Speech by

Mr L. SPRINGBORG

MEMBER FOR WARWICK

Hansard 3 March 1999

ATTORNEY-GENERAL BILL

Mr SPRINGBORG (Warwick—NPA) (Deputy Leader of the Opposition) (4.52 p.m.): At the outset I indicate that the Opposition will be moving that this Bill be referred to the Legal, Constitutional and Administrative Review Committee for its investigation and report back to the Parliament and, in the event of the failure of that move, will be opposing the Bill.

The Opposition is not convinced that this Bill will in any substantive way enhance the role or the operation of the Attorney-General or his department. I am concerned that this legislation grew out of a personal vendetta by this Attorney-General against the former Attorney-General, Denver Beanland. The Attorney-General certainly has indicated as much as he has sought to justify the introduction of this legislation and also account for some of its perceived benefits.

Mr Bredhauer: He has got better things to do with his time.

Mr SPRINGBORG: It is fairly obvious that the member for Cook, the Minister for Transport and Minister for Main Roads has not read some of the comments of the Attorney-General. He should probably keep playing with trains because he does not have much of an idea about this.

What is the independence of the Attorney-General? Does it mean an Attorney-General chosen from not amongst his political peers and not sitting in Cabinet, not being a member of the Executive Government, but a member of Government who provides fearless and impartial advice to the Government and is not open to political persuasion; or does it mean, as this Attorney-General wants us to believe, an elected member of the Parliament who is a member of the Executive Government, who sits in the Cabinet, who is still considerate of and bound by the political processes of his party and wants to seek to portray the image that he is independent?

I have long held the belief that sometimes when something has come about over many centuries, and sometimes even longer, it is far better to let the tradition, the convention and evolution rule the process. Sometimes the very act of enshrining or explaining in statute something which has been built upon convention, tradition and practice has the effect of diminishing and curtailing the existing system, which I believe is in many cases, and in particular in this case, working very well. The Attorney-General is the first law officer and is the guardian of the public interest. This principle has evolved over centuries and will be compromised and destroyed by the passage of this Bill.

For all intents and purposes Queensland has an independent Attorney-General or, at least when one considers the vagaries and the machinations of the political process, an Attorney-General who can be as independent as he possibly can in a political environment. The Attorney-General in Queensland is an elected member of the Parliament. The Attorney-General is a member of the Executive arm of Government. He sits in the Cabinet. He is a member of Executive Council. He participates in parliamentary debate. He is a member of a political party—a political party which has a certain philosophy or an ideology—and he invariably is a person who is involved in the development of policy and the implementation of that policy.

Unless we can take the political process out of the role of the Attorney-General and take the Attorney-General out of the political process and the Executive arm of Government, I think what the Attorney-General is seeking to achieve is probably a bit misleading and may, in fact, be a misnomer. If the Attorney-General wants to achieve what he is espousing, he should change the system and

become a non-executive member of Government, that is, he should not participate in the processes of Cabinet.

This Attorney-General has made much of the fact that the Electoral and Administrative Review Commission recommended in 1992 a draft Bill for the independence of the Attorney-General. It is also worthy of note and valuable to place on the record of this Parliament that the parliamentary committee responsible for analysing and reporting upon EARC's recommendation actually recommended against the introduction of a Bill similar to that which the Attorney-General is seeking to pass today, and it did so, I believe, for very, very good reason. The commission thoroughly investigated the issue and it took various submissions from very, very interested people—people who were experienced, I think, and very learned in this particular field—over a considerable period. It called those people as witnesses and cross-examined them during public hearings. EARC recommended that it was far more important to guarantee the independence of the Director of Public Prosecutions and also the Crown Solicitor. This was a theme carried through by PEARC. It recommended certain reporting provisions for any direction which the Attorney-General gave the Solicitor-General and the Director of Public Prosecutions.

In a submission to PEARC, Mr Ratnapala suggested—

> "There are many conventions and common law rules associated with the office of the Attorney-General. It is not easy to codify all the relevant principles, and, indeed, it may be unwise to codify them. The office has evolved with the common law, and it may continue to do so in future. I am mindful of the fact that the EARC's draft Bill intends to preserve the Attorney's 'traditional functions, powers, prerogatives and privileges'."

That appears in clause 5(1)—

> "However, the Act is likely to have a stultifying effect on the evolution of the traditions associated with the office."

That is on page 27 of the Review of the Independence of the Attorney-General.

I would just like to say that, even though the Attorney-General will indicate to this House no doubt later on this evening that he has made some moves in the legislation which he has before the Parliament to make sure that those particular powers can evolve from time to time with convention and with tradition that may have been in place for many centuries, the mere act that the Attorney-General is going to pass legislation through this Parliament to codify the powers and conventions of the Attorney-General in many ways is going to stifle and stymie that particular important process.

I must say that I am very much a traditionalist when it comes to this particular matter and also many issues relating to the evolution of our parliamentary democracy; that is, when we seek to codify them, we do in many cases restrict and reduce at the end of the day the effectiveness and the way that our system has evolved and has actually worked over a long period.

