

(No. 13.)



1900.

PARLIAMENT OF TASMANIA

COMMONWEALTH OF AUSTRALIA CONSTITUTION
BILL:

COPY OF TELEGRAMS ON THE SUBJECT OF
AMENDING.

Presented to both Houses of Parliament by His Excellency's Command.

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COPY OF TELEGRAMS RECEIVED FROM THE SECRETARY OF STATE FOR THE COLONIES, AND OTHER TELEGRAMS ON THE SUBJECT OF AMENDING THE COMMONWEALTH BILL.

Copy of Telegram received by His Excellency the Governor from the Secretary of State for the Colonies, 5th April, 1900 :—

HER Majesty's Government earnestly share your desire to see the great work of Australian Federation completed, including Western Australia in the Commonwealth.

The sole obstacle now remaining to the acceptance of the Constitution by Parliament of that Colony is Clause 95, and objections of Western Australia to the sliding scale on practical grounds of continual dislocation of the revenue and of commerce have considerable force. The Amendment desired does not affect any principles of the measure, and it would be misfortune to fail in securing a great national object on account of matter of minor detail. Delegates have no power to consider the question without further authority. Would your responsible Ministers be willing either to assent to the Amendment asked for by Western Australia, or to authorise their Delegates to endeavour to come to an arrangement on the subject ?

If your responsible Ministers agree in principle, but fear that delay would be caused by necessity of further reference to the people of the Colonies concerned, might not the object be obtained by inserting in the covering clauses of the Bill containing Constitution, a proviso, that Western Australia may enter the Federation on the terms abovementioned, provided that the Parliaments of the Six Colonies severally passed Resolutions to that effect ?

This suggestion is made with a sincere desire to assist the completion of the success of the great scheme of Federation prepared with so much ability by the Australian Colonies, but Her Majesty's Government have no intention to press it if Ministers of the Federating Colonies do not favour it.

Copy of Telegram received by the Governor of Tasmania from the Secretary of State for the Colonies, 6th April, 1900 :—

DISCUSSION has been proceeding in most friendly spirit, and with good result. The Imperial Government disclaims any desire or intention to interfere in any matter involving Australian interests exclusively, but they are confident that Ministers will give full weight to their suggestions when urged on behalf of the interests of the United Kingdom, or as trusts of the Empire at large. Various questions have arisen as to which Her Majesty's Government would have desired Amendments, but are unwilling to press their views at the risk of delaying Federation, and the matter at issue is now substantially reduced to the question of Clause 74 in restricting the right of appeal to the Privy Council. Her Majesty's Government object to this Clause because—

- I. The vague and inadequate term of public interests leaves uncertainty in a matter where precision is of the first importance, and would lead to increased litigation due to applications for leave to appeal, and multiplicity of arguments on some points on appeal.
- II. It would seriously impair the most important link of the Empire, the consequences of which would be far-reaching in allowing divergency to spring up where unity and uniformity are most desirable in the general interests.

- III. It can scarcely be desirable in the interests of Australia that in important questions as to boundaries between the powers of journalist and statesman that on such questions finality of decision should not lie with the highest tribunal of the Empire, beyond suspicion of local bias or predilection.
- IV. Important questions may arise as to the operation of the Commonwealth laws on British shipping, or generally as to whether such laws are *ultra vires*, and Imperial Parliament can scarcely allow such questions to be concluded by the decision of the Australian Federal Court.
- V. The interests of subjects of other parts of the Empire may be seriously affected by the Commonwealth legislation—on, for instance, fisheries—and Parliament could not suffer them to be deprived of appeal to an Imperial Court on such matters.
- VI. Very strong feeling against limitation entertained by banks and other financial and commercial institutions having large interests in Australia; and strong representations have been made to Her Majesty's Government on the subject.
- VII. Her Majesty's Government feel the actual restriction and power claimed to make further restriction equivalent to practical abolition of appeal especially inopportune at the moment when they are considering the terms of a Bill for enhancing the dignity and promoting the efficiency of the Judicial Committee of the Privy Council by its practical amalgamation with the House of Lords, and providing for adept permanent representation of the great Colonies in new Court proposed to be created.

