House of Assembly

05 October 1989

Mr SPEAKER - I call on the honourable member for Denison, Dr Crean, and may remind the House that this is Dr Crean's inaugural speech.

Dr CREAN (Denison) - I would like to take this opportunity first of all to thank the people of Denison for the support they showed me on 13 May and to reiterate what I said at the declaration of the polls, that my door is always open, and the point I made to numerous constituents whilst doorknocking, that there are seven State politicians in Denison to be used and so they should be used.

In this my maiden speech I would like to raise a number of diverse issues but nevertheless issues relevant to the State of Tasmania.

I would like to discuss, first of all, the circumstances of our most recent State election and its ramifications in terms of the democratic process and the relationship between the people and the Parliament, and the role of the Governor and the Premier as his senior adviser in the concept of responsible government.

Secondly, I want to discuss what I consider to be two broad main issues facing this State, namely, the overall approach we have to the economy in general and the role that an economic summit will have in this approach; and the conflict between development and the environment, and the role an independent assessment commission will have in this conflict.

On l 3 May Tasmanians went to the polls, the outcome of which under the Hare-Clark system - not a first-past-the-post system - was the election of a parliament consisting of seventeen Liberal, thirteen Labor, and five Independent members. Under our democratic system of government an election was held at the pleasure of the then Premier with a campaign duration of his choosing.

During this campaign, as with all campaigns, many diverse political issues arose and were debated, none more prominent than the possibility of a balance of power situation resting with the Independents.

People were made well aware of the fact that this possibility was real and people realised that if this were the case two options could be exercised.

Firstly, a casual parliament with no formal alliances; and, secondly, declared support by the Independents for one major party or the other.

It was obvious that whichever option resulted would depend on discussions between the Independents and the major parties after the election result.

In fact both major parties accepted the reality of this situation and were approached by the Independents.

After these approaches it was obvious the Independents had nothing in common with the Liberals and they decided to support a minority Labor government under the agreement of a written accord.

They had exercised a right under our democratic system not just to sit as five Independents in parliament and watch the Liberals govern, but to give better representation to the people who voted for them.

It was their right under the Hare-Clark system which had operated in this State in excess of eighty years.

Similarly the Labor Party exercised its right. In any event, accord or no accord, the Tasmanian people had just elected a House of Assembly which had the capability of delivering a motion of no confidence in the Liberals on 29 June.

Subsequent to the Governor's decision to summon parliament on 28 June, much was said about what ought to happen, given the inevitability of a no-confidence motion being brought against the former Liberal Government.

It was agreed on the one hand that, in view of the fact that an election had just been held, the Governor would make the decision to ask the Opposition if it could form a stable government - accord or no accord.

On the other hand, it was argued that the Governor would be obliged to accept the advice of his most senior adviser, the Premier, under the concept of responsible government and, because one of the serious options considered was a dissolution of parliament, the Governor would be bound to accept his advice and dissolve parliament.

I believe a concerted attempt was made by the former Premier and others to politicise certain features of our constitution, a process which should be above politics.

In this process a lack of appreciation of the concept of responsible government was exemplified. I think it is opportune here to remind members of the meaning of the concept of responsible government and how this concept relates to the Governor and the Premier as his senior adviser, with respect to executive decision making of which dissolution of parliament is one.

In doing this, in order to develop the concept adequately, I think it is important to trace briefly the relevant sequence of events in relation to the acquisition of responsible government in the Australian colonies.

Until about 1840 the mode of administration in the colonies was unsatisfactory. The responsibility of government was centred absolutely and exclusively with the Governor. He was assisted by an executive council but that council was responsible to no one, and in fact the Governor consulted it at his own discretion.

The sole responsibility of government rested with the Governor; he was responsible only to the supreme authority of the Empire, not to the people of the colonies.

In the early 1840s a remedy was effected to solve the unsatisfactory situation of colonial administration, and that was the adaptation of the British constitutional system with the constitutional maxim under the Westminster system of ministerial responsibility to an elected assembly.

These changes were effected through an imperial act of 1850 which enabled Australian colonies to introduce parliamentary institutions and constitutions which could be altered by popular proceedings but subject to approval by both Houses of the British Parliament.

The one definite change in pursuit of responsible government in the colonies was that the power to enact decisions was transferred from the .Governor to the Governor-in-Council, his council being ministers directly responsible to the people's House and representing the views of the majority of members in that House.

The Governor had the overseeing role to make sure nothing unlawful was performed or that abuse of the system did not occur, and it was understood he would only act unilaterally in extraordinary circumstances and then according to constitutional law and practice.

This function has not changed under the law and practice of the constitution and m modern times it is accepted that all executive decisions must be taken on the advice of the Governor's senior adviser.

That is, the Governor, being an unelected representative, cannot take personal responsibility for any executive decisions; neither can he make political value judgments.

The responsibility and political philosophy, if you like, must be taken by a senior adviser who is accepted as representing the views of the majority in the people's House.