I am not sure that we need legislation before this Parliament to seek to achieve some of the simple things that may have been recommended by the Parliamentary Electoral and Administrative Review Committee in 1993. In fact, at that time the committee concluded in Appendix D1, Section 5.8.13 that an Attorney-General Bill should not be adopted. Therefore, I think that it is absolutely paramount that we send this particular piece of legislation to PEARC's successor committee, LCARC, to see just what has changed and to look at it aside from politics and report back to the Parliament.

There may very well be some eminent sensibility in what the Attorney-General says he is trying to achieve, but there are some things that cause me to be suspicious of some potential political motivation on his part. I would like to take that out of the equation by having LCARC, which is the appropriate committee, look at these issues and look at the matters raised by the many expert witnesses who gave evidence before it in 1993 to see what has changed since that time. I think that is reasonable.

We as members of this Parliament have to be very careful when fiddling around with these things that we do not throw the baby out with the bathwater. We need to ensure that when we codify the powers and responsibilities of the Attorney-General we do so for good and correct reasons. We need to ensure that at the end of the day we do not restrict or in any way stunt the growth of this very high office which, as I said, has grown over many centuries into what we see today.

EARC recommended that the two statutory law officers, the Solicitor-General and the Director of Prosecutions, publish in an annual report all directions, references and guidelines given to them by the Attorney-General on the basis that this would strengthen the independence of all parties involved and would protect them from innuendo of Cabinet interference. I think one of the motivating factors behind this piece of legislation introduced into and sought to be passed through this Parliament by the Attorney-General relates to the innuendo of Cabinet interference rather than to any real problem with the system as it has evolved over very many years.

The committee considered whether the very different functions of these two officials warranted a similar reporting regime. The Solicitor-General has no independent powers and is subject to the

authority of the Attorney-General, unlike the Director of Prosecutions, who has the independent power to prepare, institute and conduct proceedings in the Supreme and District Courts. While it is not possible for the Attorney-General to override decisions of the Solicitor-General because of the nature of their relationship defined in the Solicitor-General Act 1985, the committee recommended that the Attorney-General's instructions to the Solicitor-General should be included in an annual report to Parliament in two particular instances: instructions to intervene in court cases involving the Commonwealth Constitution which may have implications for Queensland and instructions in relation to relator actions. That is a reference to the chairman's executive summary of the 1993 PEARC report.

Little is to be achieved and much will be lost if the Attorney-General has to report to the Parliament every time he uses his fiat or decides on a nolle prosequi. I believe this will politicise, not depoliticise, the high office of the Attorney-General. At the moment, the respect in which the office of the Attorney-General is held ensures there is little doubting the motivation or action of the Attorney-General when he exercises his discretion. I believe the requirement to report to the House matters relevant to the relator action or a nolle prosequi will in fact encourage political action.

The office of the Attorney-General is held in high regard because of the conventions that exist and the great discretion which Attorneys-General in Queensland have traditionally utilised over a long period of time. They are very careful and cautiously exercise discretion in the areas of relator actions, nolle prosequis and so on. People cannot underestimate that.

In the very great tradition that exists in the Westminster system—this Parliament is no exception—Attorneys-General are very much aware of their particular responsibility. If Attorneys-General who have gone before could relay what they have done, I think we would find that they have very rarely, if ever, used this particular discretion. Sometimes the strength of an office is in the fact that it is there, that it is built on convention and tradition and that it is continually able to evolve. I believe that legislating will restrict that from happening in the future.

I submit that it may well suit political purposes at any time in the future to have a large swag of relator applications. This Bill brings more pressure upon the Attorney-General to consent to an application. If that is the case, the obligations placed upon the Attorney-General and his department are such that administrative costs involved in preparing the report as required by clause 10(2)(a) and (b) could be nightmarish. The role and powers of the Attorney-General have evolved and developed over many centuries. They have done that remarkably well and to great effect.

I will outline a brief history of the nolle prosequi. The Attorney-General of England has power in any criminal proceedings, on indictment at any time, to enter a nolle and thereby stay proceedings. The origin of the power is uncertain, but the basis appears to be that the Crown, in whose name criminal proceedings are taken, may discontinue proceedings. The first instance recorded was in 1555. Thereafter the court will not allow any further proceedings to be taken in the case nor, importantly, inquire into the reasons or justification for the Attorney-General's decision. I think that is extremely important. Therein lies the basis for the Attorney-General's discretion, I believe, in deciding not to go ahead with a prosecution. The nolle prosequi is not equivalent to an acquittal; it does not bar a fresh indictment for the same offence.

I must confess to a concern that after eight months in Government this is the Attorney-General's defining legislative glory. This is not a Bill which substantively addresses the main issues within the areas of Justice and Attorney-General that the community at large is very much concerned about.

