



# Legislative Assembly

## Director Of Public Prosecutions

### Amendment (Parliamentary Joint Committee) Bill Hansard

#### Extract

05/04/2001

#### Second Reading

**Mr HARTCHER** (Gosford) [10.15 a.m.]: I move:

That this bill be now read a second time.

For some years now, the Director of Public Prosecutions [DPP] has been the subject of community comment and concern. The comment has been because certain decisions taken by the DPP have not been seen to either represent or protect community interests and values. The concern has been because the function of the Director of Public Prosecutions is to uphold the rights of the community to be protected against criminals and criminal actions, and to feel secure in the knowledge that when criminals are caught, they will be judged before the law. However, increasingly this is not the case. A number of well-publicised cases where the DPP refused to move a matter to trial or to appeal against a sentence considered too lenient by the community highlights the need for accountability of this office\_to Parliament and, through Parliament, to the people of New South Wales.

I could cite any number of cases to illustrate my point. I could, for instance, cite the sentences handed down to the killers of Mark Evans, the truck driver who died when two young men recklessly threw rocks at passing cars from an overhead bridge. The sentencing judge took into consideration the youths' intellectual abilities and the fact they pleaded guilty, even though one of the accused changed his plea halfway through the court proceedings. The two men received sentences of two and a half years, and five years and three months. "Not enough" screamed the headlines, on radio, television and print media alike. Even the Premier of New South Wales expressed outrage at such lenient sentences and by such miscarriage of justice. The DPP refused to appeal.

I could cite also the sentences given to Michael James Ryan, who killed Arthur Wong and Susan Barnes when he deliberately drove his semitrailer down the wrong side of the road on 18 September 1998—for that, he will serve just five years and two months. Or I could cite the decision last year by the DPP not to send to trial Jeffrey Ian Gilham for the 1993 killing of his parents and brother, despite recommendations by the Coroner that the matter be referred to trial. I could go on and on. But the point is this: the Director of Public Prosecutions cannot be both judge and jury in the process of justice. Accountability of this office has been of concern for years now. The fact of the matter is that this office is funded by the taxpayers of New South Wales, and the responsibility of this office is to carry out public duty.

The Coalition is determined to ensure that when decisions are made by the DPP\_particularly when they go against the tenet of community expectations and values\_that the DPP is able to explain, and if necessary justify to an appropriate body, the reasons for such decisions. The Director of Public Prosecutions Amendment Bill will ensure this end is achieved. It will not remove the independence of the Office of the Director of Public Prosecutions, but will make it accountable to a parliamentary oversight committee, in much the same way that the Office of the Ombudsman and ICAC is accountable now. The object of this bill is straightforward. It will amend the Director of Public Prosecutions Act 1986 to establish a parliamentary joint committee, to be known as the Committee on the Office of the Director of Public Prosecutions.

The committee will recommend, on an annual basis, the amount to be appropriated out of the Consolidated Fund for the Office of the Director of Public Prosecutions. The committee will also: comment generally on the budget of that office; have the power to veto the proposed appointment of a person as Director of Public Prosecutions; monitor and review the exercise by the Director of Public Prosecutions of the Director's functions under the Director of Public Prosecutions Act 1986 and any other Act. This bill is not a new bill. It was introduced in 1995 and 1997 respectively by the honourable member for Epping, Mr Andrew Tink, whose work on this issue has been commendable. At the time of that introduction the honourable member noted an important point. He said that the committee's process of monitoring and reviewing decisions made by the DPP would not extend to recommending that "the DPP makes a decision that relates to the institution or cessation of prosecutions or proceedings in a particular case, or to reconsidering any such decision"

As the honourable member for Epping rightly stated, the powers and functions of the committee, other than the function of monitoring and reviewing the public funding of the office, are in other respects similar to the functions of the existing joint committees under the Ombudsman Act 1974, the Independent Commission Against Corruption Act 1988 and the Health Care Complaints Act 1993. However, what the committee will do is to ensure proper accountability of this office. It will provide an appropriate mechanism for debate surrounding legal policy matters between the DPP and the community. It will ensure that when decisions taken by the DPP are broadly

considered lenient or inappropriate, that the committee can hear first hand the reasons such decisions were taken.

If the committee, upon review of that decision, is of the opinion that there was not sufficient justification, the committee may recommend that the Attorney General ask the DPP to reconsider the decision made. Justice must be answerable to the victims, to society and to the law. This bill will help to preserve the proper process of justice in our society. Schedule 1 inserts a new Part 4A into the Director of Public Prosecutions Act 1986. Clause 30A provides for the establishment of the committee of the office for the Director of Public Prosecutions as a joint committee of the Parliament. Clause 30B sets out the functions of the joint committee. Those functions include the recommending of the amount of money to be appropriated annually from the Consolidated Fund to fund the operation of the office, and commenting generally on the budget of that office.

