Speech by

Mr SANTO SANTORO

MEMBER FOR CLAYFIELD

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ELECTRICITY AND GAS LEGISLATION AMENDMENT BILL

Mr SANTORO (Clayfield—LP) (3.43 p.m.): I rise to support the comments made by my friend and colleague the honourable member for Hinchinbrook. In particular, I rise to express my grave concern about the delay in the commencement of those parts of the Electricity Amendment Act (No. 3) 1997, which will establish an electricity ombudsman until 5 December 2000. It is surely the mark of an incompetent and arrogant administration that, 18 months after it was sworn in, it has introduced legislation suspending the commencement of these vital provisions at the very last moment.

The creation of an electricity ombudsman should never be a matter of partisan debate. It is a commonsense measure that has been adopted by Governments of all political persuasions in New South Wales, Victoria, Tasmania and South Australia. In the context of the privatisation, corporatisation, restructuring and opening to competition of energy markets throughout Australia, there has been widespread recognition that customer protection requires an independent utility ombudsman designed to oversee the market and provide independent, timely and competent dispute resolution services to consumers.

When the then coalition Minister for Mines and Energy, Tom Gilmore, introduced the concept of an electricity ombudsman into this House in late 1997, there was no debate on the matter. There was next to no press comment. It was just regarded as a commonsense measure in the context of the establishment of a national electricity market. I have looked at some of the debates in this House on the legislation on 25 November 1997. From the Labor side, the current Minister, the current Premier and the member for Nudgee spoke to the legislation. There may have been others who spoke, but I have read the contributions made by those honourable members. In those contributions, there was not one word of criticism about the electricity ombudsman. No division was called on the matter.

Of course, since then the Minister has come out attacking the concept. In his press release of 19 November, he said that it was "yet another self-serving, costly and bureaucratic entity". Just one week later, the same Minister introduced this Bill into the House, delaying the establishment of an electricity ombudsman's office for a year and then claimed that the Consumer Protection Office model, which he had been praising, would be reviewed against it. I cannot think of a greater sham. What is there to compare? Who will do the comparisons? Will they be independent? Who will make the final decision?

The reality is that this Bill is just buying time for the Minister and the Government. There has been an understandable public outcry about the proposed scrapping of the electricity ombudsman's office, and this Bill is an attempt to bury the issue for the time being. I suggest respectfully to the Minister that this strategy will simply not work.

The consumer movement is well aware of the failings of the model that this Government is putting forward. One only has to look at the response that this model received from Justin Malbon of the Queensland Consumers Association, who was quoted in the Courier-Mail of 20 November as saying that the alternative Consumer Protection Office plan was"completely unacceptable to consumers". In common with many other members of Parliament, I received correspondence from Simon Cleary, the Vice-President of the Queensland Consumers Association. The member for Hinchinbrook has quoted from his letter, but I also would like to refer to just one sentence, because it sums up my concerns. In that letter, Mr Cleary stated—

"At a time when the Queensland public demands transparent decision-making processes from Government, we are concerned that the Department of Mines and Energy is about to adopt an ADR model which is fatally flawed."

I think that it is important to set out in Hansard what Part 8A of the legislation provides, because it helps to explain why the Minister's plans have received such a frosty reception and why there is a pressing need for this part to commence at the first available opportunity. Section 64A of the legislation established both an electricity ombudsman and an office of the electricity ombudsman. Section 65A provided that the ombudsman controls the office, although the section makes it clear that that does not prevent the office being attached to the Department of Mines and Energy for the purposes of being supplied administrative support. Section 64D provides that the Governor in Council is to appoint an ombudsman for a term of up to five years, and later provisions detail the ombudsman's remuneration and allowances. Section 64G limits the ability of the Governor in Council to terminate an appointment to four specified circumstances. Part 8A of the legislation does not give any general power to sack at will, and it is clear that the ombudsman is intended to be given significant security of tenure.