Practical withdrawal of Australian appeals would deprive new Court of a large part of its value as providing a new sphere of co-operating between the Colonies and Mother Country, and to some extent giving effect to ardent desire for closer relations that now happily exists in Mother Country and Colonies. For these reasons, and others which have been fully explained to Delegates, Her Majesty's Government feel that they must press for amendment of Clause 74; but they earnestly desire to carry out such amendment in the way most agreeable to Australian sentiment, and so as (if possible) to avoid the necessity of delay and expense of further referendum. Several suggestions have been made with this object, but Delegates feel themselves precluded by lack of instructions from discussing the form which any Amendment should take, or the method by which effect should be given to it. It is also necessary that there should be provision made for explaining that Colonial Laws Validity Act, 1865 will apply to the laws of the Commonwealth Parliament, as intended by the framers of the Constitution: there can be no difficulty in arranging suitable terms on this point. I now earnestly appeal to your Government to co-operate with me in securing the unopposed passage of a Bill, which, while accepting, practically in its entirety, the Constitution proposed by the Colonies, will also take account of considerations urged above. I trust that your responsible advisers may see fit to send the instructions to their Delegate, and to give him authority to arrange with Her Majesty's Government the method by which these objects can be most quickly and satisfactorily ensured.

COPY OF TELEGRAM.

The Hon. the Premier, Sydney.

AFTER considering cablegram of 5th instant from Secretary of State for Colonies to the Governor, this Government is doubtful whether any strong stand by the Delegates or Governments of the Colonies will save the draft Commonwealth Bill from Amendment conferring right of appeal on special leave first granted to the suggested new appellate tribunal for the Empire. If Secretary of State for Colonies and Crown Law Officers withdraw insistence on introduction of this Amendment, it will probably be inserted in Commons or Lords. We do not think the people of this Colony would care to see Federation jeopardised by an absolute adherence to the draft Bill in this one particular. We are anxious to see West Australia join the other Colonies as an original State, and so make the union complete; and with this object would personally be prepared to accept the Amendment of Clause Ninety-five of the Bill, as suggested by Sir John Forrest, as we understand he is willing to withdraw all his other Amendments, and to give satisfactory assurance that the Bill as amended will be accepted by the Parliament and people of his Colony. The Amendment seems to us a comparatively small one, and any disadvantage that may accrue to any of the Colonies from its acceptance will be temporary, and will be more than counterbalanced by the advantage of having West Australia united with us from the outset. No Government has the power to accept any Amendment of the draft Constitution, and each Colony in sending a Delegate, very properly, I think, instructed him to carry out the will of the people, and to urge the passage of the Bill in the identical shape in which it was adopted by the people; nor has any Government the power to authorise its Delegate to accept on behalf of the people of his Colony even the slightest Amendment, but Delegates should be instructed not to press their insistence on each word of the Bill to such an extent as to cause the withdrawal of the Bill, or to endanger its passage. Unfortunately, no provision was made in the various enabling Acts for dealing with Amendments made by the Imperial Parliament, or with the Constitution as amended by that body, such a probability not having been apparently contemplated. We see three ways in which any Amendments that may be made, can be satisfactorily dealt with: firstly, that a fresh Referendum of the people be taken; secondly, that the Parliaments of the Federating States with whom rested the responsibility after Referendum taken or transmitting Addresses praying that the Constitution should become law, should pass Resolutions accepting or rejecting the amended Constitution; or, thirdly, that the Constitution should be deemed accepted by such of the Federating Colonies as do not, within six months after the passing of the Commonwealth Bill, reject the Constitution. This Government prefers.

the last alternative, believing that the overwhelming majority of the people who voted in favour of the Bill voted for the principles of Federation, and that the vote would not have been materially altered had the proposed Amendments been included in the Bill as submitted to them. Whichever alternative may be adopted, the necessary provisions for giving effect to it must be included by the Imperial Parliament in the covering Clauses of the Bill.

N. E. LEWIS, *Premier.*
9/4/00.

COPY of Telegram received by the Governor of Tasmania from the Secretary of State for the Colonies, 16th April, 1900:—

My telegram of the 5th April.—Whilst Her Majesty's Government would be glad to learn that Prime Ministers concur in and approve of the policy of amending the Bill for the purposes indicated, what they immediately desire is that authority should be given to Delegates to consult with Her Majesty's Government as to the best means by which effect may be given to the necessary alterations, especially with a view to avoiding, if possible, further referendum.

The responsibility must, of course, rest with Her Majesty's Government, but, as explained in my telegram of the 5th, they are anxious to avail themselves of the assistance of the Delegates.

COPY of Telegram received by the Governor of Tasmania from the Secretary of State for the Colonies, 17th April, 1900:—

NEW ZEALAND Government anxious to have an Amendment in the covering clauses of the Federation Bill, providing that New Zealand may enter the Federation at any time within seven years, on the same terms as original States.

I have replied, that in the absence of express Australian opinion in favour of the proposed Amendment, Her Majesty's Government would not be justified in making it, and suggested, that if the Prime Minister of New Zealand wishes to press it, he should communicate with the Prime Ministers of the Federating Colonies. If they regard the proposal of the New Zealand Government favourably, Her Majesty's Government will be prepared to consider it.

[NOTE.—Formal parts of the above telegrams omitted.]