Speech by

Mr DENVER BEANLAND

MEMBER FOR INDOOROOPILLY

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ATTORNEY-GENERAL BILL

Mr BEANLAND (Indooroopilly—LP) (5.25 p.m.): I second the amendment of the member for Warwick. I rise to speak in this debate as a former Attorney-General of Queensland and as someone who is gravely concerned about the intentions of the legislation. The Attorney-General Bill 1998 would have to be one of the most unnecessary and insulting pieces of legislation that has been before this Parliament. It is unnecessary because it does not change what has been in practice for hundreds of years. In fact, I believe that it undermines the common law and our Westminster system of Government.

The Minister's second-reading speech is a most interesting document. It is very big on rhetoric and very short on detail. It is a political speech that is conspicuously silent on significant issues. Certainly it is not of a standard that would be expected from our State's first law officer.

I do not think that there is any question in the mind of any member that the Attorney-General has special functions that he or she undertakes free from political interference and Cabinet control. This is a proposition that has been respected and upheld by successive Queensland Governments and other governments that operate under the Westminster system. Unfortunately, this Bill represents an attempt to codify the powers, functions and responsibilities of the Attorney-General and does nothing but undermine the many centuries of tradition that have contributed to making our parliamentary system strong and resolute.

Of course, if one looks at the section that spells out the specific powers of the Attorney-General, one will see the very point that I make, which is that, for centuries, this has been the traditional role of the Attorney-General. Therefore, this exercise in grandstanding cannot be seen to be anything but a cheap political stunt—unless, of course, the Minister is seriously suggesting that I for one broke the law when carrying out my duties, having regard to clause 7 of the Bill which lists the specific powers of the Attorney-General. Is the Attorney-General suggesting that due consideration or due process was not followed with one or more of these issues? I think not, and it certainly was not the case.

The Attorney-General is playing a game of politics and if he plays it too often he will get burnt on some of these issues, especially in relation to this particular matter. I believe that my record as Attorney-General of standing up for the courts was impeccable. I recollect that Mr Justice Fitzgerald, as President of the Appeal Court, faced a complainant in the High Court in Sydney. The Solicitor-General defended him against what were quite outrageous allegations that were aimed at showing conflict and smearing his good character. Of course, performing one of the many roles of the Attorney-General, I had no problem in having the matter dismissed promptly. I believe that that is how an Attorney-General should act. That highlights just one of the many functions of the Attorney-General that are set out in clause 7 and, of course, there other functions that require an Attorney-General to stand up for the judiciary in the name of good sense.

I notice that this legislation was introduced on 6 August—it has been left to languish on the Notice Paper for seven months. It can hardly be of great or urgent moment if it has been allowed to languish for that time. When checking on the consultation that occurred in relation to this legislation, I noticed that the Explanatory Notes state that a copy of the draft Bill that was produced by EARC was circulated to the Bar Association of Queensland, the Law Society of Queensland, the judiciary, the Queensland Law Reform Commission and other stakeholders prior to the introduction of the Bill.

There is no mention at all about the feedback from those particular groups of people in relation to this legislation. I would like to hear something about that because it is tradition that the Explanatory Notes make reference to the feedback that one receives in relation to the legislation. One then has to ask if this was the consultation that has been circulated. I take it that there was no time for feedback and the legislation was introduced.

I suggest that there was really little or no consultation, apart from what occurred previously in 1993 with both EARC and the parliamentary committee that had oversight of EARC. I believe that the legislation should have been referred to the Legal, Constitutional and Administrative Review Committee— LCARC—which has jurisdiction in this area. The member for Warwick has moved a motion to refer the legislation to that committee. That is where it should go, because it has been some six years since this matter was last discussed.

If the Attorney-General has problems with his Cabinet interfering in his role, he should stand up in this Parliament and tell us about his problems in that regard. I am sure that all good members will help him resolve those particular issues that he might have with his Cabinet in relation to his functions as Attorney-General.

The Attorney-General tells us that this Bill is based largely on the draft Bill introduced by the former Electoral and Administrative Review Commission—EARC. Although I have read the Minister's second-reading speech several times, I have not seen any mention of the fact that the EARC recommendations were rejected unanimously by the Parliamentary Committee for Electoral and Administrative Review. I might add that that committee was comprised of four Labor members and three coalition members, yet it rejected unanimously the EARC recommendations.

Likewise, nowhere in his speech does the Attorney-General mention that the Queensland Council for Civil Liberties and the Queensland Bar Association have called on the current State Government and the current Attorney-General to give up his powers to appeal criminal sentences. That is an issue which is rumbling around in the community and about which the community is concerned. However, no mention has been made of that matter. I would have thought that, since we are dealing with the specific powers of the Attorney-General, some reference might have been made to that matter. The Queensland Council for Civil Liberties and the Queensland Bar Association have called for the power of appeal to be limited solely to the Director of Public Prosecutions. I agree totally with my colleague the shadow Attorney-General, who has stated previously that it is an indictment on the Attorney-General that both the QCCL and the Bar Association have no faith in his independence.

