Speech by

# Mr L. SPRINGBORG

## MEMBER FOR WARWICK

Hansard 25 November 1999

### STIPENDIARY MAGISTRATES AND OTHER ACTS AMENDMENT BILL

**Mr SPRINGBORG** (Warwick—NPA) (Deputy Leader of the Opposition) (8.30 p.m.): The Opposition is generally supportive of the Stipendiary Magistrates and Other Acts Amendment Bill. However, during this debate we will be expressing some concerns about a couple of issues and in the Committee stage I will be opposing clause 8, which relates to a retrospectivity provision that the Opposition finds to be of concern.

At the outset, I would like very much to thank the Attorney-General for consulting with me throughout the course of the preparation of this legislation. I do not think that the Attorney-General would mind my mentioning to the House that we had some discussions to try to work out how we might be able to meet the expectations of the magistracy in this State to have some sort of appeal or review mechanism against a decision by the Chief Stipendiary Magistrate to transfer them to a place that might not necessarily meet their current circumstances. Obviously, this is a very, very difficult issue because of separation of powers issues and the necessity to preserve and respect the right of the Chief Stipendiary Magistrate to administer the magistracy in this State. He or she always has had the very difficult job of trying to balance the expectations of, I think currently, about 74 or 75—

**Mr Foley:** 73.

**Mr SPRINGBORG:** Seventy-three magistrates in the State. Obviously, when one is dealing with that many magistrates, some issues and problems will present themselves and there are always going to be aggrieved people. Notwithstanding the need to make sure that we preserve the separation of powers and that the Chief Stipendiary Magistrate should be as unencumbered as he or she possibly can be, I have always felt that, in this day and age, we needed a process for appeal or review of decisions to transfer a magistrate if that person is genuinely aggrieved about a placement by the Chief Stipendiary Magistrate. The important point to make is that that appeal process should not be capable of being abused. It needs to be open and accountable, to contain the necessary checks and balances, but also take into consideration extraordinary circumstances that arise from time to time.

Unfortunately, the situation arose in this State where there was some significant media commentary and a stand-off between a newly appointed magistrate and the Chief Stipendiary Magistrate. That tended to cloud what was, I think, very good and reasonably well-considered reform that had been coming to light in the State over the past couple of years. It is probably fair to say that, even though the process of appointing judges is a bit different from the process of appointing magistrates and the process of placing judges is a bit different from the process of placing magistrates, if there were 74 District Court judges or 74 Supreme Court judges in Queensland, comparable problems could arise in that jurisdiction. However, the magistracy has a different level of jurisdiction and some issues need to be considered differently.

I think the Attorney-General would agree that, unfortunately, the debate surrounding that issue diverted attention away from what was trying to be achieved in this legislation. It was very unfortunate that we saw that situation develop with the Chief Stipendiary Magistrate in this State, Mr Stan Deer. I would like to place on the record that I thought that he was a very good Chief Stipendiary Magistrate. Obviously, he was a man of conviction: he was strong, he was good and he was a very firm administrator. I suppose that, from time to time, his firm style tended to lead him into some degree of

conflict. However, when a Chief Stipendiary Magistrate is running a magistracy, there is no doubt that that is going to happen.

Not long ago in Victoria I had the opportunity to have a conversation with the then Victorian Attorney-General, Mrs Jan Wade. During that conversation she indicated to me that a similar situation had developed with the Chief Stipendiary Magistrate of that State. There were stand-offs, complaints and a resignation. In this State, the Chief Stipendiary Magistrate sought early retirement. So I think that, in circumstances where magistrates are aggrieved by decisions relating to transfers, there is pressure on the Chief Stipendiary Magistrate and, unfortunately, sometimes that pressure becomes too great for a Chief Stipendiary Magistrate to be able to bear.

I think that another lesson could be learned from this situation, and that is that, when we appoint people to the magistracy, we should be very much aware of potential conflicts that may arise and make sure that there can be no ifs, buts and maybes about such appointments—that there is no misunderstanding between the Attorney-General, the Chief Stipendiary Magistrate and the person who is about to be appointed to the magistracy. If that comes to pass, obviously a conflict situation is created. That happened in the instance to which I referred. It probably became all engulfing for a period.

At that time, a number of other magistrates took the extraordinary step of speaking out anonymously to the major daily newspaper and the radio stations. Although their individual names were not referred to, they gave a background briefing. I think that that was extraordinary.

