it is my intention to put forward what I believe to be some of the concrete solutions to certain of the problems facing the federation of Australia right now.

In my estimation, the state of the federation, which is now 80 years old, is one of serious disarray. Again, in my estimation, that position is likely to deteriorate unless some fairly fundamental changes are made. Without those fundamental changes, and without their being made quickly and effectively, the federation is bound to collapse within a generation.

I begin with the simple premise that such a collapse would be both antidemocratic and, indeed, anti-Australian. I base that assertion on the historical fact that it was the Australian people, by democratic action, who voted in favour of a federation. Simply put, the Australian people voted to have legitimately the best of both worlds; that is, they sought to gain a national identity by permitting a central Government to discharge those functions which could best be done centrally or nationally, while at the same time they - that is, the Australian people - voted to have the State exercise those existing and future functions which could be best discharged on a State-by-State basis.

One does not need to be a constitutional genius to know that almost immediately after its creation the federation began to develop along lines which were quite contrary to the wishes expressed by the voters.

One of the best commentaries in this regard comes from the authors of *Federalism in Canada and Australia: the Early Years*. At page 289 they state -

Within 14 years of their creation both the Canadian and Australian federations had actually moved significantly away in practice from the apportioning of powers and responsibilities between the centre and the units that had been arranged by the countries' respective fathers. Yet in neither case had the formal constitution of the two sister federations been markedly altered.

That breach of faith - and I believe it does amount to that - with the Australian people is as apparent today as it was when those words were written. Ironically the breach of faith implied in that comment may well provide the mechanism for a healthier federation in the years ahead, for if earlier Governments were responsible for a swing away from a proper apportioning of powers without constitutional amendments, then it stands to reason that a swing back to a true federation also can be achieved without constitutional change.

If there is any merit in the proposition of which I speak, a few fundamental pieces of current thinking must be altered. It has been pointed out by Professor Geoffrey Sawer in *The Australian Constitution*, at page 34, that the founding fathers -

intended to create what has come to be called a "co-ordinate" Federal system, in which the two sets of authorities - central and regional - would act independently of each other in relation to topics so defined as to reduce to a minimum the possibility of overlap or collision.

I suggest that is also part of the kernel of the problem. Indeed, we have become obsessed in recent years with talk of so-called co-operative federalism. I, for one, reject the theory of co-operative federalism simply because, apart from being a contradiction in terms, it is no more than an excuse for Federal and State Governments each to have a finger in the same pie. The very purpose of a federation and of a proper apportioning of constitutional powers is to guarantee that the Commonwealth and the States keep their fingers in their own respective pies, and that in itself would reduce to a minimum any overlap or duplication. Only in the gray areas should there ever be any need to work on a co-operative basis, but these areas, I submit, are far fewer than most people, even the constitutional lawyers, would be prepared to admit.

I come therefore to the very genesis of my argument, and my suggested solution: the need to institute in Australia what might be described as a constitutional trade-off - that is, a trade-off of powers between the Commonwealth and the States. I am proposing a fundamental and far-reaching change by way of trade-off along

the following four lines, and I stress that they are not exhaustive and that each would need to be taken in concert with adequate financial arrangements -

- (1) That the States entirely vacate the field of industrial relations, and in return the Commonwealth entirely vacate all involvement in education, including tertiary education.
- (2) That the States entirely vacate the field of social welfare, and in return the Commonwealth entirely vacate the field of environmental protection.
- (3) That the States entirely vacate the field of State emergency services and allow them to become the responsibility of a civil division of the Australian Army, and in return the Commonwealth entirely vacate all involvement in apprenticeship, trade training, and training support schemes.
- (4) That the States entirely vacate such areas as meat inspection at export works, and in return the Commonwealth entirely vacate the field of road funding and priority listing.

In other words, I am suggesting we get rid of duplication, that we get out of each other's hair and, for better or worse, have a situation where one or the other level of government exercises full authority in a specified area.

Let me stress that in the case of industrial relations I am not implying that the Commonwealth Government can exercise this function better than the States can. My suggestion here is based on the belief that only by a two-way trade-off of the type to which I have referred, with the exchange of powers along the lines I suggest, will we ever show good faith to the Commonwealth and to other Governments, and they in turn to us in wanting to achieve a proper apportioning of powers.

The vacation by the States of social welfare matters makes sense simply because the Commonwealth already handles a large proportion of the welfare market. The suggestion that the State Emergency Service become a civil division of the Australian Army in no way implies that the present Western Australian State Emergency Service is in some way deficient. Indeed, the contrary is the case. It is a highly professional and efficient service, but for the purpose of a meaningful trade-off I believe it could well be transferred to Commonwealth control, especially as the Commonwealth already has a national disasters apparatus working out of Canberra. The transfer of meat inspection functions to one Government or the other also makes sense, in that it will immediately cut out the unnecessary duplication which places an extra financial burden initially on producers and ultimately on consumers.

