



Speech by

**Hon. M. FOLEY**

**MEMBER FOR YERONGA**

---

Hansard 6 August 1998

### **ATTORNEY-GENERAL BILL**

**Hon. M. J. FOLEY** (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (12.31 p.m.): I move—

"That the Bill be now read a second time."

The purpose of the Attorney-General Bill is to enshrine in legislation the roles, responsibilities and functions of the first law officer of Queensland. This Bill is part of a process of seeking to restore public confidence in the rule of law in the wake of an unprecedented vote of no confidence by the 48th Parliament in the then Attorney-General.

The Labor Government recognises the Attorney-General's role as guardian of the public interest. The Fitzgerald report stressed the need for an independent Attorney-General as a bulwark against corruption. In his report in 1989, Mr Fitzgerald expressed concern in relation to the independence of the office of Attorney-General in Queensland. Page 138 of his report said in part—

"... the Attorney-General has extensive powers and discretions which are intended to be exercised in the public interest, including powers and discretion with respect to the initiation, prosecution, and discontinuance of criminal proceedings. The Attorney-General also has primary responsibility for legal advice in relation to matters of public administration and government. The proper performance of such functions is dependent upon independence and impartiality and freedom from party political influences, which is threatened if the Attorney-General is subject to Cabinet control and Parliament is effectively dominated by the Executive."

Acting on recommendations contained in the Fitzgerald report, the Electoral and Administrative Review Commission conducted a review of the independence of the Attorney-General. EARC's recommendations included the enactment of legislation to specify the Attorney-General's powers, functions and responsibilities. The Bill before the House today is based largely on the draft Bill produced by EARC. However, it has been modified to take into account concerns about the EARC Bill expressed by the Director of Public Prosecutions and others consulted about the legislation.

Apart from statutory manifestations of the powers of the Attorney-General, many of the office's powers and responsibilities are sourced in common law. Many derive from royal prerogatives. Courts have held that the nature of many of these powers means they are, quite properly, not amenable to judicial review. See, for example, the High Court's decision in *Jago v. District Court of New South Wales* (1989) 168 CLR 23 concerning the commencement of prosecutions, and the decision of the House of Lords in *Gouriet v. Union of Post Office Workers* (1978) AC 435 concerning the grant of a fiat for a relator action to allow a person to bring a court action on a matter of public interest. This Bill neither extends nor reduces the availability of judicial review in respect of decisions of the Attorney-General. The Bill does, however, provide for the Attorney-General to be accountable to Parliament for certain decisions about prosecutions and about the grant of fiats in relator actions.

Identifying the powers and responsibilities of the Attorney-General would present considerable difficulty to the average person. This Bill sets out the various powers and responsibilities of the Attorney-General in a way which makes the law more accessible. However, recognising the powers are rooted deeply in the history of the common law system, the Bill does not attempt to exhaustively codify them or the way they are carried out. This will ensure the Attorney-General's powers are not fixed in time and are able to continue to evolve.

Importantly, this Bill does not attempt to give the Attorney-General powers not already recognised at law. This Bill is the product of an extensive process of consultation. In addition to the reviews carried out by EARC and by the Parliamentary Committee for Electoral and Administrative Review, there has been further recent consultation with the Bar Association of Queensland, the Queensland Law Society, the Judiciary and the Director of Public Prosecutions. Submissions also were invited from the community.

This Bill honours a Labor election commitment and is a fundamental part of our determination to restore respect to the office of Attorney-General and to restore respect for the rule of law. I commend the Bill to the House.

---