That is what responsible government is about. In our modern context it is accepted that all executive decisions, of which dissolution of parliament is one, are carried out on the advice of the Governor's most senior adviser and let me quote from the 'Annotated Constitution of the Australian Commonwealth' by Quick and Garran, page 406:

“parliamentary government has well established the principle that the Crown can perform no executive act, except on the advice of some minister responsible to Parliament.”

And in relation to dissolution of parliament I again quote from Quick and Garran, page 407:

“The refusal of a dissolution recommended by a minister of State, is not an executive act, it is the refusal to do an executive act. It seems to be generally admitted by constitutional authorities that the Crown has still an undoubted constitutional right to withhold its consent to the application of a minister for permission to dissolve Parliament.”

Let me further quote from Todd - one of the foremost constitutional authorities of his time - from the second edition of 'Parliamentary Government in the British Colonies', page 800, and this chapter was used extensively in the Cosgrove case here in 19.56:

'Whilst this prerogative, (i.e. of dissolution) as all others in our constitutional system can only be administered upon the advice of councillors prepared to assume full responsibility for the Governor's decision, the Governor must be himself the judge of the necessity for a dissolution. The constitutional discretion of the Governor should be invoked in respect to every case wherein a dissolution may be advised or requested by his minister; and his judgment ought not to be fettered, or his discretion disputed, by inferences drawn from previous precedent, when he decides that a proposed dissolution is unnecessary or undesirable.'

In other words, the Governor's refusal to allow a dissolution of parliament is constitutional and within his rights at any time, let alone a time of extraordinary circumstances.

The logic and relevance of that power was manifestly applicable to our circumstance following the election on 13 May. It is a check on the system to avoid political abuse. Here we had a situation where six weeks previously the people of Tasmania had voted in such a way that their representatives were capable of delivering a no-confidence motion against the Liberals on 29 June.

To accept the argument that parliament did not really represent the people's views because one political party said the people were misled really makes any election result meaningless, because any party could use that political argument on any issue at any election.

And to expect a governor to be swayed by political arguments of this nature shows a lack of understanding of his role under the constitution - that is, his role as an unelected non-political entity.

The former Premier, Mr Gray, and his supporters were inferring that, because Mr Gray was still Premier in name until someone else had been commissioned, the Governor would be bound to accept his advice and dissolve parliament.

Not only does the Governor have the constitutional power to withhold his consent to a dissolution of parliament, as I have just outlined but, under the concept of responsible government under the Westminster system, if the Governor were bound to accept that advice from a person who did not have the confidence of a newly elected Assembly without seeking advice from others who could command the confidence of that newly elected Assembly, the Governor would be placing himself in a position of sole responsibility for the executive decision of dissolution.

Robin Gray could not take responsibility; he had just lost the confidence of a newly elected House; he no longer represented the views of the majority of the people's House.

The Governor's position would have been untenable and unconstitutional. It was always the case - and it should be acknowledged as such - that the Governor, under the constitution, could make only one decision under the circumstances and that was to seek advice from others who could command the confidence of a newly elected House; that is, the former Labor Independent Opposition.

But instead of accepting this inevitability weeks beforehand and avoiding the instability which resulted, the Liberals sought to politicise constitutional practice, a practice which must be above politics now want to move on to discuss our general approach to economic issues in this State and particularly the role of the employment summit.

The clear unequivocal messages for this State are: firstly, we need to reassess the structure of our economy with a view to new strategies for employment growth; secondly, any new strategies must be carried out in the context of environmental responsibility and social justice; and, thirdly, broad community participation is needed in developing these strategies rather than the insular approach which maintains that executive government alone should formulate such strategies.

It is with these principles in mind, as well as others, that we ought to be approaching the forthcoming employment summit.

It has been. obvious for some time that, because Tasmania's population has been basically a stagnant population and because of the high unemployment rate both in absolute terms and relative to the mainland - nearly double our closest mainland State, Victoria - we need to take a serious look at how we have been conducting our affairs.

We need to challenge the mentality which claims that we are doing as well as possible under the circumstances, without exploring other alternatives.

I believe the employment summit 1s one of those alternatives and could be the springboard for future successful strategies. It is fundamentally important that this summit be structured in such a way that all relevant groups in the community have an input; that there is an effective mechanism for collating the information in a coherent and logical manner; and that there is an efficient and

effective process which enables short-term and long-term consideration and implementation of ideas.

I want now to consider in detail an example of a strategy which exempli fits the essence of the argument I have just outlined in relation to a very important issue facing this State, and that issue is the conflict between development and environment.

It has become abundantly clear that we need a new approach in areas where development and environment are at issue.

There is obvious conflict over this whole issue of which Wesley Vale was a typical example.

It is manifestly clear that the parliamentary process by itself is incapable of producing a satisfactory outcome.

The future of this State does not lie in no development at all.

Equally it does not lie in development at all costs.

The future of this State lies in productive development in an environmentally responsible manner.

In order that both sides approach this simple basic premise we must have access to correct and relevant information relating to the issue delivered by a process everybody can be confident about, not on the basis of an environmental impact statement commissioned by the company seeking- the development.

In simple terms we want to know unequivocally if a particular development is economically productive in terms of jobs and wealth to the community on the one hand, and is environmentally responsible on the other hand.

