



Speech by

Mark McArdle

MEMBER FOR CALOUNDRA

Hansard Wednesday, 7 February 2007

MOTION: ATTORNEY-GENERAL, MOTION OF NO CONFIDENCE

Mr McARDLE (Caloundra—Lib) (5.40 pm): I second the motion moved by the member for Moggill. It is critical to understand that the Attorney-General in this state has two very critical roles: firstly, he is the first law officer; secondly, he is clearly a member of cabinet. The Attorney-General must at all times put aside political allegiances and be required to act in the interest of the institutions he has sworn to uphold, in particular the judicial system.

On 31 October 2006 in this House, I made a number of statements in relation to the office of the DPP. At the end of that address, I quoted a 1994 New South Wales Court of Appeal decision in which it referred to the DPP in these terms—

What is the object of having a Director of Public Prosecutions? Obviously it is to ensure a high degree of independence in the vital task of making prosecution decisions and exercising prosecution discretions.

Critically, the office of the DPP is an independent body constituted by an officer appointed to deal with the most serious criminal matters in this state. In comparison with the DPP, the role of the Attorney-General is anything but that of a prosecutor except in the rarest of circumstances, and certainly the Attorney-General should not act in a manner that is at odds with the Director of Public Prosecutions where that person has made a determination and fault cannot be established in the process of that person reaching their decision.

In fact, the director's position is so fiercely guarded as being independent that section 7 of the Attorney-General Act 1999 states clearly that the Attorney-General may not direct or instruct the director to present an indictment. It cannot get plainer than that. However, it is clear that matters in this state have progressed far beyond that to the point at which the director's position has been seriously compromised. What has been enshrined in legal precedent for years, that is the separation of powers, has been gutted as a consequence of recent actions.

We need to think very carefully about what the phrase 'separation of powers' means. The pure doctrine of the separation of powers classifies what I call governmental power into three traditional powers, or three traditional bodies in Queensland: this House—the Assembly—the executive and the state courts. At the Commonwealth level, grey areas that surround the three branches have been resolved by the High Court, but there are still issues with regard to the overlap of those three levels in the states. That position has still not been resolved. It is that difficulty that places an even greater need for scrutiny in regard to actions undertaken by an Attorney-General. In my opinion, it is even more important that actions taken by him protect the principle of the separation of powers, given the existence of the grey areas that exist at state level.

As I said, under legislation there is no question that it is the right of the Attorney-General to take legal proceedings against a person. But that only further enhances the necessity for such action to be taken only in the most exceptional and unusual circumstances. In particular, section 7 of the Attorney-General Act grants the Attorney-General the right to present an indictment which in the normal course of events would be an ex officio indictment.

To present an ex officio indictment in general is a critical step for the reason that it removes the right in the normal circumstances of an accused to what is traditionally a committal or preliminary hearing. The

committal is the opportunity provided to the defence to test the evidence of the Crown and, on occasions, have matters discharged.

The High Court has been very careful when considering the determination by the Attorney-General to present an ex officio indictment. The High Court in the decision of *Barton v. The Queen* made it very clear that it will uphold the right of any Attorney-General to present such an indictment. But it stated—

The courts exercise no control over the Attorney-General's decision to commence criminal proceedings, but once he does so, the courts will control those proceedings so as to ensure that the accused receives a fair trial.

I accept—

Mr Beattie: That's exactly what's going on.

Mr McARDLE: I ask for the courtesy that the Premier asked of this side of the House.

Mr Beattie: Okay. Fair enough. Fair point.

Mr McARDLE: I thank the Premier. As I said before, there is no doubt that the Attorney-General has the legal capacity to take this step, but in doing so he removes the serious right that rests with every defendant to test the evidence before going to the ultimate trial. This power—

Time expired.