The functions of the ombudsman are set out in section 64I, which include—

investigate complaints about the performance by electricity distribution and retail entities of their obligations under a customer connection or customer sale contract;

resolve disputes between electricity distribution and retail entities and customers about the performance of obligations under a contract;

approve procedures prepared by distribution and retail entities for complaint handling procedures; and

perform any other function prescribed by regulation.

The ombudsman is given the necessary statutory powers to carry out those duties.

One of the most important provisions in the legislation is section 64K, which makes it absolutely clear that the ombudsman is not subject to direction about investigations. That is a critical provision, and I think that it is important to set it out in Hansard in full. It provides that the Electricity Industry Ombudsman is not subject to direction by anyone about—

(a) the way the ombudsman investigates complaints or resolves disputes; or

(b) orders made concerning a dispute referred to the ombudsman; or

(c) the priority given to investigations or the resolution of disputes.

A number of other important provisions should be mentioned. Section 64O deals with the funding of the office and makes it clear that the funding of the office can be by means of a levy on the distribution and retail entities or other specified means. The cumulative effect of the funding sources makes it clear that the funding of the office is intended to come from the industry and not from consolidated revenue.

Section 64P requires the production of an annual report by the ombudsman, which must contain—

complaints received;

complaints by customers investigated by the ombudsman;

disputes referred to the ombudsman;

orders of the ombudsman; and

matters referred to the ombudsman by the regulator.

This report must be tabled in this House.

Finally, section 64R applies certain pieces of legislation to the ombudsman's office, two key ones being the Criminal Justice Act and the Financial Administration and Audit Act. These are not the only provisions dealing with the ombudsman. In fact, a number of other key sections deal with disputes and how they are to be handled. However, it is clear that this model, which is based on the successful ADR models that have operated for some time in the banking and telecommunications sectors, meet the six key benchmarks for industry-based customer dispute resolution schemes, namely, accessibility, independence, fairness, accountability, efficiency and effectiveness. I might add that utility regulators have also developed some other key indicators including consistency, predictability and transparency. In all of these key areas, the electricity ombudsman model is far superior to the model that the Minister has floated.

Before highlighting the differences, one matter that deserves comment is the erroneous and misleading argument the Minister raised that the Government's preferred model would be less expensive. The fact of the matter is that the Minister's model will most probably cost as much, except that, unless the legislation is amended, the costs will come from consolidated revenue. The costs for the ombudsman scheme will not be coming from the Treasury; they will be paid by the electricity industry. From the viewpoint of people paying taxes, the ombudsman model would have been self-funding, which is not what can be said about the Minister's alternative. On top of that, as the member for Hinchinbrook pointed out, the Minister's model is based on six staff, and I doubt

that there would be any more in the ombudsman's office. The Minister's model is based on initially the industry handling complaints, then departmental mediation and then, finally, the appointment of an independent arbitrator.

All consumer commentators have pointed out that the key to the success of any industry-based dispute resolution scheme is consumer confidence that the people carrying out the mediation or arbitration are fair, independent and removed from any pressure to favour one side or the other. Under the model that this Government is determined to foist upon electricity consumers, the mediation of disputes between customers and electricity entities will be performed by officers of the Department of Mines and Energy.

The fact that the same organisation is carrying out mediation and industry regulation is, to quote the QCOSS submission, "an inappropriate and conflicting combination of roles". Unlike the electricity ombudsman, those mediators are public servants who are not independent. They are subject to bureaucratic directions and are part of an organisation that is carrying out a range of duties, some of which do not sit easily will their role. Their activities are not subject to an annual report that focuses on their performance and achievements, and the persons selected for those key and very sensitive duties will be determined by people in the department who may have little appreciation of or sympathy with the concept of a professional, transparent and independent dispute resolution office.

