Speech by

LINDA LAVARCH

STATE MEMBER FOR KURWONGBAH

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ATTORNEY-GENERAL BILL

Mrs LAVARCH (Kurwongbah—ALP) (5.14 p.m.): I rise to support this Bill. In all Australian Parliaments the Attorney-General holds the often contradictory position of being both an elected member of Parliament and the chief law officer—one position being party political and the other requiring the independent administration of justice. In giving advice on a legal matter to the Cabinet, he or she must act on a basis of what is just and separate the advice from any political considerations.

The member for Warwick has made much of the history and origins of the office of Attorney-General. But what he did not point out was that the origins of the office of Attorney-General can be traced back to medieval England. From the earliest times, the king could not appear in his own courts in person to plead his case where his own interests were concerned. He filled this gap by using the services of an attorney or an agent to appear on his behalf. The earliest Attorney-General was appointed in the reign of Edward I from 1272 to 1307. As the Crown's representative, the Attorney-General was given the powers of the monarch to control the Crown's servants through the courts.

From the time of the existence of the House of Commons, there was a conscious decision to exclude from amongst its number the holder of great offices under the Crown, such as the office of Attorney-General. However, from the time of Sir Francis Bacon being appointed Attorney-General whilst a member of the House of Commons, and the inability of his opponents to find anything illegal in his holding of both offices at the same time, it became the common practice for the Attorney-General to be a member of Parliament. Of course today, in most Commonwealth countries the law officers are civil servants. But in both Australia and New Zealand, the Attorney-General is a Minister of the Crown. From its inception in 1860, the Queensland Parliament has included an Attorney-General in the Ministry. At a Federal level, the Attorney-General was one of the seven original Ministers in 1901.

The previous Attorney-General, the member for Indooroopilly, Denver Beanland, brought this office into controversy. The member for Warwick made much of his belief that the only reason that this Bill has been introduced is because of a vendetta. Nothing could be further from the truth. I believe that we have to come back to that controversy into which the member for Indooroopilly brought the office of Attorney-General to show that it is not a vendetta; it is the very fact of that controversy that requires this Bill. I do not think that anyone would have ever thought that that office would be brought into such controversy as the member for Indooroopilly brought to it. In the words of our now Attorney-General, I think that he well summed it up when he said that the member for Indooroopilly poisoned the wellsprings of justice.

In his second-reading speech, the Attorney-General stated that the Bill is part of a process of seeking to restore public confidence in the rule of law in the wake of an unprecedented vote of no confidence by the 48th Parliament in the then Attorney-General, Denver Beanland. The EARC report came about from a situation that was perhaps anticipated by Tony Fitzgerald in his report, which highlighted the need to introduce this Bill before the House. It must also be noted that there was an obsession by the previous Government in trying to destroy the CJC, which was another recommendation of the Fitzgerald inquiry, and it was this obsession that led to the vote of no confidence in the former Attorney-General. That can be traced back to the Fitzgerald inquiry, as well.

I turn to the contents of the Bill, which largely follow the recommendations of the draft Bill of the EARC report to Parliament, report No. 21. The Attorney-General's office, as outlined, is an ancient

office. The functions of the Attorney-General are derived from Crown prerogative and from the common law. It is an office that has wide discretionary powers that are to be exercised in the public interest. Those powers include the ability to initiate, prosecute or discontinue criminal proceedings. The Queensland Criminal Code gives the Attorney-General alone the power to lodge an appeal against sentences imposed in respect of indictable offences. In recent years, we have seen a great increase in the number of criminal decisions being appealed on the grounds of leniency of sentence.

The actual functions of the Attorney-General are probably a mystery to most. Locating the origins and precise meanings of the royal prerogatives or discretionary power can prove an exhausting task. I think this is central to the Bill that is being introduced to the House. The member for Warwick kept insisting that it was a matter of codifying those powers, but nothing could be further from the truth. This Bill is not a code. The Bill does not close off what the Attorney-General can do. In his second-reading speech, the Attorney-General spelt that out when he said—

> "However, recognising the powers are rooted deeply in the history of the common law system, the Bill does not attempt to exhaustively codify them or the way they are carried out. This will ensure the Attorney-General's powers are not fixed in time and are able to continue to evolve."

A code will not allow them to evolve, but this Bill will.

I congratulate the Attorney-General for his initiative in introducing this Bill. As I have said on many occasions before, if we are to have access to the law it has to be able to be found. This Bill, in setting out clearly the various powers and responsibilities of the Attorney-General concisely in one document, meets the need for the law to be found.

The second and most likely the more important function of this Bill is to make the office, functions and exercise of the power of the Attorney-General more transparent. It does this by providing for the Attorney-General to be accountable to Parliament for certain decisions about prosecutions and about grants of fiats in relator actions. Edwards in his text. The Law Officers of the Crown makes reference to the fact that the exercise of the power by the Attorney-General is overlaid with the responsibilities of the Attorney-General to the House of Commons. He states—

> "It has been stated repeatedly, and needs underlining that Parliament is not an appropriate forum for judging the propriety of every decision reached by a Law Officer in the exercise of his common law prerogatives or statutory responsibilities. The same observation may be made at the Home Secretary's position when faced with questions after his advice has been tendered on the exercise of the royal prerogative in capital cases. Intransigence on the part of Ministers or members of the Commons when issues of this nature arise for debate is not calculated to enhance the prestige of Parliament or the administration of justice. So far as the Attorney, and Solicitor-General are concerned in suitable cases sufficient reasons should be given to convince the House of Commons that the Law Officer has considered all the relevant factors and has reached his decision with that impartiality of judgment which is the ultimate strength and protection of the constitutional independence of the Law Officers of the Crown."

In the Bill before the House, clause 10 imposes an obligation on the Attorney-General to report to Parliament if he or she refuses to grant a fiat to a person to bring an action to enforce or protect a public right, whereas clause 11 imposes an obligation to report if there has been an exercise of prosecutorial discretion by the Attorney-General himself or herself to indict a person or enter a nolle prosequi on an indictment. In the EARC draft Bill, this was expressed as a duty to report when the Attorney-General exercised his or her powers in prosecutions without agreement from the director of prosecutions by either overriding the directors's decision or not first obtaining it. The present Bill expands this requirement and protects the director of prosecutions from being embroiled in political debates.

In moving his amendment, the member for Warwick asks that the Bill be put out for further public consultation and then be further considered by LCARC. The Bill was introduced in August 1998, some seven months ago. While it is up to the Attorney-General to answer the member, it appears to me that it is very late in the piece—the day that the Bill comes before the House—to raise such issues. I have not heard similar suggestions from the member in the past seven months. This was part of the Labor Party platform on which we went to the last election and, therefore, I support the Bill because we are delivering on an election promise. I commend the Bill to the House.