Speech by

BRUCE DAVIDSON

MEMBER FOR NOOSA

Hansard 24 November 1999

EQUITY AND FAIR TRADING (MISCELLANEOUS PROVISIONS) BILL

Mr DAVIDSON (Noosa—LP) (3.52 p.m.): The Minister for Equity and Fair Trading, the Honourable Judy Spence, introduced into this House the Equity and Fair Trading (Miscellaneous Provisions) Bill. The Bill proposes relatively minor technical amendments to a number of statutes administered by the Department of Equity and Fair Trading.

In the Explanatory Notes the Minister indicates that her department is responsible for the administration of 78 statutes and, as a result, from time to time there is a necessity for a large number of minor or technical amendments to be regularly made to various legislative provisions to ensure that the statutes continue to operate in the manner intended. It is the intention of this particular Bill to ensure that all perceived technical or minor amendments are to be effected by means of this one statute. This intent, by itself, is a logical and practical means of addressing these needs, but one must be careful that one does not throw the baby out with the bathwater.

A number of the Bill's provisions were contained in the Justice and Other Legislation (Miscellaneous Provisions) Bill 1998 which was introduced into the Parliament on 5 March 1998, but which lapsed due to the subsequent election. The Scrutiny of Legislation Committee recommended certain changes to that Bill, which obviously have been noted by the Minister. However, the same committee indicated with regard to this Bill that there are a number of issues which need to be addressed—in particular, certain amendments to the Associations Incorporation Act 1981.

As an example, clause 5 of this amendment is queried in so far as it questions whether this Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons, as referred to in section 4(4)(A) of the Legislative Standards Act 1992. Clause 5 of the proposed Bill inserts into the Associations Incorporation Act 1981 a new section 43 dealing with unsuitable names for associations. These are presently termed "undesirable names". Under the proposed section, the determination of what are unsuitable names will be made entirely by means of regulations. As a name which an association can have may be a matter of some significance, the Scrutiny of Legislation Committee was concerned that the proposed section does not have any criteria which are to be applied in making the relevant regulations.

The current section 43, whilst also containing a residual power to declare unsuitable names by regulation, stipulates a number of grounds upon which names will in fact be unsuitable. Thus the Scrutiny of Legislation Committee has—not unreasonably—recommended that the Minister considers amending proposed section 43 to stipulate in that section some of the grounds upon which names shall be unsuitable. As the ancient saying goes, "One man's poison is another man's poison." Thus, association members should have some rights in the matter of naming, and particularly so when the Minister advises us that a computer system will be considering what is a suitable or unsuitable name.

We have all had alarming experiences of what computers, left to their own devices, can come up with—none more so than Minister Spence whose department's brand new computer, BACHCO, will, when finally brought on stream, carry the loads to which much of this Act pertains. This is also the computer that is celebrated for its inaction and time delay in registering business names—a matter that I raised during the Estimates.

At that hearing, I pointed out to the Minister that a member of my staff had sent off the appropriate forms on 22 September 1999 to register a business. As at the date of the hearings—14

October—no further correspondence or contact had been received from the Minister's department. We had undertaken this exercise because I had received complaints from business operators that the delays in receiving business name registrations was causing problems. For example, it is impossible for a new business to open a bank account until the business name is registered and the owner has the appropriate documentation to present to the bank.

At the Estimates committee hearings, the Minister had her staff check on the delay and, as Hansard reports, at the end of the session the Minister was able to inform us that registration had taken place on 11 October. She proceeded to quote the appropriate number. This is all very efficient and proof positive that BACHCO was up and running and that business had no need to worry because all was well.

The appropriate documents eventually turned up in my staffer's post office box on 21 October, exactly 29 days after he sent off his cheque to the Department of Equity and Fair Trading. Sure enough, the documents contained all the dates and numbers as described by the Minister at the Estimates hearing, but I still raise the question: is it good enough for business to have to wait 29 days before it can apply for a bank account so that the business can commence to operate?

I do not want to give the impression that I lay the blame for this delay, and seemingly inefficient operation, at the Minister's door. She certainly cannot personally post out every letter from her department. I am simply trying to highlight the fact that, with the very best of intentions, computers and the staff who input into them are not the be-all and end-all of the problems that beset us all each day.

