



Speech by

Peter Wellington

MEMBER FOR NICKLIN

Hansard Tuesday, 6 February 2007

SEPARATION OF POWERS

Mr WELLINGTON (Nicklin—Ind) (12.39 pm): Yesterday the parliamentary Scrutiny of Legislation Committee met and considered a number of bills which have been introduced into parliament and are now ready to debate. As a member of that committee, I telephoned the committee office prior to the meeting and conveyed my apology for being unable to attend because of another commitment.

During the holding of that committee meeting in Brisbane, I joined with over 500 Queensland police officers who attended a Police Union meeting on the Sunshine Coast. I do not intend to repeat here the issues raised and discussed at that meeting because I note the rulings made this morning by the Speaker. Suffice to say, I use this opportunity to urge all members of this government and all members of this parliament to reflect on the issue of government intervention and interference in decisions made by the Office of the Director of Public Prosecutions.

I table a 10-page paper prepared by Professor Gerard Carney on the topic of the separation of powers. The paper states—

In Queensland, the doctrine of separation of powers appears not to operate as a legal restriction on power but it provides the basis for important principles which the law protects, such as the independence of the judiciary, and for certain political conventions. Because it is not a legal restriction in Queensland, serious consideration has to be given to other controls on power, such as a committee system for parliamentary review of executive action. Moreover, there are other areas within the constitutional and political system of Queensland where it would seem desirable that the doctrine be put into effect even as a matter of political practice. These areas will be explored towards the end of this paper.

What I hope this paper achieves is to put the doctrine of separation of powers into its proper context as an *ideal* of good government, and to demonstrate that it provides a basis for the adoption of structures, processes and controls which protect liberty now and in the future. As our system of government evolves, new conventions, political practices and even at times new legal rules, will need to be devised to protect the liberty of the people. The doctrine of separation of powers provides the justification for these measures and helps to determine their nature and scope. There is a need to monitor our political system, be vigilant about liberty and advocate new measures when this liberty is threatened. The doctrine of separation of powers is the key to this whole process.

Tabled paper: Copy Queensland Parliament fact sheet titled Separation of Powers.

I also table a two-page fact sheet on the role of the Queensland Office of the Director of Public Prosecutions which states—

The Office carries out the work of the Director of Public Prosecutions, who represents the State in serious criminal cases.

The Director is responsible for providing the State with expert legal representation so that the evidence against someone accused of a serious crime can be properly presented to the court.

...

Lawyers from the ODPG act for the State at several types of court hearings: committal hearings, trials, sentence hearings, appeals, bail applications and court 'mentions'.

Tabled paper: Copy fact sheet from Department of Justice and Attorney-General titled The Office of the Director of Public Prosecutions.

I understand our Attorney-General recently said, 'The best legal minds often differ on matters of law. Even in the High Court of Australia it is common for differing judgements to be recorded.' I use this

opportunity to call on the government to bring on a debate about the issue of political interference in the decisions made by the Director of Public Prosecutions and the apparent willingness of the government—

Mr DEPUTY SPEAKER (Mr English): Order! I ask the member for Nicklin to be very careful where he is going with this conversation.

Mr WELLINGTON:—to shop around for another legal opinion—I reflect on the comments already reported by the Attorney-General—when the government receives advice from the Director of Public Prosecutions which it does not like. A senior barrister is reported as recently saying, ‘At some stage if the executive government can review the prosecutor’s decision’—

Mr DEPUTY SPEAKER: Order! Member for Nicklin, you are commenting on matters—

Mr WELLINGTON: No, I am not, Mr Deputy Speaker.

Mr DEPUTY SPEAKER: Order! Do you wish to disagree? The Speaker was very clear in his ruling this morning. To be general in nature is fine. The comments you are making now are not general in nature. Please continue.

Mr WELLINGTON: This is general in nature, Mr Deputy Speaker. A senior barrister is reported as recently saying, ‘At some stage, if the executive government can review the prosecutor’s decision not to prosecute someone, does that mean they can review a decision to prosecute?’ The question we have to consider is: where does it stop?

The other important aspect of the system of separation of powers is the issue of contempt. I table for the benefit of all members a 13-page extract from *Halsbury’s Laws of Australia*, which in other words is a legal encyclopedia.

Tabled paper: Copy extract from Halsbury’s Laws of Australia regarding contempt of court.

I will quote two extracts from the encyclopedia for the benefit of all members. It states—

Criminal contempt involves acts or words which interfere with or tend to interfere with the administration of justice—

Time expired.