Nevertheless, I think that we can trace the genesis of this legislation to issues that arose over the past couple of years in relation to magistrates who said, "I have been in an area for a period of time. My children are in Year 11 or Year 12 at school. Come August, I have been informed that I must move to another place in the State." Obviously, that creates problems and concerns for magistrates who have families. They have to take their children from their school almost at the end of a school year or disrupt their family's lives in the middle of the year and move somewhere else. So notwithstanding that we had to maintain the supremacy of the Chief Stipendiary Magistrate in his or her decision-making capacity, there had been this murmuring that we needed to look at the process.

Another issue that we need to consider when we debate this legislation is the changing face of the magistracy in this State in the 1990s. Until 1991-92, all of our magistrates were Public Service appointments. Those officers went through the hierarchical system within the Public Service. They were the deputy clerk of the court or the deputy registrar, or whatever the case may be. They then became the clerk of the court and then they might have been appointed as an acting stipendiary magistrate and then, in some cases, they were appointed as a magistrate. After the early 1990s, the magistracy was opened up to a broader range of people and outside appointments were made. The outside appointment process is very important. It is important to have a good balance of Public Service appointments and outside appointments, as that broadens the pool of people from which one can choose.

It is also fair to say—and I am sure that the Attorney-General would appreciate this point—that Public Service appointees and outside appointees sometimes think a little differently about transfers. Magistrates who were Public Service appointees have said to me that they cannot see what all the fuss is about because they are used to being transferred. Others have told me that they think that there needs to be a process of review, notwithstanding that they have always accepted that it is the prerogative of the Chief Stipendiary Magistrate to transfer them at his or her discretion.

With outside appointments, one may be dealing with a successful barrister or solicitor from, say, Rockhampton, Maryborough, Townsville or Cairns. They may have been practising successfully at the Bar for 15, 20 or 30 years. Obviously such people would make a decision to accept an appointment as a magistrate if it is offered to them. However, they then have to adjust to a situation in which another person decides where in the State they will be transferred to. That has sometimes caused a little concern. It is one of the issues that has caused—

**Mr Nuttall:** Who are you talking about?

**Mr SPRINGBORG:** I am speaking across the board. I am very pleased to take the interjection, because I have spoken throughout most of the day and given what I thought were interesting speeches of 30, 40 or 50 minutes' duration. Nobody has listened to me or even lifted their heads. Now I am talking to four people who at least appear to be half interested. The people that I was talking about certainly had to change their mind-set. Such issues have led to the introduction of this legislation.

I have had interesting and open discussions with the Attorney-General, who asked for my views on the best way to approach this matter. The association that represents magistrates was of the view that we needed to establish a collegial system, whereby a committee would be responsible for reviewing contentious decisions. The association suggested that a number of its members could be appointed or elected to review a decision of the Chief Stipendiary Magistrate if an issue was raised.

That proposal is not without its problems, because it means basically that a group of magistrates would be reviewing a decision of their boss, the Chief Stipendiary Magistrate. That proposal could have caused potential fractures within the system. However, insofar as the people whom the association represents and their understanding of the system are concerned, there is some limited degree of merit to the proposal.

What we have ended up with is a review committee that will be made up of appointees from the two highest jurisdictions of our court process. The Chief Justice or his nominee, the Chief Judge or her nominee and one other judge of either court will be responsible for reviewing cases where a dispute has arisen over an appointment or, eventually, a transfer. Obviously, that has raised some concerns from within the magistracy and elsewhere as judges from the higher court will be reviewing the decisions of the Chief Stipendiary Magistrate.

I do not think that there is a perfect system, but what has been developed is a good starting point. Obviously, as this legislation is passed and has an opportunity to be tested, issues will arise that need to be reviewed. To put it another way, some warts might need to be knocked off. When one is stepping into a new area, one expects those sorts of things to arise from time to time. This is a reasonable starting point. People might say that there is a better way to do this. I would ask those people to come forward and tell me what that is, if they have established that there needs to be a process to review the decisions of the Chief Stipendiary Magistrate if a magistrate is aggrieved about his or her initial appointment or a future transfer decision.

Queensland covers an area of about 1.7 million square kilometres, which is a very big area. As I said earlier, placing 73 magistrates around the State and keeping them all happy will not be easy because they will have different expectations. However, this review process provides magistrates with the opportunity to have genuine grievances addressed. It means, basically, that we have to establish an entirely new process for the initial appointment of magistrates. In the first instance, when the Attorney-General is looking at replacing a magistrate—or maybe more magistrates will be appointed in the State— obviously he will consult with the Chief Stipendiary Magistrate. A new magistrate will be appointed to a location in Queensland for a period of five years unless the Chief Stipendiary Magistrate and the magistrate agree on a shorter period or, sometime during the course of that person's appointment to that location, they decide that they want to move.

