SELECT COMMITTEE INTO PUBLIC SECTOR EXPENDITURE

Establishment — Amendment to Motion, as Amended

Resumed from an earlier stage of the sitting.

HON PETER COLLIER (North Metropolitan — Minister for Energy) [5.33 pm]: Prior to question time I was talking about the separation of powers and my strong feeling that the proposed select committee will compromise the separation of powers within Western Australia. There is a bit of a problem when we blur the lines of responsibility in the different levels of government, and when one level encroaches on another, we go down a very slippery slope. I just draw the house’s attention to the following article to reinforce what I have just said on the separation of powers. The article from Oz Politics, under the heading “Separation of powers”, reads —

Introduction

The doctrine of the separation of powers had a celebrated moment in the history of Queensland politics. It occurred in December 1988, at the Fitzgerald Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct. In spite of his 19 years experience as the Premier of Queensland, the by then retired Sir John Bjelke Petersen was unable to explain the doctrine to the Inquiry. Quite simply, the ex-Premier had no idea. Evan Whitton (1989: 184-185) reported part of the exchange as follows:

Michael Forde (Counsel examining Sir Joh Bjelke Petersen): What do you understand by the doctrine of the separation of powers under the Westminster system?

Sir Joh Bjelke Petersen: The Westminster system? The stock?

Forde: The doctrine of the separation of powers under the Westminster system?

Bjelke Petersen: No, I don’t quite know what you’re driving at. The document?

Forde: No, I’ll say it again. What do you understand by the doctrine of the separation of powers under the Westminster system?

Bjelke Petersen: I don’t know which doctrine you refer to.

Forde: There is only one doctrine of the separation of powers.

Bjelke Petersen: I believe in it very strongly, and despite what you may say, I believe that we do have a great responsibility to the people who elect us to government. And that’s to maintain their freedom and their rights, and I did that—sought to do it—always.

Forde: I’m sure you’re trying to be responsive to the question, but the question related to the doctrine of the separation of powers or the principles —

Bjelke Petersen: Between the Government and the—is it?

Forde: No, you tell me what you understand.

Bjelke Petersen: Well, the separation of the doctrine that you refer to, in relation to where the Government stands, and the rest of the community stands, or where the rest of the instruments of Government stand. Is that what—?

Forde: No.

Bjelke Petersen: Well you tell me. And I’ll tell you whether you’re right or not. Don’t you know?

Less than a year later in September 1989, when Russell Cooper replaced Mike Ahern (who had replaced Bjelke Petersen in December 1987), ABC journalist Quentin Dempster asked the Premier-elect the same question. “What do you understand by the doctrine of the separation of powers under the Westminster system?” For all to see, the question was met with a similar display of incomprehension from Cooper.

By some quirk of history, 1989 was also the tricentenary of the birth of the French writer Charles Louis de Secondat, Baron de Montesquieu.

My French is not that flash! My parlez-vous is not that flash!

Hon Kate Doust: I think you need a few more lessons. Alliance Française de Perth does fantastic classes.

Hon Ken Travers: I’m sorry, I missed that. Could you say that again?

Hon PETER COLLIER: It was Montesquieu. That is all I know. I have only ever referred to him as Montesquieu or Baron Montesquieu.

Hon Ken Travers: French, ocker style!
Hon PETER COLLIER: Kalgoorlie style. It continues —

Although the idea of a separation of powers has a long history that can be traced back to Aristotle, and is clearly evident in John Locke’s 1690 Second Treatise of Civil Government, it is particularly associated with Montesquieu.

I am going on about this for a reason and I will get to it in a moment.

Hon Ken Travers: It’s okay; I don’t mind entertaining filibusters.

Hon PETER COLLIER: This is very relevant. Hon Ken Travers has no idea; he is trying to compromise the debate! It continues —

Montesquieu described an ideal type of constitution developed from his understanding of the English constitution as it was in the early part of the 18th century. In chapter 6 of book XI of *The Spirit of Laws*, he identified three separate functions of government: what we today call the legislative, the executive and the judicial functions of government. Although he did not use the term “separation of powers”, Montesquieu argued no two, let alone three, functions should be under the control of one branch of government.

That is my point.

Hon Ken Travers: Did you give this lesson in term 2 or term 3 of politics?

Hon PETER COLLIER: No, in first-year politics 100.

Hon Ken Travers: Politics 100, was it?

Hon PETER COLLIER: Rolf Pervan taught me this—may he rest in peace—and Barbara Hamilton. It was fascinating. That is where I got the basis of my —

Hon Kim Chance: I am glad the honourable member brought that up.

Hon PETER COLLIER: What is that?

Hon Kim Chance: About how fascinating it is.

Hon PETER COLLIER: It was absolutely fascinating and I have to say that it is particularly pertinent to this motion, because what we are doing here is compromising the separation of powers—make no bones about it.

Hon Ken Travers: Ha-ha!

Hon PETER COLLIER: We are.

Hon Ken Travers: Even you are laughing now.

Hon PETER COLLIER: I am not.

Hon Ken Travers: You are.

Hon PETER COLLIER: I am genuinely not. I am genuinely concerned that we are actually —

Hon Ken Travers: You can’t keep a straight face.

Hon George Cash: Hon Ken Travers needs another lesson.

