



Speech by

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Mr HORAN (Toowoomba South—NPA) (3.25 pm): This bill amends a substantial number of pieces of legislation. It is an omnibus bill and it continues the trend of the Labor government of putting a number of amendments of some substance into an omnibus bill. An omnibus bill is usually a bill that covers amendments of a technical nature. Yet here we see contained in this bill a large number of quite serious amendments. The opposition agrees with some of these amendments; it does not agree with other amendments. As the shadow Attorney-General has said, because there are some amendments in this bill that the opposition does not agree with, we will vote against the bill.

This bill covers some 28 pieces of legislation that come under the jurisdiction of the Justice portfolio. One of the key amendments in this bill relates to the appointment of judicial registrars, which I have no doubt the Attorney-General will explain to some extent in his summing-up. As I understand it, these are appointments that are made by the Attorney-General in consultation with the Chief Magistrate. Those people who are appointed must be eligible for appointment as a magistrate. I think, in that process, it is going to be very important that we ensure we maintain the very highest of standards.

The amendments contained in this bill that relate to the Bail Act give us some concern. I have a lot of sympathy for the argument that we do not want to see police driving long distances and often at night, as the minister mentioned in his second reading speech, to have a person brought before a court. We might have a lack of courthouses and a lack of resources because of government neglect or courthouses being closed in the past by the Labor government, particularly under Goss and Rudd. But one of the important things about our justice system is its formality and presence. It provides structure and status. It is part of the process of people who have been recalcitrant in making up their minds that they will not do what they have done again because they do not want to go through this whole process again. This bill provides an amendment whereby the granting of bail can be done through the relatively easy process of making a phone call compared to the more frightening, if you like, process of being brought before a magistrate, having a police officer reading out the details of the charge and the applicant, which shows that this is pretty serious business and that the wrongdoing is going to be treated in a highly formal and structured way. That causes the opposition a lot of concern.

Today, I want to comment on the removal of judicial review from the building tribunal. A fundamental tenet of justice is the people's right of review. In this parliament we hear a lot about justice, people's rights, the separation of power and all those sorts of things. The legislation that we are debating today removes one of those fundamental principles of justice.

The Building Tribunal has provided an excellent service. In recent times a merge has taken place involving the tribunal, the auctioneers, agents and motor dealers acts and also Aboriginal land titles, although the acts have remained separate. One could not get three more disparate systems than building and construction, auctioneers, agents and motor dealers, and Aboriginal land titles. I understand that the system has become weaker because of that and because of its lack of speciality, which is what made it such a good system when operations were conducted solely through the Building Tribunal.

Perhaps because of a lack of proper remuneration, over a period the tribunal has moved from employing full-time people to having a number of part-time members. The tribunal deals with a lot of very difficult and complex matters. Bearing all that in mind, the right of appeal is extremely important.

It is also important to consider the exclusivity of the Building Tribunal with regard to domestic construction. If someone has an issue with the building of their house, the only place that they can go to is the Building Tribunal. With a commercial construction, there are alternative avenues to the Building Tribunal. People who have an issue with domestic work, that is, the construction of their home, can go only to the Building Tribunal. That makes it all the more important for those people to have a right of appeal.

Matters that come before the Building Tribunal and construction contracts are often very complex. Many of them come under a principle of fair and reasonable price, which may not even be in the contract itself. However, because of something else that may have happened in the construction, the principle of fair and reasonable price comes into it. It is very complex and it requires very careful and learned consideration by the tribunal and, likewise, very careful representation by the legal profession. It really is a travesty to remove this right of appeal, particularly bearing in mind how important home construction is to people.

If this amendment is being made purely as a money-saving device, it is probably penny-wise and pound-foolish. The most important thing is to get the right result and the right answer, and for people to be given every proper opportunity to get justice. If we do not have a right of appeal, we create injustice.

The tribunal can get it wrong. As I said, the tribunal deals with very complex matters and when it does get it wrong, the people who have brought a matter before the tribunal must have a fundamental right—a fundamental tenet of justice—to appeal. There are appeal processes in every other facet of the justice system, yet in this particular area that process will be ripped away. These matters can involve considerable financial loss, particularly when one considers the price of building domestic housing and the importance of housing to people.

This matter also infringes separation of powers. The simple interpretation of the separation of powers is that the parliament sets the laws, but does not interfere in the application of those laws or the operation of the Police Service. There is a complete separation of those three important functions—that is, the lawmakers, those who apply the laws and those who do the operational police work.

When a parliament takes away part of the justice system, an interpretation of the separation of powers quite correctly states that that is interfering with the principle of the separation of powers. That is what is happening in the parliament today. Rather than just setting the law, we are taking away a very important part of the justice system, which is the right of appeal. More importantly, we are taking away the right of appeal from people who have a domestic housing matter before the tribunal.

I wanted to comment on that issue in today's debate. I call on this parliament to consider this matter. It is worthwhile looking at this part of the legislation and ensuring that the right of appeal is not removed.

One thing that can upset people more than anything else is to have something go wrong with the construction of their house. All sorts of systems have been put into place, such as the licensing of builders and so on, to ensure the very best possible protection for people undertaking the most important project of their lives and that of their families, which is to put a roof over their heads and to build their family home. Yet we are taking away people's right to appeal to the Building Tribunal.

As I said, there is an exclusivity issue here as the Building Tribunal is the only place one can take a domestic construction matter. If this legislation is passed without this clause being withdrawn or amended, the right of people to appeal to the Building Tribunal is gone. That is wrong. It is particularly unfair to those who are paying for domestic construction.