



Speech by

**Mr L. SPRINGBORG**

**MEMBER FOR WARWICK**

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Hansard 17 November 1998

**COMMISSIONS OF INQUIRY (FORDE INQUIRY—EVIDENCE) REGULATION 1998**

**Disallowance of Statutory Instrument**

**Mr SPRINGBORG** (Warwick—NPA) (12.46 p.m.): I second the disallowance motion moved by the honourable member for Indooroopilly. Before I speak about some of my concerns about the regulation we are debating the disallowance of today, I commend the Attorney-General for his courtesy in notifying me that there was an issue and that the Government wanted to move to make sure that the Forde inquiry could have access to the information that it required to do its duty properly. I very much support that. The Government's objective is eminently sensible. However, my concern is that the process is questionable. This afternoon in my contribution I wish to outline why I believe that to be the case.

The Scrutiny of Legislation Committee has brought down a very balanced and proper report in respect of this matter. It is true that it has indicated that there is a head of power in the Commissions of Inquiry Act which allows the use of a Henry VIII clause in this case. However, it also raises some very serious concerns about whether it should be used and the future of that section in that piece of legislation.

There is little doubt that no member of this Parliament and no reasonable member of the community would condone the horrific reports of child abuse that have emerged in this State and throughout the rest of Australia over the past few years. Today there is a lot more transparency and a much greater desire on the part of members of Parliament, the authorities and Government departments to uncover these appalling acts that have happened in the past in this State and around the rest of Australia, and to attempt to do something about it. Therefore, I commend the Government for the establishment of the Forde inquiry. I hope that at the end of the day we will get to the bottom of these matters and that a better process is arrived at for protecting our young people in the future. We owe that to our young people.

There is also no doubt that we need to be very careful about the way we treat the private information of individuals. That has been the concern in relation to what the Government has been seeking to do. There has to be a balance between the holding of private information on individuals by those people charged with the responsibility of keeping that information private—that is, the employees of the Department of Families, Youth and Community Care—and the public interest. The issue of the public interest is what we are debating.

I turn now to the report of the Scrutiny of Legislation Committee, which says—

"The regulation was made to allow persons subject to the secrecy and confidentiality provisions to provide confidential information to the Inquiry, and thus facilitate the Inquiry."

It goes on to talk about the role of the committee. The report states—

"Section 22 of the Parliamentary Committees Act 1995 provides that the committee's area of responsibility is to consider the lawfulness of particular subordinate legislation, and the application of fundamental legislative principles contained in the Legislative Standards Act 1992 to particular subordinate legislation."

In fulfilling its responsibility, the committee has considered a range of issues arising from the regulation. It goes on to say—

"The committee's consideration is limited to consideration of the lawfulness of the regulation, and an assessment of the regulation in light of the fundamental legislative principles. The policy issues underlying the regulation are beyond the scope of this committee's area of responsibility."

As I indicated, no member of Parliament has any problem whatsoever with what the Government is attempting to do. It is a very, very noble principle; it is something that we certainly should be doing. We should be making available that particular information. It is the process which the Opposition does have some concern about, and that is the issue that we are trying to draw to the attention of this Parliament.

At 6.3 of the committee's report, under the headings "Other Relevant Factors" and "Legitimate role for 'Henry VIII clauses'", it states—

"The committee agrees with the 3rd Scrutiny of Legislation Committee that use of a 'Henry VIII clause' in an act of Parliament may be justified to facilitate immediate Executive action.' Accordingly, the making of a regulation under a 'Henry VIII clause' may be justified. The current committee interprets 'immediate' in this context to mean urgent."

The report goes on—

"The committee considers that the respective time frames of introducing and passing primary legislation and making a regulation is one factor which is relevant to a consideration of whether the regulation is justified and has sufficient regard to the institution of Parliament."

That is a most important factor, that is, has there been a usurping of the role of Parliament? Bearing in mind that we needed only a rather small amendment to legislation to actually facilitate what it is trying to do here today in the form of a regulation, could the Government have put together such legislation? I dare say and I suggest to this Parliament that the Government would have had time to do that. The Opposition would have quite properly facilitated the passage of that legislation as urgent legislation, as all Oppositions do so from time to time in this Parliament. I would say that it was a matter that could have been dealt with in a few short days.

Another issue which causes me some concern is certification by the Office of Parliamentary Counsel. It raises some concerns that I believe we do need to put on the Hansard record. The report states—

"6.18 The Department of Justice and Attorney-General has supplied the committee with an explanatory memorandum containing background information about the regulation. The committee notes that the explanatory memorandum provides that:

'Parliamentary Counsel has drafted the regulation but is unable to certify it under the Cabinet Handbook, paragraph 7.4 and considers that the matter should be referred to Cabinet. The office is not satisfied that the regulation has sufficient regard to the fundamental legislative principles.'

6.19 The Attorney-General has provided the committee with a copy of the advice from the Office of Parliamentary Counsel. That advice referred to the 3rd Scrutiny of Legislation Committee's definition of a 'Henry VIII clause' and concluded:

'The issue here is not clear and judgment must be exercised. Ultimately the proposed regulation, because it can specify any Act to put to one side, is too close to the Committee's definition of what is a 'Henry VIII clause' to allow the office to certify it.' "

Under "Conclusion", the report states—

"The committee makes no comment regarding the objective the regulation seeks to achieve."

That is something that I indicated earlier in my contribution. It quite clearly indicated that that, of course, was a matter for the Parliament and it is a quite proper and absolutely right objective.

The issue once again is whether proper and due parliamentary process has been followed, whether we should have been debating this in the form of a legislative amendment—and I believe that we should have been doing that. Once again, quite clearly, I believe that the Government did have time to bring this particular matter to the Parliament in the form of a legislative amendment. That is the point. If we are going to use Henry VIII clauses, we need to be extremely careful in the way that we use them. I know that all members of this Parliament believe that we should be doing the right thing. If we are going to do something that is somewhat questionable in terms of process and it could be done in the proper way, I say that we should err on the side of caution and do it in the proper legislative way.

I conclude with these simple points at the end of the report in 5.3—

"Provisions which allow an order of a Commissioner of inquiry to take precedence over an express secrecy or confidentiality provision in legislation are, in the committee's view,

extremely serious. Such confidentiality and secrecy provisions generally exist to protect various rights and interests of clients, staff, and other people in contact with the relevant department. Any provision which takes precedence over the secrecy or confidentiality provisions therefore risks impinging upon these rights and interests. As a general rule the committee considers that provisions of this nature should be fully considered by Parliament, and are not appropriate for inclusion in regulation."

I will now touch briefly on 5.5, which says—

"The committee recognises that in the circumstances the matter is appropriate for regulation, as it is clearly within the legislative provision. However, the committee reiterates its earlier comments that provisions of this nature are more appropriate for legislation."

That is my fundamental point as to why I believe the Parliament should move to disallow this particular regulation. There is no doubt that the legislation says that it can be done. The committee has said that it does not like that particular clause of the legislation and it says that it should be repealed. It goes on further to say that these sorts of issues should be dealt with by legislation. That is why this particular regulation should be disallowed.

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