Hon Simon O’Brien: You’ll have to start again, Peter; I’m afraid you’ve lost track.

Hon PETER COLLIER: I will have to go over it all again.

Hon Simon O’Brien: Yes, you’ll have to start again.

Hon PETER COLLIER: Let me just say that what actually happened in the evolution of liberal democratic systems of government was —

Hon Kate Doust: Is this an essay you wrote?

Hon PETER COLLIER: No. What we are doing here with this motion is getting to the point that the executive level of government, of which the front bench where I sit is part, ideally should be morphed into the legislative level of government. What happens, of course, is when we get to the point of too much compromise in the roles and responsibilities of both those areas, we compromise our true liberal democratic system of government. Because the executive is within the legislature, which it is in WA, we already have a bit of a blurring of the boundaries. In the United States, as members would all know—we are finding this out at the moment—the executive is completely separate from the legislature. In Australia we have a situation in which the executive and legislative branches of government are the same in a particular capacity; that is, the ministers sit in the legislature. This motion asks the executive to compromise its decision-making process. The opposition wants to
call senior members of the public service to make comment on government decisions and policymaking. It wants
to go through the whole cabinet and executive decision-making process, and for what? To get an outcome that
the opposition already knows. The government has already had all the resources of government —

Hon Peter Collier: We don’t know the extent of what you guys will do.

Hon PETER COLLIER: Let me get this straight. The former Treasurer committed the previous government in
the last election to an efficiency dividend of $1.5 billion without a cast-iron guarantee that he could afford it. Is
that right?

Hon Kim Chance: As he has done before.

Hon PETER COLLIER: Is Hon Kim Chance saying that the former Treasurer did not have that information?

Hon Kim Chance: We knew he could do it because he had already done it once.

Hon PETER COLLIER: He was not Treasurer in 2001.

Hon Kim Chance: Yes, he was, in 2001.

Hon PETER COLLIER: But he did not go to the election with that policy in 2001.

If we wish to reach the point at which we do not further compromise our system of government, we must ensure
that we have an autonomous, independent and impartial public service. We must ensure that the public service is
not compromised. However, this motion will compromise the public service. I will quote again from the Oz
Politics web page about the public service.

Hon Kate Doust: Doesn’t the public service get compromised when you put political hacks in to run it?

Hon PETER COLLIER: The opposition would know about that.

Hon Kate Doust: That’s what you have done.

Hon PETER COLLIER: How?

Hon Kate Doust: You put Peter Conran on; he is a Liberal Party activist.

Several members interjected.

The DEPUTY PRESIDENT (Hon Matt Benson-Lidholm): Order! I would like to be able to hear the debate.

Hon PETER COLLIER: The Oz Politics web page states —

According to Stanley (2000), there are three distinct duties of a public servant: providing frank and
fearless advice to ministers; helping ministers to promote, explain and defend government policy; and
implementing government policy.

The first duty of a public servant is to give frank and fearless advice before ministers make policy
decisions. The advice should be honest, comprehensive, informed, accurate and timely, even if it is
politically inconvenient. As far as is possible within time and resource constraints, advice should be
based on a full understanding of all relevant issues and options, the government’s objectives and the
environment in which it operates. Such advice may be ideas for new policies and programs, or a fair
critique of the policy ideas of others, whether they are the government’s policy platform, suggestions
from other political parties, or proposals from service providers, clients or the public.

The second duty of a public servant is to help ministers and the government promote, explain and
defend their decisions, even if the public servant previously advised against the course of action decided
upon. For a public servant this can range from preparing speeches for ministers, developing media
campaigns and media lines for the minister, speaking at public events, preparing responses to
correspondence to the minister, and explaining the detailed policy provisions to clients and customers
wishing to receive a government service. In all of these tasks, it matters little whether a public servant
thinks that the minister is right or wrong or that the policy is good or bad.

The third duty of a public servant is implementation. Once a minister or the government makes a
decision, public servants are called on to implement that decision on the ground, often beginning with
the drafting of necessary legislation. Once a decision is made, the time for frank and fearless advice on
the issue has passed. Stanley (2000) observed, “Nothing upsets Ministers more than civil servants who
cannot recognise when Ministers have made their minds up, and so fail to provide the pro-active service
to which Ministers are entitled.”
Clearly, there is a tension between the various duties of a public servant. For example, sometimes a public servant may find himself marshalling the arguments against a particular policy approach in a brief for the minister, and at the same time preparing a media statement for the minister, which extols the same approach.

Hon Peter Collier: Wait, I am going somewhere with this.

Hon Ken Travers: What happens when you have two ministers and they both give a public servant different advice?

Hon Peter Collier: We do not give different advice. Where did the member find that out from? The web page continues —

The confidentiality of advice to ministers is necessary to manage this tension. Without confidentiality, political opponents could use the frank and fearless advice that has not been heeded to embarrass the government. If all advice were publicly available, public servants would be more likely to say what they believe their political masters want to hear. Conversely, because they have a public duty to explain government policy, the public statements of public servants will not be particularly critical or analytical and they may not reflect the personal views of the public servant.

This is why we cannot have this select committee. Inevitably, public servants will be called upon to pass comment on government policy: “Can you afford this?” “Can you afford that?” It will compromise the independence and autonomy of public servants. The previous government did not have a very good track record for public servants.

Debate interrupted, pursuant to standing orders.