Fine defaulters legislation—it will get people who should not be clogging up our jails out of those jails—could be reintroduced into this Parliament very soon. We could have seen also the introduction into this Parliament of legislation which comprehensively overhauls the Coroner's Act to ensure that the coroner plays a far greater and more proactive role in our contemporary society—making recommendations and overseeing the establishment of procedures which would educate people in the ways of avoiding death and thus reduce the number of deaths.

I now refer to the Electoral and Administrative Review Commission report of 1992, when it investigated and made recommendations on the issue of the independence of the Attorney-General. Once again, I also refer to the report of the parliamentary committee which looked into and made recommendations on this matter. At the end of my contribution, the Parliament will quite clearly understand why it is my intention to move that this legislation be referred to the Legal, Constitutional and Administrative Review Committee for its attention and report.

I and many other members of this Parliament would like to know why the reasons which caused the parliamentary committee to be reticent and recommend against the introduction of a Bill in 1993 have changed. That is a fundamental issue. I would like to hear that answered by the Attorney-General. I believe this is something which can ultimately be answered only by a properly constituted parliamentary committee with the power and ability to thoroughly investigate these issues and make recommendations. Which circumstances are different today?

Is there an opportunity to ensure proper enhancement of this legislation? If the Parliament fails to refer the legislation to this committee, the Opposition will have little choice but to oppose this legislation for the reasons I previously outlined. Principally, we continue to be unconvinced about the need for this legislation. We are unconvinced that it will do anything to ensure a greater independence for the Attorney-General in Queensland. We already have an independent Attorney-General.

If one looks historically at the Attorney-General's role, one finds that, once again, it is as independent as it possibly could be, given the political system under which many democracies around the world operate. Quite frankly, by seeking to define and legislate the convention, I say again that we will be restricting and confining what the Attorney-General traditionally does—and does so, I believe, with a great deal of judicious discretion.

I would also like to know from the Attorney-General, when he replies, why Queensland is the only State in Australia which has sought to move to legislate the role of the Attorney-General. I understand that the Northern Territory and the Australian Capital Territory have both legislated the role of the Attorney-General. However, I would like to know what is the principal reason that has deterred other States around Australia from going down a similar path and what, if any, difference exists between States and Territories in this particular regard.

I would also appreciate hearing from the Attorney-General any examples of other Westminster-type democracies which have moved to legislate the role of the Attorney-General. And if so, has their traditional role been the same as our role? By that I mean: is the Attorney-General a member of the Executive Government or separate from the Executive Government? I understand that in the United Kingdom the Solicitor-General and the Attorney-General are both drawn from the Parliament and are Ministers of State but are not, in fact, members of the Cabinet. I would also like to hear from the Attorney-General as to what he believes the benefits of this legislation are going to be for Mr and Mrs Average Queenslander. One cannot blame Queenslanders for being a little cynical as to the time frame in the introduction and the move to pass this Bill through Parliament. A question that I raise is: why is this now a priority when EARC reported on it in 1992 and PEARC recommended against the implementation of an Attorney-General's Bill at that time in 1993?

The Goss Government had three years in which to implement this, and during at least some of that time the current Attorney-General, who was the then Attorney-General, in no way acted to introduce a Bill to enshrine the so-called independence of the Attorney-General. Surely the reason that exists today must have been the reason that existed then, and the urgency which exists today must have been the same as the urgency which should have existed then. Or is the Attorney-General acting in a not very independent way, or a very considered way, in bringing legislation before this Parliament to, as I said, carry on his personal concerns and vendetta against the member for Indooroopilly?

The enactment of this Bill would result in unnecessary costs to the Attorney-General's Department by way of mandatory preparations of reports. I know that the Attorney says in his Explanatory Notes that the cost is nil. I must admit that I find it very difficult to believe that when one considers that there will be certain mandatory reporting requirements. Any mandatory requirements obviously tie up resources, with expert people with particular skills in certain fields putting together reports which will have to be tabled in the Parliament. I believe that that will, in effect, take away from resources in other areas.

More importantly, contrary to what the Explanatory Notes state, a power recognised at common law will continue to be exercised under the common law. I believe that the Bill goes to the very heart of those particular powers not to disclose the Attorney-General's reasons, places a mandatory impost upon the Attorney-General and disposes of hundreds of years of common law precedent and convention.

I believe that section 10 opens a conduit to more public funding of court actions to minority groups by intimidating the Attorney-General potentially. By that, what I am saying is that any action which actually makes the Attorney-General disclose his reasons for his very, very careful and judicious use of his discretion may bring it before the Parliament. I believe that the Attorney-General may find himself in a situation, because of the political imperatives that would exist on a particular day, and he would find it very difficult to stand back and say, "I won't do that. Regardless of my good reasons, I am sure that some people might not necessarily understand." So in some cases his hand could potentially be forced.

There is, in my opinion, no justification for this Bill in its present form or maybe any other form. I move—

> "That the question be amended by omitting the words 'now read a second time' and inserting the words 'referred to the Legal, Constitutional and Administrative Review Committee with a direction that the committee undertake an inquiry into and public consultation on the Bill and report to the House on the Bill on or before 2 June 1999'."