Under clause 30C notification of the committee's recommendation of funding must be given no later than five months before the beginning of the financial year to which it relates. Such a function will not only ensure proper accountability of expenditure and operations, it will also ensure that the office receives sufficient funding to carry out the role of first prosecutor of this State. Funding of the office of the DPP has been in crisis now for some years. The current DPP has been quite outspoken about this issue. On 27 November 1999, the *Sydney Morning Herald* ran the headline "Criminal crisis is looming, says DPP". The 1998-99 annual report went further. In that report the DPP said:

The straightened times to which I referred in the last annual report have become tighter. We are facing challenges of Olympic proportions.

While an additional \$5.5 million was provided to the office in the last State budget, the effectiveness of the operation and current amount of funding provided to the office must have an ongoing avenue of review. The joint committee's proposed function to comment generally on the budget of the office of the DPP will also ensure that funding is spent on criminal prosecutions, and not on numerous overseas trips or unnecessary bureaucratic administration. The 1999-2000 annual report showed that the DPP took seven overseas trips and visited eleven countries, costing the taxpayer more than three-quarters of a million dollars. That is the same office that only the year before cried insufficient funding to prevent a criminal crisis from looming. The Government cannot have it both ways. It can no longer refuse to allocate sufficient and recurrent funding to allow the DPP to do his job well, while at the same time providing no accountability for the way that money is spent. The community has a right to ask—and receive an answer—as to the validity of the State's top prosecutor spending such an amount on overseas travel. Under this bill, such questions could be asked, and answered.

Clause 30B provides that the joint committee monitor and review the exercise by the Director of Public Prosecutions of his or her functions and report to Parliament on such matters relating to the DPP as the committee considers should be brought to Parliament's attention. Those functions are in many ways similar to parliamentary oversight in England by the Home Affairs Committee of the House of Commons. As part of its review of the office of the DPP the committee will examine annual and other reports of the Director of Public Prosecutions and report to Parliament on those reports. When the honourable member for Epping first spoke on this bill, he pointed out that such a function will enable the standing committee to investigate and oversee the DPP by reviewing the legal policy issues which are raised, without getting into operational matters or directing the DPP.

The committee will also report to Parliament any changes that are considered appropriate to the functions, the structures and the procedures of the office of the DPP. In that way, the somewhat rampant decisions and policy directions increasingly taken by the DPP will at least be held up to scrutiny. People in New South Wales will no longer feel that the process of justice has been held up to ransom, or that their values are no longer represented in the criminal justice system. The process of justice through the courts, is, after all, intended to reflect the values of what our society considers to be acceptable behaviour. It is incumbent upon law officers to ensure that justice is not only done, but is also seen to be done.

Under clause 30B, the joint committee will also inquire into any question in connection to its own functions that is referred by both Houses of Parliament. This will ensure that the committee acts when requested by Parliament. Clause 30D will enable the joint committee to veto the proposed appointment of a person as Director of Public Prosecutions. This provision is no different to that given to the oversight committee for the Office of the Ombudsman. Once appointed, the DPP has the protection of judicial tenure. A joint committee will develop expertise of understanding of the roles, the responsibilities and the functions of the DPP. Regarding that, the honourable member for Epping said:

Importantly, if a parliamentary committee is to effectively exercise that function, which it has at law, to possibly veto Cabinet's proposed appointment of a DPP, the committee should have some expertise and understanding about what the DPP does ... as the ICAC and Ombudsman committees have such understanding about their relevant bodies through an ongoing relationship with the statutory office holder.

Clause 30E sets out the make-up of the committee, which will consist of three members of the Legislative Council, to be appointed by the council, and eight members of the Legislative Assembly, to be appointed by the assembly. Clause 30F outlines the circumstances in which a member of the joint committee ceases to hold office, and the stipulations for filling any vacancies. Clause 30G provides for a chairperson and vice-chairperson of the joint committee. Clause 30I outlines the mechanism by which the joint committee can report to Parliament when Parliament is not sitting. Clauses 30J, 30K, 30L and 30M outline procedural details of the committee's operation, including procedures for evidence in public and in private.

Last month the Carr Government announced its intention to create a management board to oversight the Director of Public Prosecutions. In doing so, the Government is treading on dangerous ground. Such a plan will

compromise the judicial independence of the DPP, because it will make the office beholden to Government and government process. Accountability must be to the people of New South Wales through their elected representatives, not to government bureaucrats on short-term contracts. It is important that the DPP is accountable to Parliament, but independent from Government. Politicians must not run the judicial process: the judiciary must.

Ultimately, if the DPP cannot control his staff or his budget because it is under the control of a management board that is really nothing more than government officials, the independence of the prosecutorial system itself will be seriously compromised. However, under the Coalition's Director of Public Prosecutions Amendment Bill, judicial independence will remain, accountability will be preserved, and justice will not only be done, but be seen to be done—in the eyes of the community, the victims and indeed, even the criminals. I commend the bill to the House.