The Attorney-General expects us to believe that the introduction of this Bill will make everything different. That is not the case. In its report titled Review of the Independence of the Attorney-General, tabled in December 1993, on page 31, the Parliamentary Committee for Electoral and Administrative Review recommended that an Attorney-General Bill should not be adopted at that time. The committee even went further to express the view that legislation should not be enacted just to educate the public on the Attorney-General's proper role.

There is no question in my mind that the Attorney-General is introducing this legislation for all the wrong reasons. I believe that the Bill represents nothing but an attempt by the member for Yeronga to educate everybody about his own importance rather than about the functions and the role of the Attorney-General.

That is a great pity, because there are so many important issues that should be occupying the attention of the current Attorney-General and Minister for Justice. For example, I know that all members have been waiting with great expectation for the guardianship and administration legislation. However, the Beattie Labor Government has failed to address that particularly important Bill. That legislation would allow the families of those with impaired capacity to be appointed as substitute decision makers. That was on the drawing board and it would have been the first legislation that I would have introduced had I continued as the Attorney-General and Minister for Justice after the last election. It is a vitally important piece of legislation. It has been eight months now since the Government was elected, yet we have not seen that legislation. Nothing has been heard of it from this can't do Government.

There is also the fine defaulters legislation and the amendment to the Coroners Act. They are both very important pieces of legislation that one could have expected to see before the Parliament. However, this can't do Government cannot even get that legislation introduced.

Mr Borbidge: All too hard.

Mr BEANLAND: As the Leader of the Opposition says, it is all too hard.

I turn to some of the facts about this legislation. As I say, it has been some eight months since this Government came to office. In the first eight months of the former Government, the National/Liberal Borbidge/Sheldon Government, 37 Bills were passed. A further 20 Bills were passed during the ninth month of that Government. In the eight months during which the Beattie Government has been in office, only 22 Bills have been debated and passed by Parliament, and many of those Bills belonged to the former Government, such as the stalking legislation, which was introduced a little earlier

today. I recollect having done a great deal of work on that legislation prior to the election. I spent many hours going through that particular piece of legislation and getting it to the stage at which it could be put to the public for further discussion.

However, it would appear that the Attorney-General has afforded greater significance to this Bill and little importance to those other major pieces of legislation that I believe are of paramount importance to the public of Queensland. Certainly, I am contacted regularly by people asking me when the guardianship and administration legislation is going to come before the Parliament. The amendments to the Coroners Act, which relate to Aboriginal deaths in custody and other matters, are very important. A great deal of work has been done on that legislation; it has been in the pipeline for some time. Yet it has not come before the Parliament. As well, we often hear members opposite talking about wanting to keep people out of jail for fine defaulting. The fine defaulters legislation would certainly accomplish that particular task. It is a great shame to think that the Attorney-General sees his Bill as being more important than those other important pieces of legislation, particularly that guardianship Bill, which will assist families and allow them to be effectively appointed as substituted decision makers.

It is also a great shame that we see the partial codification of the powers of the Attorney-General and a legal recognition of his role as being more important than that legislation, particularly when the relevant parliamentary committee ruled it out unanimously. At that time there was a great deal of discussion on it. One would think that if the Minister considered law and order to be an issue he would be debating a Bill that would be far more important and relevant to that issue. I mentioned earlier the legislation that was introduced today. It is something that has been around for some time and, again, it belongs to the former National/Liberal coalition Government.

I am beginning to think that the current Minister has some insecurity that prevents him from doing anything of substance until he feels he has the full legal knowledge of his authority. Clearly, it demonstrates to the public a lack of policies. We get the Rumpole-like performances from the Attorney-General, but that is simply not good enough; we want to see some substance and real legislation coming forward into this Parliament. There is a great deal of it in the pipeline somewhere. It requires the Minister to work late at night, sometimes until midnight perhaps five or six nights a week. If one works hard and long enough at it, one eventually gets it right so that one can get it introduced into the Parliament, get it debated and get it passed. Heaven help us: there has been very little parliamentary time in which to debate and pass legislation over the past eight months that this Government has been in office.

I notice that back in 1993 when this matter was being discussed, Mr Suri Ratnapala, a highly respected constitutional law lecturer at the University of Queensland, submitted that codification of the Attorney-General's functions could lead to problems with statutory interpretation and judicial review of the powers, role and functions of the Attorney-General. Mr Ratnapala also warned that there could be nothing more stultifying on the evolution of the traditions associated with that office. Those views are not isolated to one person: they have been expressed many times before about all types of attempts to write into legislation what has been accepted within the legal system for hundreds of years. The great value of our common law legal system is the way in which it allows the development of prerogative powers and, as a consequence, the evolution of institutions such as the office of Attorney-General.

