



Arnold Sandell

25 January, 2002

The Secretary  
Legal, Constitutional and Administrative Review Committee  
Parliament House  
Cnr George and Alice Streets  
Brisbane QLD 4000

Dear Sir,

Re:- Electoral (Fraudulent Actions) Amendment Bill 2001

Please accept this submission in respect of the above Bill.

It is fitting that this question should be considered by Parliament and as soon as possible. For many years all legislation dealing with taxation has been scrutinized by experts and those with interests affected by the legislation. They are seeking loopholes under which they can lessen the burden upon them by the legislation. Should such a loophole be found in can be exploited to its fullest extent and yet be completely legal. No legislation has been amended more than that dealing with taxation to close these loopholes once they have been discovered.

It is unfortunate, although probably inevitable that this practice has been extended to other legislation. It may be that experts could find a loophole and then use that knowledge to their own advantage plus that of their clients. In most cases it would be by someone or some organisation considering it has been harshly treated by the legislation and seeking a reduction in payment or fairer treatment.

The responsibility for finding loopholes would then be given to experts in the field of legislation.

There is no reason to assume that the Electoral Act should be any different and that there will not be, from time to time someone who will try to find a loophole for some reason known only to themselves.

Consequently this submission supports the principle behind the Amendment and recommends the Committee in turn recommends it to the House.

However there is a query surrounding the use of the word 'fraudulently'. Would it not be possible to commit an offence within the wording of the Amendment but not in a fraudulent manner.

Consider this. A person is charged in accordance with the Amendment and brought before a court. The accused would admit the offence and deny it was in any way a fraudulent act. On the contrary he could claim it was committed from the highest possible motive. The accused could then allege that in his opinion and in the interests of good Government of the State, party 'A' had to become the Government and party 'B' had to become the Opposition. It was to bring this about the offence was committed. This could well be accepted by the Court as a genuine plea in mitigation or may even result in the action being struck out and the accused dismissed.

Therefore this submission recommends the word 'fraudulently' be examined very closely and if thought possible to be deleted.

A further query would be just how the Amendment would operate in practice. Would it be the prerogative of the person being influenced to initiate the proceedings. Could a charge be laid with that same person being the sole

witness. If additional witnesses were required would they be difficult – if not impossible – to obtain. There would be the classic 'syndrome' of not wanting to become involved. At what stage would the Police or the office of the Public Prosecutor be brought in, or would it become the subject of a C.J.C. inquiry as the initial step.

Then there is the fourth possible problem of How to Vote Cards. The mere act of handing a person a How to Vote Card is an attempt to influence the vote and by extension the outcome of the election. Yet it could hardly be called a 'fraudulent' act, yet it could be classed as an offence within the wording of the Amendment. Many people would consider it an offence but not fraudulent.

The Committee will need to look closely at this and possibly include another clause excluding How to Vote Cards.

Has the Committee looked at what any of the other States might have done and can any other State help the Committee either positive or negative.

Is it proposed to draw up any subordinate legislation and if so what aspects would it cover. It may be necessary to do so to cover some of the possible weaknesses raised by this submission. As an alternative the Amendment could be withdrawn and redrafted. In either case the decisions and details should be made available to the general public for examination and comment.

This submission supports the principle involved as a loophole definitely exists. However in view of the comments made it is considered that in its present form the Amendment is not very practical and could not be classed as successful in the manner intended.

Should there be a Public Meeting called it would be appreciated if details could be supplied as per the details at the head of this submission.

Finally it congratulates the Committee for tackling this problem and wishes it every success in its deliberations.

Yours sincerely



ARNOLD SANDELL