Under the Minister's model there is no independent oversight of what is going on. There is no accountable officer, other than the director-general, who is responsible for the activities of the mediators, at least so far as this Parliament is concerned. Electricity consumer mediation will be just a very small office in a big department, which will receive the degree of funding and consideration commensurate with most ADR offices that are tucked away in large bureaucracies.

Then there are the independent arbitrators that the Minister made much of. Again, we will have a situation where they will be chosen by the department and no doubt their continued utilisation will be at the sole discretion of the department—I repeat: at the sole discretion of the department. I am not suggesting anything improper from the viewpoint of either the department or the arbitrators. However, from the viewpoint of consumers, this lack of independence and the perception that conflicts of duty could arise may well pose problems for the acceptance of the model.

The honourable member for Hinchinbrook referred to the recent Commonwealth Treasury attitudinal survey that highlighted that there is acute consumer sensitivity in relation to the independence of ADR models and confirmed that independence, or at least perceived independence, was critical to consumer confidence in a dispute resolution scheme. Unfortunately, the fact of the matter is that the Minister's model fails from the viewpoint of both independence and accountability. Neither the mediators nor the arbitrators are independent of the department. In the one case they will be departmental officers and in the other they will be dependent on the grace and favour of the department for their continued employment. In comparison, the ombudsman is appointed for a fixed term and is not subject to any form of direction.

Where is there any statutory prohibition on any of the persons in the Minister's model being subject to directions about investigations? There is none. Where is there any provision giving these people a fixed term? There is none. Where is there any statutory provision enabling this Parliament to receive a specific and detailed report on how they are carrying out their duties, so that there is an appropriate degree of parliamentary oversight? There is none.

It is not as if there are not problems with the electricity industry. Again and again there have been reports of disconnections without warning and without reason. There have been reports of massive fee increases. As the industry continues to experience restructuring and as the full impacts of National Competition Policy bite even more, it is essential that there be put in place an effective, efficient, well accepted and respected consumer complaints body that can carry out investigations and deal with disputes.

The Government's model gives to the public servants and arbitrators who will be carrying out these duties over the next 12 months no extra statutory powers to do this critical job. The Government is not giving them statutory independence, nor does it intend to outlaw interference in investigations, which section 64K would do.

Therefore, all in all what is on offer from the Government is inferior to the ombudsman model. In those circumstances, the question arises as to why the Minister and the Government are so keen to bury the electricity ombudsman concept. Why has there been such an effort to dispense with a model that is based on other offices in other States that have worked very well? Why jettison an office that has the clear support of the consumer movement?

Those are questions that the Minister must answer. For the first time he should put forward some credible reasons why the Electricity Industry Ombudsman is being relegated to a legislative vacuum for a further 12 months. On its face, the only apparent reason is that the Minister does not want an independent office that is answerable to the community and the Parliament. I suggest to the Minister that if this is the case, it is a very

short-sighted view that is not in the interests of the industry itself.

Finally, as the honourable member for Hinchinbrook has stated, we see another example of how low on the list of this Government's priorities effective consumer protection is. With respect, I believe that the honourable member for Mount Gravatt, the Minister responsible for advancing the interests of Queensland consumers and who I notice is in the Chamber, has failed dismally to ensure that the Electricity Industry Ombudsman model that is in place in four other States, and which is already on this State's statute books, is brought into effect. I can only assume that she went AWOL at a critical juncture for Queensland consumers, or that she has little clout in a Cabinet that is so ignorant of basic consumer rights that it has ploughed ahead with such a regressive policy.

All in all, this is a very bad piece of legislation. It is yet another regressive initiative from the Minister for Mines and Energy, who seems to have no time for independent officers reviewing his portfolio's performance and who is keen to maximise discretionary power in his own office and that of his department. I totally support the extensive and comprehensive comments of the honourable member for Hinchinbrook. I strongly recommend to the Minister that he listens to the very wise advice that will come from the honourable member for Hinchinbrook during the Committee stage of the debate.