As I understand it, from the time of the commencement of this Act, magistrates who have been in an area for five years and are not transferred as they wish will have an opportunity to take their grievance to the review committee. That opens up a new and potentially difficult area, as it means that the Chief Stipendiary Magistrate will have so many more issues to look at as she administers the magistracy in this State.

I return to the initial appointment process. In the first instance, a new magistrate will be appointed for five years. If that person is aggrieved, they have the opportunity to go before the review committee, which will be made up of three judges of the two higher courts. In the second instance, if a person is aggrieved by the decision of the Chief Stipendiary Magistrate not to transfer them after five years, they can also apply to the review committee.

It is important that the legislation states that the decision of that committee of eminent judges is not reviewable by another appellant body. It is very important that there is no process for judicial review. A fair bit of pressure will be placed on that committee, but it will be made up of eminent people. As they go along, they can determine the issues that they need to address according to the criteria that they develop for each individual case. That is sensible, because it is probably wrong for the Parliament to push on to the committee the issues that it needs to consider. Of course, the committee will look at a range of issues such as a magistrate's personal circumstances and so on.

Taking it back one step further, any decision that the Chief Stipendiary Magistrate will make—and I will use the word "she", because we currently have a female Chief Stipendiary Magistrate—will take into account the personal circumstances of each magistrate. I have no doubt that, in making a decision to locate a magistrate, she will find out, for example, whether the magistrate has any school-age children and she will ask herself, "If I place this person in that area, will that cause some difficulty for that person and their family?" For example, she might also have to take into account the personal circumstances of magistrates or their family members who require treatment for an illness.

This process is worth while, although it might have some minor flaws. We will need to look at this area continually. The Chief Stipendiary Magistrate will be expected to meet greater demands. In the past, a far more arbitrary approach has been taken. The Chief Stipendiary Magistrate will now have to look at a range of factors. A number of magistrates around Queensland will be looking to be transferred either before or after the five-year period. New or replacement appointments will also have to be considered. There will be a lot more administrative pressure on the Chief Stipendiary Magistrate to balance those issues. Notwithstanding that, it is important to have a review process. However, we need to be prepared to address any administrative issues that arise in the future.

We need also to look at where we will go from here. A number of years ago, the former Attorney-General advertised for appointments to the magistracy—I stand to be corrected on this—and received a number of applications. I am not sure whether this Attorney-General does that. However, I think it is worth while. When Victoria advertised for people interested in being appointed to the magistracy, 200 or 300 people responded, and an equal number of men and women were put on a short-list. They were given an explanation of what to expect if they were appointed to the magistracy. The Attorney-General kept the names of the people who were short-listed. We should be moving towards a more open and transparent appointment process. The magistracy is probably the best place to start.

As I indicated, the coalition has some concerns about this legislation. When the Scrutiny of Legislation Committee reported to the Parliament, it raised a couple of issues, one of which was the position of existing magistrates requesting a transfer, which is addressed in clause 18A(1)(c). Retrospectivity may be an issue in this area. I am not overly concerned about that. I think we can live with it.

However, in respect of the transitional provision for stipendiary magistrates, I note that magistrates appointed since 31 March this year will not be able to access the review process for decisions of the Chief Stipendiary Magistrate until after the passage of this Bill. In a nutshell, this is a retrospective provision. It means that anybody who has been appointed as a magistrate in the State of Queensland since 31 March but before this piece of legislation comes into being would have a retrospective capacity to go before the review committee and request a determination on a grievance. I oppose that very strongly. We should deal with everything prospectively, that is, from the date on which this legislation is assented to. We will stand by that principle at the Committee stage by opposing that clause, as I have already indicated to the Attorney-General. Without wishing to do the Attorney-General a disservice, I think he probably inserted that clause at another time to try to address a situation that was on the minds of many Queenslanders earlier this year. I do not think that we should be addressing those sorts of situations retrospectively.

In conclusion, the coalition is broadly supportive of this legislation. It is not perfect legislation. It is a piece of legislation which is new for the State of Queensland. It enshrines the principle that anybody appointed to the magistracy, in common with anyone else in the Public Service or even outside it, should have a process for having any concerns about their appointment or transfer location addressed. In common with the Attorney-General, we will be watching with a great deal of interest to see how this legislation works over the next year or so. I think there will be some administrative issues, because there will be a lot more for the Chief Stipendiary Magistrate to consider. Notwithstanding our reservations on a couple of issues, this legislation is worthy of support. It should be monitored to make sure that any problems are addressed in the future.