As this particular computer will have the job of keeping track of much of the contents of this legislation, it is worth while noting that if we are going to be left with BACHCO as the adjudicator of what is and what is not a suitable name, it is possible that Australia Post may have a decided increase in profitability this year because of the possible protracted correspondence in which Minister Spence would find herself involved as BACHCO keeps on turning out quite legitimate names. I wish the Minister well in her sorties with BACHCO and his/its definition of an unsuitable name.

A number of amendments to the Cooperatives Act 1997 have also led to some concern. The Scrutiny of Legislation Committee has, in relation to this section of the Bill, asked the question: does the Bill authorise the amendment of an Act only by another Act—by a Henry VIII clause? This clause has nothing to do with many of Henry's well-known foibles but, in fact, is concerned with relevance and sufficient regard being given to the institution of Parliament under the Legislative Standards Act 1992. The question is asked in regard to proposed clause 19 and Schedule 1 and clauses 3, 4 and 6 respectively. Clauses 3, 4 and 6 of Schedule 1 respectively amend section 16(3)(C), 19(1)(C)(II) and 68(3)(b) of the Cooperatives Act 1997.

In each case, the Act currently specifies a minimum number of people required for various purposes. The Bill adds to each stipulation the following words—

> "... or if a lesser number than five is prescribed under a regulation (not less than) the prescribed number."

The amended provisions respectively concern the minimum number of persons required to be in attendance at a cooperative formation meeting, the minimum number of members required to sign a cooperative's registration application and the minimum number of members required in order for the cooperative to commence trading.

It appears that these clauses are all Henry VIII clauses within the adopted definition, because in all cases a provision of the Act declaring a specific number to be required can be displaced by a regulation. Since none of the clauses falls within any of the four situations in which the committee regards Henry VIII clauses as being sometimes justifiable, all clauses are provisions that the committee would classify as generally objectionable. The committee also noted that the subject matter of these clauses, although not insignificant, is also not of the first order of importance. The committee also noted that the regulation making power is relatively confined in that it allows the setting of numbers 1 to 4. As a result, the committee recommends that clauses 3, 4, and 6 of Schedule 1 to the Bill be removed. These are major concerns in relation to the Bill now before the House. No doubt the Minister has noted the recommendations. It would appear that she has acted accordingly. We will be alert to the need for the Bill to be changed appropriately.

Under the amendment to the Hire-purchase Act 1959, clause 64 amends section 2 (Interpretation) by excluding from the definition of "hire-purchase agreement" a transaction that would otherwise be hire-purchase agreement if the total market value of the goods exceeds $40m at the time of the transaction. I must admit that I personally have a problem getting my mind around a hire-purchase contract that has a bill for $40m tacked onto the bottom of the deal. No doubt such events have occurred. The new treatment of such transactions will make it much easier for all parties to understand.

While pursuing the other facets of this multi-sectional legislation, I was amused to note that under clause 59 of the amendments, which amends section 94 (Preservation of secrecy) of the Fair

Trading Act, the commissioner may now communicate information to Ministers or officials of another country in addition to the Commonwealth and other States of Australia. One can just imagine Mr Bracks in Victoria waiting to hear secrets from Ms O'Donnell or the acting Commissioner for Consumer Affairs, Ms Ulla Zella, or the FOI office's John Lamont, whose tenure of position must be of some concern to him as one week his position is revoked and then the next month he is back in business. As Mr Bracks will need all the help he can get, I am sure a few secrets from the Department of Fair Trading will be of immense help to him.

Ms Spence interjected.

Mr DAVIDSON: A few months ago he was in and out three times.

Ms Spence: That had nothing to do with us.

Mr DAVIDSON: We have been waiting since April to debate this Bill. The contents of this speech are not up to date. It has taken the Minister seven months to get this debate into the Chamber. A number of people who anticipated this legislation would be passed some time ago contacted us to ensure that we are supporting its passage through the House, because they have an urgent need for this legislation to be passed.

Although this Bill has passage through the House, I will raise a matter for consideration within the confines of it. I am aware that this matter has been presented to Minister Spence as well as the Premier, the Attorney-General and Minister for Justice and Minister for the Arts, and the Minister for State Development and Minister for Trade. The matter to which I refer is a submission from the National Institute of Accountants asking on behalf of that organisation for the legislative recognition of the National Institute of Accountants. That submission in its presentation to the Attorney-General expanded the request for legislative recognition to "the legislative recognition of auditing qualifications for members of the National Institute of Accountants— Queensland".

