



Speech by

GARY FENLON

MEMBER FOR GREENSLOPES

Hansard 7 October 2003

COMMERCIAL AND CONSUMER TRIBUNAL REGULATION 2003

Mr FENLON (Greenslopes—ALP) (10.13 p.m.): I rise to speak against the disallowance motion moved by the member for Callide. In doing so, it must be pointed out that this is a very simple matter. It is a matter where the opposition is trying to chase the horse that has well and truly bolted in that this is simply a regulation in relation to the legislation that is in place. The time to speak against the intent of that legislation was when that legislation was passed. This particular disallowance motion moved on 20 August 2003 against the Commercial and Consumer Tribunal Regulation 2003, which was approved by the Governor in Council on 26 June 2003 and commenced on 1 July 2003, is a regulation made under the Commercial and Consumer Tribunal Act 2003 which establishes the relevant consumer tribunal.

The Scrutiny of Legislation Committee recently wrote to the Minister for Tourism and Racing and Minister for Fair Trading raising issues about the performance management provisions of this regulation. The committee's main concerns were that there were no provisions about the consequences of a poor performance appraisal, what would happen to the information obtained during a performance appraisal, what the power of the chairperson was to develop a code of conduct in the regulation and not the act, and what the consequences of non-compliance with the code of conduct would be. The chairperson of the tribunal alone manages the performance of members and the minister has no role in this regard. The performance appraisal of tribunal members is a new feature for tribunals in the minister's portfolio and comes about due to a recommendation of the tribunal's review which led to the establishment of the Commercial and Consumer Tribunal.

Tribunal members perform a crucial role in the delivery of fair and just outcomes for businesses and consumers who are a party to a tribunal proceeding. It is therefore imperative that members' performance be appraised, and regulation is thus essential as it prescribes the process for this to occur. The code of conduct is a management tool the chairperson may choose to use in their role as managing member performance and it is not compulsory for a code to be developed. The information obtained during a performance appraisal would not be used for any purpose other than one related to the performance of that particular member. The consequences of a poor performance appraisal or non-compliance with a code of conduct have not been specified in the act or regulation. This is because both situations are part of the chairperson's range of management tools in managing member performance.

To specify a range of consequences would not provide the flexibility the chairperson needs in order to best carry out this particular role. However, the act specifies that a member's appointment can be terminated by the Governor in Council under a range of prescribed circumstances. For example, if a member performs their role inefficiently, this may be grounds for termination. This would be an option of last resort when other standard management practices in relation to that member's performance had failed. The regulation establishes vital management tools for the chairperson to use and to disallow the regulation would be to prevent the chairperson from undertaking this statutory role in managing member performance, and it certainly would be contrary to the intent of the act and disable that particular part of the act. I therefore recommend that this motion be rejected by the House.