In his second-reading speech, the Attorney-General stated—

> "This Bill neither extends nor reduces the availability of judicial review in respect of decisions of the Attorney-General."

This statement is supported by clause 7(3)(b) of the Bill, which provides that a decision or proposed decision to exercise a power for a matter listed in clause 7(1) is not a decision of an administrative character under an enactment. If I have time, I might read out some of those matters that are contained in clause 7 so that anyone reading Hansard might be able to get the gist of what it is about. The Attorney-General stated also—

"... the Bill does not attempt to exhaustively codify"—

that is, the powers—

"or the way they are carried out"

and ensuring—

"the Attorney-General's powers are not fixed in time and are able to continue to evolve."

The mere fact that there has been an attempt to codify powers is of great concern just because of the way that it undermines the common law and our Westminster system of Government. Does the Attorney-General really have such a low regard for our common law system—for hundreds of years of precedents—that he considers it necessary to implement a Bill that was rejected by a committee of the Parliament? This was a committee which expressed essentially the same reservations as the ones I have detailed in this speech.

I seek clarification on one particular matter. It is important to the debate to ensure that there is no confusion between the powers of the Attorney-General and the role of the Minister for Justice. As we know, the Attorney-General of Queensland has prerogative powers that are designated solely to the person who holds that office. In my experience, our Attorney-General operates in a totally independent and bipartisan manner which is free of political influence and Cabinet control. The independence of the Attorney-General is not, and never has been, in question. The role and functions of the Minister for Justice are, nonetheless, a quite separate and different matter. Commissioner Fitzgerald highlighted that in his particular commission of inquiry. He expressed concern about the independence of the Attorney-General and the "partiality accentuated by the effective amalgamation of the offices of the Attorney-General and Minister for Justice".

The Minister for Justice is a Minister of the Crown and, like all other Ministers, is bound by decisions of Cabinet. In this respect the Bill before the House today does not accurately reflect the intentions of Commissioner Fitzgerald. In 1989 the Ahern Government separated the office of Attorney-General from the office of the Minister for Justice but they were brought back together by the Goss Government when the member for Murrumba was appointed Attorney-General and Minister for Justice after the 1992 State election.

At that time, in response to an inquiry from EARC, the then Premier stated that—

> "... the amalgamation decision had been taken as a result of practical anomalies created by the separation of the two portfolios."

This in itself did not undermine the independence of the Attorney-General. Indeed, all subsequent Governments have followed suit. However, in appointing the one person as Attorney-General and Minister for Justice the Premier exercised his prerogative to form a Cabinet as he saw fit.

Clause 3 sets out the ability for the Premier to separate those two roles. Certain functions are then set out in clause 5. I would like the Minister to confirm that some Premier down the track will be able to appoint a separate individual as Minister for Justice because, if we look at clause 5, we might end up with a misunderstanding of the situation.

Mr Foley: You are quite correct.

Mr BEANLAND: Otherwise, I would be quite concerned if that was not the case. I believe it is important that we have a clear understanding of the role of the Attorney-General in relation to this particular area. Honourable members have indicated that some people are not aware of this situation. If it is spelt out clearly people will be able to understand the situation when they read Hansard. The Attorney-General's specific powers are set out in clause 7 and are as follows—

"(a) present an indictment;

(b) enter nolle prosequi on indictments;

(c) grant immunities from prosecution;

(d) undertake to a person not to use, or make derivative use of, information or a thing against the person in a proceeding, other than in relation to the falsity of evidence given by the person in a proceeding;

(e) enforce charitable and public trusts;

(f) bring proceedings to enforce and protect public rights;

(g) grant fiats to enable entities, that would not otherwise have standing, to start proceedings in the Attorney-General's name—

  (i) to enforce charitable and public trusts; and

  (ii) to enforce and protect public rights;

(h) challenge the constitutional validity of legislation, (including Commonwealth legislation) that affects the public interest in the State;

(i) appear before a court to help the court in appropriate cases;

(j) advise the Executive Council on judicial appointments;

(k) start proceedings for contempt of court in the public interest;

(l) apply for judicial review to correct errors by courts and tribunals.

(2) Despite subsection (1)(a) or (b), the Attorney-General may not direct or instruct the Director of Public Prosecutions to present an indictment or enter a nolle prosequi.

(3) To avoid any doubt, it is declared that—

(a) the Attorney-General may not grant immunity from prosecution for a future act or omission; and

(b) a decision or proposed decision to exercise a power for a matter listed under subsection (1) is not a decision of an administrative character under an enactment merely because the matter is listed under subsection (1)."

I read those out only because there is some concern and I wanted to give people a simple way of relating exactly what we are talking about here.