



Speech by

**Mrs E. CUNNINGHAM**

**MEMBER FOR GLADSTONE**

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Hansard 3 March 1999

#### **ATTORNEY-GENERAL BILL**

**Mrs LIZ CUNNINGHAM** (Gladstone—IND) (5.46 p.m.): I want to raise a couple of questions with the Attorney-General. In his second-reading speech the Attorney-General talks about this Bill in part 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. That was a very specific issue. It was a vote of no confidence and I supported that vote of no confidence with a tag which I was unable to have amended. No-one on either side of the House would support an amendment to the motion that there be a vote of no confidence with the Attorney-General stepping down. The Attorney-General at the time chose not to stand down and I have no problem with that decision on his part.

At the beginning of his second-reading speech the Minister said that this Bill is seeking to restore public confidence in the rule of law. Given that that is the incident to which the Minister refers, I wonder how the Bill responds to that statement. I could not find anything in the Bill that addressed the incident that occurred the year before last. I would be interested to hear the Minister's response.

The Minister's second-reading speech also stated that the Fitzgerald report concluded that the proper performance of such functions is dependent upon impartiality and freedom from party political influence. The fact is that the Attorney-General is not proposing to step outside of the Cabinet or the party political. Therefore I would question how the Minister is achieving that stated aim.

The Fitzgerald report recommended that EARC implement and supervise reforms recommended by that report, including the establishment of an independent office of the Attorney-General; yet I note with some concern that PEARC, consequent upon that EARC recommendation, concluded that the Attorney-General Bill not be adopted. The Explanatory Notes state "at that time". I am not sure what circumstances have changed. I wonder whether the concerns of the PEARC committee have been addressed in the legislation that has been brought forward today.

We see quite a specific list of powers of the Attorney-General in clause 7 on page 5. Clause 7 (1)(d) is not contained in any of the reports that I have been able to identify. This is important because the Attorney-General has been granted the power to "undertake to a person not to use, or make derivative use of, information". However, I would seek clarification as to the source of that addition to the list of powers. The list, minus that additional power, had been through EARC and PEARC. I understand that this addition is a derivative use of information and is often a protection for ordinary Australians.

This Bill has been modified from the Fitzgerald report and the EARC recommendations to take into account concerns about the EARC Bill expressed by the Parliamentary Committee for Electoral and Administrative Review, the Bar Association, the Law Society, the judiciary and the director of public prosecutions. The latter three are from the legal side of things. Submissions were also invited from the community. I did not have any information that outlined community concerns. I received a couple of letters from people in the community and before I sit down I will be raising concerns expressed in those letters.

I wondered whether the Minister could comment on the balance that he has maintained between lawyer/barrister-type concerns and ordinary community concerns. I know there is concern in the community at an over-influence by the legal profession on the Queensland Government and I would be interested to see how the Minister has maintained that balance.

In 1990 the then Attorney-General, Dean Wells, made a ministerial statement in relation to indemnities against prosecution. He said—

"While the common law has recognised that an Attorney-General has the power to grant a transactional indemnity, in Queensland to date there have not existed any objective standards by which an application for an indemnity against the prosecution may be assessed, nor have there existed any guidelines by which the ethics of a particular application can be measured. The whole issue of indemnities against prosecution involves not only a careful assessment of the facts but also ethical questions concerning the administration of justice. For reasons of public safety, or other reasons relating to security, it is sometimes impossible to make public the details of indemnities or, indeed, even confirm that an indemnity has been granted. However, the criteria by reference to which these decisions are taken should be exposed to the clear light of day, not enveloped in a dark shroud of Government secrecy."

To me that statement indicates that in deciding on the granting of an indemnity there are facts and also circumstances that are difficult to list in an objective form that the Attorney-General must take into account.

This Bill proposes to codify the powers of the Attorney-General. I wonder whether we will be opening the way to more regular challenges of the decisions of an Attorney-General by listing the powers and responsibilities of the Attorney-General and codifying them in an Act of Parliament. I seek the Minister's response as to whether that may raise the spectre of solicitors, barristers and QCs challenging the Attorney-General's granting of indemnities or other exercises of his or her power—something that was not possible in the past. I understand that one response could be that codifying the powers creates a greater opportunity for accountability. For very good reasons, the former Labor Attorney-General, Dean Wells, specified that sometimes it is difficult to enunciate the reasons for granting an indemnity in very clear and precise terms.

In conclusion, I wish to raise a couple of issues brought to my attention by people in the community, one of which was along the same lines. The Legal Reform Group states—

"The mere fact that this Bill seeks to have so much committed to paper without specific protection from any rise in legal action against the Attorney-General rings alarm bells. The Attorney-General may never be taken to court, but the threat could always be there. This could limit the sensible action required to be taken by an Attorney-General in many circumstances."

I would be very interested in the Attorney-General's response to that point. Is there sufficient protection in the Bill to protect the Attorney-General from either malicious or vexatious litigation on the basis that the Attorney's powers will now be codified? Is there any opportunity either in the existing Act or in the proposed changes to allow members of the public who feel aggrieved by the actions of the Attorney-General to take action against the Attorney-General's exercise of his power?

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