



Speech by

Dr DAVID WATSON

MEMBER FOR MOGGILL

Hansard 17 April 2002

PUBLIC RECORDS BILL

Dr WATSON (Moggill—Lib) (2.50 p.m.): I rise to speak on the Public Records Bill 2001. As the minister has noted, the Electoral and Administrative Review Commission, in its report on archives legislation in 1992, recommended major changes to the 1988 Libraries and Archives Act to modernise legislation governing archives. In 1993 the Public Sector Management Commission, in its review of the Department of Administrative Services, did likewise. These two reviews resulted in the Archives Bill 1995, which lapsed with the change of government in early 1996.

The current bill differs from that originally advanced in 1995 and is much closer to the Public Records Bill 1999—it is not the same in certain crucial aspects—which was introduced into the last parliament and again lapsed because of the election. The 1999 bill largely reflected the model I chose in 1997 for the development of an archives bill. Unfortunately, the current bill departs from the 1999 bill in respect of the appointment process and the statutory position of the State Archivist. This raises fundamental concerns for the independence of the State Archivist under this bill.

When I became the responsible minister in 1997 there were two options considered for proceeding. The first option was to use the Archives Bill 1995 with only minor amendments as the basis for the new legislation. The second was to substantially redraft the bill. The first option would have speeded up the process. The member for Caloundra, as the then Minister for the Arts, was redrafting the library bill and, since the Archives Bill 1995 retained the link between the State Archives and the Library Board of Queensland, choosing this option would have resulted in a quicker passage of the bill.

I decided that Queensland would have a more effective and appropriate piece of legislation if a new archives bill were drafted which would break the nexus between the State Archivist and the Library Board of Queensland. Mrs Sheldon agreed with that position, and I recall that in presenting her library bill to the parliament she foreshadowed the later introduction of a second archives bill.

In deciding on this course of action I was cognisant of the fact that information management was increasingly carried out in an electronic environment, with the use of email, electronic trading, electronic office systems, imaging and so on. There was a litany of electronic devices affecting the way we conducted our daily lives. New legislation was required to reflect the realities of information management and to address the issue of long-term retention of information of enduring value in electronic formats.

Updating the archives act has been a long-held goal of the Records Management Association of Australia and was the goal of the Liberal Party, one which I share with them. In addition, the access provisions for public records under archives legislation needed to be made consistent with the access provisions under the Freedom of Information Act 1992. Also, because the freedom of information legislation is retrospective in its application, provision needed to be made for the eventual release of information as its sensitivity declines over time. Accountability provisions for the destruction of public records needed to be strengthened to assist in the prevention of unauthorised destruction.

The current archiving legislation, which this bill is replacing, makes no provision for ministerial records. As officers of the Crown, cabinet members are key players in the evolution of government policies and programs. The records they generate provide a wealth of information of value to historians and other researchers interested in the special perspective that each minister brings to the issues of the day.

I am pleased to see that the current bill addresses each and every one of these issues. It is a great pity that this significant improvement is tarnished by compromising the independence of the State Archivist. Having made the decision to separate the Queensland State Archives from the Library Board of Queensland, this was an opportune time to consider whether the then administrative location of Queensland State Archives was the most appropriate for the effective administration of archives in Queensland.

There are a number of aspects to this question. The first is the administrative location of Queensland State Archives. Was it appropriate for Queensland State Archives to remain part of the then Department of Public Works and Housing? Second, was there a need to establish a body to advise the minister and the State Archivist on issues concerning the management of public records in Queensland? Third, what was an appropriate avenue for the review of decisions made about the disposal of public records?

I turn first to the consideration of the administrative location of the Queensland State Archives. An important aspect of the accountability of government is to ensure that the custodian of public records, and the person or body that sets the standards for their creation and management, is not subject to influence by government or a department. Public records document the activities of a government and its administration. As such, the possibility for the suggestion of impropriety and cover-up in the management of public records, particularly when considering the disposal of public records, must be minimised. It is for this reason that the primary factor that will determine an appropriate administrative location for Queensland State Archives is the need to ensure that the person or body responsible for Queensland State Archives is seen to be able to act independently of political and administrative pressure. The EARC report I referred to earlier noted at paragraph 4.44—

If the statutory body or person controlling Archives lacks independence, in the sense of being free of direction, there will always be the possibility that political pressure will be brought to bear to approve, *inter alia*, which records should be preserved and which should be destroyed. The effect of this would be that Archives would cease to be a mechanism for accountability and a haven for the heritage of the state.

