



Speech by

**Andrew Powell**

**MEMBER FOR GLASS HOUSE**

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## **JUSTICE AND OTHER LEGISLATION AMENDMENT BILL**

**Mr POWELL** (Glass House—LNP) (2.36 pm): I rise to speak to the Justice and Other Legislation Amendment Bill, which deals with minor technical arrangements to various pieces of legislation. I appreciate the efficiency of an omnibus bill such as this, but it does require particular scrutiny given the complexity and range of acts it amends. One series of amendments that require some scrutiny today are those amendments to the Industrial Relations Act 1999, specifically those clauses which deal with the role of an industrial relations commissioner simultaneously holding another office and with the commissioner simultaneously holding the particular office of Workplace Rights Ombudsman. Clearly, with the transfer of IR powers to the Commonwealth there is an issue around the workload for IR commissioners and the Ombudsman himself. There potentially is a need to allow such individuals to perform their roles on a part-time basis, but the question is: can you perform the duties of both roles part time simultaneously?

The Scrutiny of Legislation Committee's *Legislation Alert No. 12* draws our attention to these clauses on the basis that they may make rights and liberties dependent on an administrative power which may not be sufficiently defined. But another concern here is the independence of ombudsmen as per section 5 of the Ombudsman Act 2001. The rationale underlying the role of the Workplace Rights Ombudsman is that it is to be wholly independent of the executive and other branches of government. Although it is acknowledged that measures such as these which are proposed to be included will secure independence on paper, there is no guarantee that this will happen in practice. The rationale for this position is the same one underlying section 72(a) of the Ombudsman Act in which ombudsmen will no longer be able to hold office if they nominate for election to a parliament. Namely, it is to avoid potential conflicts of interest. This is an important prescriptive measure.

Furthermore, it is submitted that these amendments could be in conflict with section 58 of the Ombudsman Act which states that the Ombudsman is not a Public Service employee, even though it is acknowledged that many ombudsmen actually do come from the Public Service.

**Ms Grace** interjected.

**Mr POWELL:** I take that interjection from the member for Brisbane Central. I look forward to further clarification from the Attorney-General himself. This is presumably done in order that the ombudsmen have a better grasp of the implications of their role and that they will be better suited to make decisions having regard to considerations which affect the Public Service. However, giving persons simultaneous access to the role of Ombudsman as well as a commissioner, in which the decision-making power and interests of the latter are significantly more onerous than that of a public servant, will only succeed in complicating the role of both offices and place unnecessary extra burden on the person who holds both offices.

Two administrative law scholars, Peter Cane and Leighton McDonald, have said that the office of the Ombudsman may be understood as part of a system of political accountability centred on parliament. They also note that the current nature of the relationships that ombudsmen need to cultivate with government agencies may seem problematic. Furthermore, and most importantly, they state that successful parliamentary scrutiny of the Executive depends on the maintenance of a degree of adversariness in the relationship between overseer and overseen, and that the current structure of the institution of the

Ombudsman already seems to make this type of relationship difficult to develop and realise. Therefore, the consequences of this process of counter demarcation will undoubtedly take the form of straining this already tenuous arrangement to the point of absurdity. The cumulative effect of burdening a person, in practice, with asymmetric responsibilities and goals of occupying both offices, despite the provisions seeking to prevent this, and the erosion of the principles underlying the current institutional arrangement will fall hardest on those who feel it necessary to complain about the executive. In conclusion, I ask the Attorney-General, in his summation, to give consideration to these concerns.