In relation to development there is urgent need for a process which clearly defines the boundaries of the issue and incorporates ·all areas of concern; enables information to be compiled by acknowledged experts in their fields; enables independent assessment of that information and recommendations made on the basis of that assessment; and, finally, enables government and public consideration of information, assessments and recommendations.

This process, embodying those four principles, I believe can be realistically achieved by the formulation of an agreed protocol and applied through an independent assessment commission.

Obviously many technical details relating to the commission's operation, including the statutory requirements and its exact structure, will need to be carefully thought through.

But certain general points should be detailed as far as possible with respect to those principles I have just outlined. The first principle will be embodied in the protocol; that is, it_ will clearly define the boundaries of the issue and incorporate all areas of concern.

The protocol will provide a framework ·on which the database relating to the issue is compiled. I think a general protocol can be compiled and modified for specific issues.

I would envisage a protocol consisting of major headings and subheadings aimed at compiling all relevant information in relation to the environmental, economic or social aspects of the development.

The structure of the protocol must reflect all areas of concern and the first task is to establish who has input into its formulation.

This would need to be a point of prior discussion and the task would be made less difficult if an initial protocol were open to the public for discussion and appeal, and altered accordingly if necessary.

The second principle relates to the actual gathering of information within the protocol.

Copies of the protocol together with a detailed preamble relating to the development would be distributed to people or groups with acknowledged expertise or interests in particular areas.

After a time they would then return a report based on the headings and subheadings of the protocol, together with references relating to their sources of information.

In making this point I want to highlight one of the real failures in the process of consideration of Wesley Vale by referring to a newspaper advertisement in the "Saturday Mercury" on 19 November 1988. It says:

"submitted in the interests of informed public debate by North Broken Hill Ltd and Noranda Forests Incorporated."

It was this advertisement which prompted my deep interest in trying to formulate a strategy which would theoretically overcome the deficiencies of the process of consideration of Wesley Vale.

That advertisement entitled, "Dioxin and the Wesley Vale Pulp Mill" listed two columns, one headed "American Lawyers Allegations" and the other headed "The Real Facts" in relation to five points concerning dioxins.

The point I wish to make is that it is not who was right but the fact that one had to be wrong because we cannot have opposing answers about the same fact – a fact is a fact.

But who do we believe? It highlighted the point that there was no independent arbitrator.

The member for Franklin talked about a select House committee – that was the very problem: It would not satisfy all groups in the community; it would be a political committee.

It also highlighted the fact that the debate was basically occurring through the media in response to what someone had said the previous day.

Having encouraged debate amongst experts on contentious issues before it and having clarified points of difference, the commission would be in a position to formulate a report clearly outlining the information according to the protocol detailing the areas of consensus, doubt and opposing views, including the questions and answers of the interviews, its assessment at each level and its recommendations.

The report would then be made available to the public and distributed to all those people or groups who received the protocol and would be subject to appeal. Any points about the report which needed to be made by any of those people would be returned to the commission and if necessary an appendix added to the report to cover further criticism or comments.

It would be this report and appendix which would be subject to government and public consideration.

A number of aspects about the commission need to be addressed in further detail but at this stage I would like to highlight some aspects. Would the commission be permanent or temporary and what sort of projects would it consider? Obviously the main reason for this sort of concept would be to consider projects of the magnitude of Wesley Vale. Some people may say it is too cumbersome a

procedure and time consuming. I simply answer that by saying how time consuming, cumbersome and costly was the ad hoc, confused approach to Wesley Vale?

Whether the commission is permanent or temporary depends on whether it is asserted that large projects only should be considered or whether the process can be simplified or streamlined to consider smaller projects or even modifications to existing projects.

Who would fund the commission? I would suggest that in relation to projects where federal involvement was necessary joint State and Federal funding would be appropriate.

Who would provide the data; that is, who would the protocol be distributed to?

As a starting point, the company commissioning the development would be one, as would the Department of Resources and Energy, the Department of Environment and Planning and other relevant departments: the Federal Government; the Commonwealth Scientific and Industrial Research Organisation; and various acknowledged relevant organisations and community groups.

The task of appointing commissioners, I suspect, would result in opposing groups claiming political bias of one commissioner or another. The important point to make here is that no matter what process we have we will always be open to the fact that there may be some political bias. It must be remembered that judicial inquiries and royal commissions arc considered impartial, and at least the structure of this commission and its mode of deliberation has a strong flavour of impartiality.

Finally, in view of the Wesley Vale pro1ect, it is imperative that a complete cooperative approach from the outset occurs between the State and Federal governments. This would be facilitated by the federal Government and agencies such as the CSIRO, as mentioned before, being two of the groups which receive protocols and by the Federal Government perhaps having input into the formulation of legislation.

It seems to me ludicrous that we can go through a process in this State - and any State, for that matter - which may be the best process of consideration possible, only to be overridden at the end by the Federal Government because there has been no cooperation and communication from the beginning. This sort of strategy is crucial for this State if we arc to accept the reality that we can have development in an environmentally responsible manner.

I conclude there and I thank the House for its indulgence and the respect it has shown me during my inaugural speech.