The very logical thrust of that submission to those Ministers is that it should not be the function of Government to provide commercial advantage to certain individuals simply because they belong to a particular professional organisation over other individuals who may be equally or more qualified but choose to belong to another professional organisation. Quite simply, the NIA seeks—

to have removed from Queensland regulation inconsistencies and anomalies regarding qualification for the appointment of auditors based solely on the membership of certain professional organisations;

to have the definition of "accountant, auditor, approved auditor, public accountant" amended to include appropriately qualified members and fellows of the NIA and for them to be able to undertake audit functions in a wide range of Queensland legislation; and

to implement recommendations approved by MINCO, of which Queensland is a member, reforms are required to the definition of "auditors" in State legislation.

The objectives of the NIA submission are to emphasise that Queensland legislation should—

promote competitive practices in the private sector and bring Queensland into line with National Competition Policy principles;

eliminate unnecessary regulation of the accounting profession; rationalise the process for the approval of suitably qualified persons to conduct statutory audits; and

provide a regulatory regime that promotes efficiency and high standards of delivery.

In respect of the anomalies, we have the ludicrous situation in which Treasury has already amended legislation to include members of the NIA within the definition of "accountant". That suggests that consistency across the whole of Government is a most desirable outcome. The current position in respect of the NIA members is probably contrary to the Trade Practices Act. In its 1992 study titled Study into the Accountancy Profession, the commission concluded that in a market as diverse and essentially deregulated as that of accounting services, the assumption that only members of major bodies—ICAA and ASCPA—are adequately qualified is open to question.

An example of the ludicrous nature of the current position and an example of the inefficiencies of the current process can be illustrated when a member has a client that is an incorporated association holding a gaming machine licence. The activities of the client are regulated by two separate departments. The Department of Fair Trading regulates the organisational aspects of the client and the Department of Treasury regulates the club's gaming activities. That circumstance requires that a member of the NIA has to obtain special approval from the Department of Fair Trading for the purpose of auditing the club's affairs, yet because Treasury has initiated amendment of the Gaming Machine Act 1991 by Parliament passing the Gaming Machine and Other Legislation Amendment Bill 1998, the same members will be able to conduct audits on the club's gaming activities without need for any special sanction from the Minister or the department.

It is my contention that immediate consideration should be given by the relevant Ministers to amend the following legislative enactments, some of which I am aware are being considered. Such legislation relevant to the Department of Fair Trading includes the Associations Incorporation Act 1981, section 58(1)(b); Auctioneers and Agents Act 1971, section 108(4); Charitable Funds Act 1958, section 24(2)(c), Collections Act 1966, section 31(1); the Retail Shop Leases Act 1994, Part 3, Interpretation, definition "approved auditor", section 37(5); and the Security Providers Act 1993, section 3, definition "accountant". Such legislation relevant to the Department of Aboriginal and Torres Strait Islander Policy and Development includes the Aboriginal Land Regulation 1991, Part 3 Land Trusts, Division 4, section 35C(1). Such legislation relevant to the Department of Justice and Attorney-General includes the Trust Accounts Act, section 15(1)(d), the Trusts Act 1973, section 5(1), definition "public accountant".

Treasury has adopted the NIA submission that the following definition of accountant be embodied into all appropriate legislation—

" 'Accountant' means

(A) a member of the Institute of Chartered Accountants in Australia who holds a current certificate of public practice issued by the institute; or

(B) a member of the Australian Society of Certified Practising Accountants who holds a current Public Practice Certificate issued by the society; or

(C) a person registered as an auditor under the Corporations Law; or

(D) a member of the National Institute of Accountants who—

(1) holds a current Public Practice Certificate issued by the institute; and

(2) has satisfactorily completed an auditing component of a course of study of accountancy at a tertiary level conducted by an institution prescribed under the Corporations Law, section 1280(2); or

(3) a person approved by the chief executive as having the necessary expertise or qualification to be an accountant for this section."

It would seem most appropriate while commenting on this Bill before the House to recommend to the Ministers involved in the relevant Acts mentioned earlier to take the necessary steps to make those amendments at the earliest possible minute. It may even be possible for the Minister for Fair Trading to include that amendment in the Bill before us before it proceeds any further in this process. If so, we on this side of the House would endorse such action. In the event that the Minister intends to bring this matter to attention at another time, I commend this action to her.

