



Speech by

Mrs E. CUNNINGHAM

MEMBER FOR GLADSTONE

Hansard 17 November 1998

COMMISSIONS OF INQUIRY (FORDE INQUIRY—EVIDENCE) REGULATION 1998

Disallowance of Statutory Instrument

Mrs LIZ CUNNINGHAM (Gladstone—IND) (2.53 p.m.): I rise on this motion of disallowance. The member for Indooroopilly raised some concerns regarding the generic use of Henry VIII clauses. That concern is valid. The use of subordinate legislation to amend primary legislation is a disregard of this Parliament. The Scrutiny of Legislation Committee has rightly criticised the use of Henry VIII clauses in the past and promoted the removal of provisions in legislation that allow for Henry VIII clauses. The committee's position has not changed. I am a member of the Scrutiny of Legislation Committee. We produced a report based on the facts. The facts clearly indicate that the Act of Parliament under which the regulation was drawn up empowers the use of a Henry VIII clause. On the last page of the report we said that that piece of legislation needs to be reviewed and that provision removed.

One intriguing aspect of the use of a regulation to clarify access to information for the Forde inquiry was the experience of the former Minister for Families, Youth and Community Care, Naomi Wilson, when she established the Children's Commission. After the commission was established and the commissioner commenced to use his powers, it was seen then that he had inadequate powers to access departmental information. I can remember that there was a great deal of discussion both in the Chamber and outside the Chamber about the appropriateness of increasing his powers, the difficulty of increasing his powers, the risks that attended that increase and a number of other ancillary issues. It became an issue of great debate just before the last election. The reason that the Children's Commissioner sought, and the reason this inquiry is seeking, the power to access that information is one fundamental that I do not believe anybody in this Chamber would disagree with: the protection of our children from abuse in the past, present and future. Part of the charter of the Forde inquiry is to examine institutional and institutionalised abuse. People are living with memories from the past that are completely untenable. They need an opportunity to be able to express the sadness and the experience and to receive some assistance in living through that experience and beyond. The current Government in Opposition criticised Minister Wilson for the difficulties she was facing in giving the Children's Commission power to access departmental files.

I seek the Attorney-General's response to a question. In part, I believe he has answered it in his letter to the Scrutiny of Legislation Committee, but I would like to have his comment on the record. I seek his assurance that there is no risk that an injunction or another challenge to this regulation could be made to, at some point in time, make the information that is currently being accessed invalid or inappropriately accessed. The Attorney-General's letter to the committee indicated that information has been requested from 104 individuals' files. That is a lot of people who have been affected. It was almost from a similar basis to this that we had the debacle that was the Heiner incident, where information was accessed and subsequently the basis on which that access was made was found to be flawed.

Mr Lucas: We all know who caused that.

Mrs LIZ CUNNINGHAM: Irrespective of who caused it, it has occurred and we do not want it to recur. My major concern is the effect of this disallowance motion. I believe that everybody in this Chamber wants to see children now, in the future and—for those children who are now adults—in the past looking forward to a more secure future. One of the effects of this disallowance motion would be

that, although those 104 inquiries to date would be valid under the regulation, any future inquiries that the Leneen Forde inquiry wanted to make would be unavailable to them until this House sat and appropriate legislation could be drawn up and passed. Even as an emergent Bill, it would be several months before the commission of inquiry could continue. I believe that everybody in this Chamber would agree that that is untenable. We do not want that sort of delay. We want to see the issue of past inappropriate departmental behaviour and past unacceptable institutional behaviour dealt with and any risk of its happening in the future rectified.

The report states that the Attorney-General advised that without the provisions of the regulation in place the Department of Families, Youth and Community Care would be placed in an invidious position where it could not provide information caught by the secrecy provisions to the inquiry without breaching its own legislation. Further, on the basis of a statement made by Mrs Forde to the Attorney-General, which was repeated to the Scrutiny of Legislation Committee, it appears that Mrs Forde is of the view that without a provision such as the one under consideration the inquiry would be inhibited from carrying out its terms of reference fully and faithfully.

Do I support the use of Henry VIII clauses? No. Do I support the disallowance of this Henry VIII clause specifically, particularly in the light of the issue that it is dealing with—the fact that people's lives will again be affected? Those lives are ones that have been affected in the past in an inexcusable way. I cannot and will not be supporting the disallowance.

Do I support the use of Henry VIII clauses generically? No. I support 100% the view of the Scrutiny of Legislation Committee and the view of many in this Chamber that it is inappropriate to amend Acts of Parliament—on issues important enough to be brought forward as legislation—by regulations. I believe that that is an inappropriate use of regulations and I will continue to hold that view. However, in this instance and in these circumstances, I will not be supporting the disallowance motion.