On the other side of the coin, it makes sense for the Commonwealth entirely to vacate the field of education. It was never intended that the Commonwealth should become involved in that field to the extent it has. Even today, when so much attention is focused on Commonwealth education funding - as though, incidentally, it is the last gasp in education funding - the fact remains that the Government of Western Australia funds 65 per cent of all forms of education in Western Australia and the Commonwealth funds the remaining 35 per cent. The State Government provides the lion's share - 83 per cent - of all primary and secondary education funding in Western Australia. There is simply no valid reason for the Commonwealth being involved in this or any other education field.

The original Constitution never at any time envisaged Commonwealth involvement in the environment. Indeed, it was intended that unspecified powers such as those relating to the environment be reserved for the States alone. Only the improper use of the Commonwealth's export licensing powers has allowed the Commonwealth to become involved to the extent it has. Apprenticeship and trade training matters are clearly for the States themselves to handle. Invariably they involve regional needs for particular industries which become hamstrung because of the joint involvement of Commonwealth and State authorities.

Road funding has become today a joint responsibility of the Commonwealth and the States. It may come as a surprise to most members to know that in the last five years Western Australia, in common with the other States, has been picking up an increasing share of the tab, to the point where in 1979-80 the State will contribute \$62.64 million and the Commonwealth \$69 million for road funding in Western Australia. The States can and should be responsible for the entire road funding and priority determination, and this could be achieved with a change in the funding mechanism.

I do not propose to deal here with the accompanying problem of a reallocation of revenues among State Governments. However, it is sufficient at this time to say that while pay-roll tax eventually must be abolished or at least substantially reduced, it must never be done at the expense of falling deeper and deeper into the clutches of the Commonwealth Treasury. Perhaps in time the introduction in Australia of the consumer type taxes which are widely and, I think, equitably used in the United States will be the best form of replacement. I do not see as being viable the proposal that the States exercise their so-called option to impose an income tax surcharge over and above the present personal income tax levels. That proposition is about as farcical as is that of a person being mugged in the street, stripped and beaten, left to perish, and then having a second party come along to extract a final measure of satisfaction by kneeling him in the back.

I make the point that, after the Commonwealth extracts its very hefty personal income tax from a citizen, that citizen has no capacity to pay an extra surcharge to a State Government. Yet, it needs to be borne in mind that it is the State Governments which are recognised as providing all the fundamental services to Australian citizens. That is borne out by a comment of Martyn Forrest in *The Organisation of Government in Western Australia*, in which he says -

The State Government is involved in almost every aspect of the daily life of the citizen of Western Australia. It meets his domestic energy needs, fluoridates his water, monitors the air he breathes, controls the trading hours of the stores in which he shops, licenses the hotels he patronizes, provides the roads and railways upon which he travels, markets the milk he drinks, owns most of the agencies through which he gambles, regulates the tradesmen he employs, builds and staffs the schools which most of his children attend and, of course, administers the law by which he is bound.

A vital principle is at stake in this for the Commonwealth Parliament itself. There can be no dispute that the Commonwealth has and must always have the sole responsibility for such matters as foreign affairs and defence policy. It stands to reason, therefore, that the Commonwealth Parliament and its members have enough weighty problems before them in those matters alone and in other distinctly Commonwealth matters to leave the internal government of Australia to the Governments and Parliaments of the States. Heaven only knows that international relations, diplomacy, and defence require the full-time attention of Commonwealth parliamentarians.

The effect of what I am saying is that in the long term Australia, by the means I have just described, could develop into an informal confederation, which, indeed, many of our founding fathers themselves advocated. The position would then be reached where the distinctly external functions of Australia and its place in the world would be handled exclusively by the Commonwealth Parliament, and the internal domestic needs of the nation would be handled exclusively by the States. As a matter of sheer business efficiency and common sense, the proposition has to be attractive.

In conclusion, I make the point that it is often lamented by both conservative and radical political elements that our Constitution is a moribund document, a legal straitjacket, and a barrier to our economic and social advancement. It was never intended as such. Indeed, changes in its intent have occurred other than by means of referendum. That in itself means that all the proposals I have outlined are capable of achievement without the need to alter the Australian Constitution.

If Australia is to continue seriously as a true federation, it must act quickly to accommodate the demands of the Australian people, who showed in 1900 and who have shown repeatedly since then that they regard a system of separate powers as the most democratic and efficient means of governing Australia. All that remains now is for us to keep faith with Australians and bring about the reality of an apportioning of those powers.