



Speech by

**GORDON NUTTALL**

**MEMBER FOR SANDGATE**

Hansard 25 May 1999

**STATUTORY INSTRUMENTS AND ANOTHER ACT AMENDMENT BILL**

**Mr NUTTALL** (Sandgate—ALP) (4.37 p.m.): As a member of this Parliament who was once a member of the Subordinate Legislation Committee, I could not let the opportunity pass without commenting on this Bill before the House this afternoon. As we all know, those people who have served on that committee know how riveting that is from time to time.

This Bill will ensure the continued effectiveness of the regulatory review process that is required under Part 7 of the Statutory Instruments Act of 1992. That part of the Act requires that there is a regular review of Queensland subordinate legislation, and that happens by causing most of the legislation to automatically expire 10 years after it was made. Any subordinate legislation that is still relevant must be replaced before it expires. Unless subordinate legislation is uniform with that of the Commonwealth or another State, the Statutory Instruments Act will only allow it to be preserved for one extra year. That is on the basis that either replacement subordinate legislation is being drafted and will be made before the end of that year or that it is not being replaced at all. Under this scheme, subordinate legislation began expiring from 1 July 1998.

Part 7 of the Statutory Instruments Act allows subordinate legislation which is substantially uniform or complementary with legislation of the Commonwealth or another State to be exempt from expiry for periods of up to five years. Clause 9 of the Bill inserts the definition of "uniform subordinate legislation" into Schedule 3 of the Act. This definition differs from the present definition in that it states that "uniform subordinate legislation includes subordinate legislation which is declared under a regulation to be uniform". This amendment will ensure certainty in the extension of uniform subordinate legislation by reducing the risk of legal argument in relation to the validity of the extension of an instrument on the basis that it is uniform.

The Scrutiny of Legislation Committee has suggested that clause 9 is a Henry VIII clause. That is on the basis that the committee considers that the criteria stated in the first part of the definition are subject to displacement by regulation. It is intended that the regulation-making power will only be used in those rare circumstances where there may be a degree of uncertainty as to whether or not an instrument meets the objective criteria. It is certainly not the intention that the power could be used to declare an instrument to be uniform in circumstances where it is clear that the instrument does not meet the objective criteria.

I understand that at the Committee stage the Premier will move an amendment to clarify that a regulation may only declare an instrument to be uniform if there are reasonable grounds for considering it to be uniform. Nonetheless, the Scrutiny of Legislation Committee has advised that it considers that the amended clause is still a Henry VIII clause. Clause 9 is not a Henry VIII clause, as the regulation-making power merely allows particular subordinate legislation to be added to the list of instruments considered to be uniform subordinate legislation. It does not change the statutory definition of uniform subordinate legislation, nor its effect. This is indeed consistent with the view of the committee expressed in its report on the use of Henry VIII clauses in Queensland. While I may disagree with the scrutiny committee's technical viewpoint, this provision is, in any case, justified by the need for certainty and clarity. It is clearly in the public interest that there be certainty in the extension of subordinate legislation affected by Part 7 of the Statutory Instruments Act 1992.

People have a right to know the state of the law, and this provision removes doubt about key aspects of uniform legislative schemes. The Statutory Instruments Act review regime is an important mechanism to reduce the regulatory burden on the people of Queensland. I know that the former member for Caboolture, Mr Jon Sullivan, would have relished this debate. This is a piece of legislation that, while it may seem mundane in some areas, is indeed important for good law in this State. I commend the Bill to the House.

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