I considered a number of alternative organisational structures. These were: first, a division within the existing departmental structure; second, an independent statutory archives authority; third, a statutory office of the State Archivist within a ministerial portfolio; and, fourth, a statutory office of the State Archivist that reports directly to parliament.

I decided on the third alternative, namely, a statutory office of the State Archivist within a ministerial portfolio. This option would have established a statutory office of the State Archivist falling within the portfolio of a minister but not forming part of a departmental structure. The State Archivist would be appointed by the Governor in Council for a fixed term. To ensure the independence of the State Archivist, the person holding that office would not be able to be removed under the Public Service Act 1996. This is crucial for effective independence.

The State Archivist would only be subject to directions by the minister on matters that related to the administration of the act, excluding matters concerning the disposal of public records. Any directions given would be required to be given in writing and tabled in parliament. Again, this would ensure the independence of the State Archivist.

The State Archivist would be responsible for the administration of archives in Queensland. The State Archivist would also be responsible for the strategic planning and policy-making activities related to archives. It was envisaged that this role would be carried out in consultation with an archives advisory body whose members represent the various stakeholders with an interest in public records, either directly or through the minister. The State Archivist would be able to employ a staff who would be public servants.

The 1999 bill followed this structure. Unfortunately, the current bill does not. The current bill effectively means that the proposed office of State Archivist is subject to the Public Service Act 1996 and, consequently, to the direction of the minister. This is unacceptable. It is, however, consistent with the Beattie government's fetish for control when it comes to the question of government information. This is particularly crucial when it comes to the issue of public records that are 25 years old or to public records less than 25 years old transferred to the Archivist.

If the State Archivist is not independent of the minister, then no believable public assurance can be given that decisions made by the State Archivist are not influenced by the responsible minister. In order to rectify this fault in the bill, during the committee stage of the debate I will be moving amendments which, in essence, replace section 22 of the 2001 bill with the relevant sections of the 1999 bill, which of course was introduced by the previous minister and now Deputy Premier. It is crucial to understand why these amendments are necessary. Even though section 27 of the proposed bill states that the State Archivist and staff are not subject to the control or direction of a minister or department in relation to making decisions about the disposal of public records, the State Archivist is open to subtle pressure from a minister or director-general. For example, the Public Service Act 1996

permits a public servant to be made redundant or to be redeployed, amongst other things. These can be used as subtle mechanisms for influencing the decisions of the appointed person.

On the other hand, the proposed amendments make it clear that the State Archivist's appointment can only be terminated on limited grounds which involve serious misconduct or serious incapacity. This proposal is consistent with other statutory appointments such as Parliamentary Counsel, Public Trustee and Director of Public Prosecutions, although I recall the latter has even more safeguards for independence. The really interesting question is why the change between the 1999 bill and the 2001 bill. Why is the current Beattie government so intent on compromising the independence of this important position? Why the retrograde step in this bill?

One can only assume that while the numbers in the parliament were close the Beattie government was prepared to pay more than lip-service to the concept of accountability. But now that the numbers in the parliament substantially favour his government, a thin veneer of accountability is sufficient. This latter approach is reminiscent of the Beattie government's approach to freedom of information, electoral reform and of course accountability in general. Slowly but surely, a lead curtain is descending on the openness and accountability in Queensland's government. This revised bill is simply another small step in that direction. It is an attempt to censor the historical record of Queensland.

While we will not be opposing the second reading of the bill, the Liberal Party will be moving the foreshadowed amendments in the committee stage. Depending upon the minister's response, we will reserve the right to oppose the third reading and are prepared to oppose it if either the amendments are not accepted or the minister's explanations are simply unsatisfactory.