



Speech by

Hon. JUDY SPENCE

MEMBER FOR MOUNT GRAVATT

Hansard 23 March 1999

MINISTERIAL STATEMENT

Auctioneers and Agents Committee

Hon. J. C. SPENCE (Mount Gravatt— ALP) (Minister for Aboriginal and Torres Strait Islander Policy and Minister for Women's Policy and Minister for Fair Trading) (9.53 a.m.), by leave: I feel compelled to make this statement because comments reported in the media in the past week indicate that there is a disturbing lack of understanding of the operation of the Auctioneers and Agents Act.

The Auctioneers and Agents Committee is a committee established under the Auctioneers and Agents Act. It comprises a registrar and eight other members appointed by the Governor in Council. It is charged with administering a fund of about \$50m, the Auctioneers and Agents Fidelity Guarantee Fund. The committee has many functions, including the statutory discretion to grant or refuse an application for a licence or a licence renewal to an auctioneer, real estate agent, commercial agent, motor dealer or manager. Another important power—and one the committee takes very seriously—is the power to reimburse consumers who suffer a loss as a result of a breach of a provision of the Auctioneers and Agents Act. It reimburses them from the Auctioneers and Agents Fidelity Guarantee Fund, which is comprised mainly of money held in trust by real estate auctioneers and agents and, to a lesser extent, motor vehicles dealers.

The registrar—who, as I have said, is appointed by the Governor in Council—also has a number of specified statutory roles. An understanding of legal principles would tell you that I, as Minister, have no role to play unless the Act prescribes that I am to be specifically involved in the exercise of a particular statutory discretion. Under the Auctioneers and Agents Act the Minister is vested with a range of statutory powers. For instance, I can grant leave to members not to attend meetings of the committee; I can allow someone to object to the registration of a practitioner; I can decide the remuneration of a receiver appointed under the Act; I can take a recommendation from the committee and exempt someone applying for a licence from examination requirements. I can do many things. But nowhere in the Act does it specify that I can intervene in the bringing of legal action by the registrar against the committee, or in a decision by the committee to reimburse a consumer who has suffered a loss as a result of a breach of the Act.

It is also a clear tenet of administrative law that a statutory decision maker must not act at the direction or behest of another. If ever I were possessed by some irrational urge to unlawfully impose my view on the committee or registrar, they would be wrong to follow my direction.

On 29 January the registrar instructed Crown law to seek an injunction to stop a reimbursement of a person who had made a successful claim to the committee. The registrar did this because he had concerns about the committee's decision and wanted to seek a judicial review. He took the action as an independent statutory officer, without reference to me. As should by now be apparent, I ought not to have been involved in his action.

On 5 February, the Supreme Court considered whether the registrar was an "aggrieved person" under the Judicial Review Act. The court made no ruling then, nor did it ever make a ruling on this issue. But about 10 days later, after taking further Crown law advice and again weighing up the likelihood that he would be considered an "aggrieved person" by the court, the registrar withdrew his application.

I also sought advice during this process and was told what this House should now know: that it would have been inappropriate for me to intervene. Had I dared to intervene, I would have invited howls of dismay from the Opposition and the media. Indeed, any Minister who waded into a process from which she should clearly be excluded would be showing contempt for the proper workings of this place, and for democracy in Queensland.
