



Speech by

**Mr L. SPRINGBORG**

**MEMBER FOR WARWICK**

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Hansard 21 July 1999

**FEDERAL COURTS (STATE JURISDICTION) BILL**

**Mr SPRINGBORG** (Warwick—NPA) (Deputy Leader of the Opposition) (12.39 p.m.): At the outset, I indicate to the Parliament that the coalition will be supporting this piece of legislation before the House. But before I sit down, I would like to make a few points. I would very much like to thank the Attorney-General for keeping me abreast of the issues surrounding this decision and providing me with an update on the formulation of the legislation. I understand that this particular matter was not of significant surprise to Government. In actual fact, some contingency had been made for a particular period. When speaking to the previous Attorney-General, Denver Beanland, he had indicated to me quite clearly that this matter was something of which Attorneys-General from around Australia had been very much aware.

Some time ago, the High Court split three-three on this particular matter, and it was only recently that the matter was resolved, with the High Court ruling six-one to strike down the cross-vesting arrangements which were in place. I feel very similarly to the Attorney-General in this matter. Even though it was probably a perfect decision made on law, it has created a significant degree of concern in the State, because now we have to come up with something that is going to be—potentially, let us hope—equal to the arrangement which has existed for about 10 years.

When Attorneys-General from around Australia—that is, from the States, the Territories and the Commonwealth—came together a number of years ago to formulate this arrangement, it was felt at that time that there would be a great degree of benefit in being able to transfer across jurisdictions certain matters that could be heard concurrently. This would be a benefit for people who might be involved in a matter traditionally before the Family Court, for example, that might have involved some issue in relation to Corporations Law that had to be resolved at the same time.

A number of years ago, people were generally confused; they would go to one court, and if that court did not have jurisdictional responsibility they would have to go to another court. This was all about making sure that the process could be condensed and issues could be dealt with concurrently, and matters could be dealt with very, very clearly across jurisdictions. Unfortunately, that option has largely been denied to us now by that decision of the High Court. As I have indicated, I do not necessarily say that the High Court did not have the right to make the decision. What I am saying is that we had a matter of law, but it has left the State of Queensland and the other States and Territories, the Commonwealth with the situation of how to resolve this.

I also understand—and the Attorney-General is probably aware of this, as well—that since the decision was handed down a number of weeks ago, a backlog is already starting to build up in the courts as a consequence. Quite clearly, the High Court decision has led us to understand that it is appropriate for the Commonwealth to transfer or to devolve down some jurisdictional responsibility that would traditionally be held—

**Mr Lucas:** The problem was that Peter Reith opposed the referendum, I think in 1984, to get Commonwealth powers easily transferred to the States.

**Mr SPRINGBORG:** I look forward to the honourable member's contribution—if he is going to make one. I did not want to go through all the history of this matter, because I want to get this legislation passed as soon as possible. There is no dissent.

Basically, the High Court determined that there was not a problem with the Federal Government transferring matters down to the Supreme Court—matters that may have been traditionally heard in the Family Court or the Federal Court—but there was very definitely a problem in our being able to transfer to the Family Court or the Federal Court matters that would traditionally be heard in the Supreme Court.

I suppose that there are only one or two ways of dealing with the problem. Obviously, the short-term one is to hear more of these matters in the Supreme Court. As the Attorney-General has previously said, that creates a demand on resources and would be a significant issue for the Government if it wanted to commit resources. I note that the Attorney-General has made some calls in regard to involving the Commonwealth in resourcing in this area to overcome some of the problems. That is certainly the responsibility of the State. When one considers what has happened here, one finds there is also an obligation on the part of the Commonwealth to consider becoming involved in that area.

The long-term solution, of course, would be to seek constitutional change which would overcome this particular problem. There is some talk about maybe tying it into the referendum on the republic, which is to be held on 6 November. I have previously said that I have some problems with that because, whether we like it or not, this particular matter of constitutional change—Australia changing its head of State—will involve the pro-monarchy argument, the pro-republican argument and a lot of confusion. Unfortunately, a commonsense, mechanical situation may very well go down based on all the argy-bargy involved in that process. So I am not sure that that would be the best option. I know that some people favour that; others do not. I also understand that the Commonwealth has some concerns about that.

On the other hand, to resolve it at the next Federal election puts the solution two years beyond where we are today. That is a problem, too. I very much believe that we should be avoiding tying it in with the referendum in November this year, because undoubtedly it would get confused and may be lost when the people of Australia generally would not have a problem with it. Those are the machinations of the referendum process in Australia, particularly if there is division between the various parties and opposition to the question that is being put.

When this process was set up a number of years ago, we had the best legal brains in the country—that is, from the Commonwealth, the Territories and the States—coming together to devise this scheme. Many people out there in the community would be thinking: how come our best legal brains in our respective Crown Law sections of Government did not manage to see this coming? I understand that some issues were raised by some of the jurisdictions at that time, that it could potentially be a problem. However, it is time to let bygones be bygones. It was a genuine attempt by the States, the Territories and the Commonwealth to come up with something that ensured cheaper, easier access to justice, which could allow matters to be dealt with across jurisdictions and dealt with concurrently. But unfortunately, that has been snapped away.

I commend the Attorney-General for bringing before the Parliament legislation that will remove any concerns about the validity of those past decisions which have been made—decisions which may have been made invalid as a consequence of the High Court, which made the decision that cross-vesting was unconstitutional. That is very, very important so that we can deal with those matters that have gone before us. The State has very broad powers in that area. Obviously, through this legislation, we have to transfer back into the State jurisdiction matters which were pending in the other Federal Courts. That will be done through this legislation.

That is probably all I wish to say about this matter, other than that the Attorney-General of Victoria, Jan Wade, was very much involved and was given the responsibility for drafting the template legislation. Our Crown Law officers have had an opportunity to have a look at the legislation, to tweak it to suit Queensland conditions, and they have done that no doubt very well. I very much thank the Attorney-General for keeping me up to date once again and providing me with a briefing from the Crown Solicitor, Barry Dunphy, other officers from his department and his staff. That is very much appreciated. We are very keen and pleased to support this legislation before the Parliament.

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