At the beginning of this speech I indicated that the Department of Fair Trading is responsible for the administration of 78 statutes, hence this Bill. The many changes proposed to the House provide for those statutes to be operated in the manner necessary, that is, competently and professionally. Apart from producing Bills and other changes to legislation, to ensure the efficient and proficient functioning of the Minister's department, a department responsible for legislation enacted for the proper conduct of just about every business in this State, there is the need for well trained, well managed and, most importantly, happy staff.

With regret I question whether that last but major need is present in this Minister's Department of Fair Trading. The House is well aware of the rusty ute affair wherein, despite ministerial bleating about the separations of powers, we are all aware that Minister Spence was involved in this sordid little Labor mates' affair right up to her mobile phone ears.

Mr Nuttall: That was a cheap shot.

Mr DAVIDSON: The member should just wait and listen.

Members will recall that Inspector David Cuddihy, Deputy Registrar Goddard and the ex-Commissioner of Consumer Affairs, Neil Lawson, were so against Labor lawyer and one time member of the Auctioneers and Agents Committee, Ms Raelene Kelly's dad, Bill, getting recompense from the Auctioneers and Agents Fidelity Fund for an amount of $6,700 that the then Commissioner Lawson even took out a Supreme Court writ in an endeavour to stop this farcical payment. Well Mr Lawson may have, when one of his many reasons for doing so was that an affidavit signed by Raelene Kelly's ex-husband, one Stephen Matthew Witt, a person not qualified to provide a roadworthy certificate or make statements pertaining thereto, declared the vehicle rusty throughout and thus useless. No wonder the committee recommended a payout with such lofty advice at their command. No doubt such advice was the subject of the 13-minute call to Ms Kelly by this Minister on the ministerial car phone on 4 September—a contact that the Minister claims in this House never to have made.

After much running around by departmental staff and investigators about the merits of the Kelly gang's claim against the fund and despite their best expert advice to the contrary—advice that now finds Mr Lawson banished from his job as Consumer Affairs Commissioner—the claim was approved by the Auctioneers and Agents Committee and both of the Kellys made a nice little earn out of the rusty

ute affair. It again just proves the point that it is not what you know but who you know that makes the difference. If members have any doubt about the correctness of that adage, they should just ask Mr Lawson for his opinion about this.

Unfortunately, someone has to pay the piper. Even the most senior officer in the Department of Fair Trading had more than his fair share of doubt about the legitimacy of this affair and so the original car seller in this Socialist Left affair, one Frank Matthew Benussi of Frank's Wholesale Cars, was the mug singled out as the bunny. On 27 May 1999, Mr Benussi was—

Mr DEPUTY SPEAKER (Mr D'Arcy): Order! I have just been advised by the Clerk that at the moment the member is way off the Bill. The member is not referring directly to this Bill; he is referring to a case that does not relate at all to this Bill.

Mr DAVIDSON: Mr Deputy Speaker, I appreciate that.

Mr DEPUTY SPEAKER: I ask the member to return to the Bill.

Mr DAVIDSON: Obviously, the Equity and Fair Trading (Miscellaneous Provisions) Bill, introduced into this House by the Minister for Fair Trading, gives members an opportunity to raise other issues and matters related to the Department of Fair Trading.

Ms Spence: Refer the matter to the CJC.

Mr DAVIDSON: That will happen. It has been seven months since the Minister introduced this Bill. The Opposition has offered bipartisan support for the legislation, given the consultation that we have had with a number of people who have contacted us regarding the urgency of having it passed. I have also taken this opportunity to raise some other matters that relate to issues that have been raised with me by people who have had a lack of correspondence with the Minister.

As I said earlier, the Opposition is happy to support the Bill, which makes amendments to 78 statutes. Some of those amendments are minor and some are technical in nature. I know that the Catholic Church and the people involved with cooperatives have contacted the Minister and expressed their wish that the Bill is passed urgently. I believe that the Minister is going to move a number of amendments to this Bill, and the Opposition is happy to support those amendments. Obviously, I have a concern about a person who has been investigated by the Department of Fair Trading, for which the Minister is responsible. I believe that this person has been misrepresented and not given fair access to the Minister on the issue that I wished to raise today. However, given that Mr Deputy Speaker has directed that those issues fall outside the boundary of this debate, I will choose to raise those issues in another forum. I say to the Minister that we are happy to support the passage of this Bill.