



Speech by

BILL FELDMAN

MEMBER FOR CABOOLTURE

Hansard 23 March 1999

ELECTORAL AMENDMENT BILL

Mr FELDMAN (Caboolture—ONP) (10.09 a.m.): I move—

"That the Bill be now read a second time."

The private member's Bill I now introduce is designed to strengthen the integrity of the electoral process by setting long overdue standards for truth in political advertising. In accordance with the commitment I gave to the Scrutiny of Legislation Committee, all One Nation private members' Bills will from now on be accompanied with Explanatory Notes and I urge all members introducing Bills to follow our example. Many members of both sides of the House, including both the Premier and Leader of the Opposition, have over the years expressed the need for legislation covering truth in political advertising, as indeed have many members of the public. During the 1998 State election, in the electorate of Mansfield ALP booth workers handed out a fake One Nation how-to-vote card that directed voters to give their second preference to the ALP. This arguably cost the coalition the seat and, as a result, the matter was taken to the Court of Disputed Returns.

I refer to an extract from the unreported judgment of the Honourable Justice Mackenzie in *Carroll v. Electoral Commission of Queensland and Reeves* relating to the issue of fake how-to-vote cards. Justice Mackenzie held the view that the electoral system ought to minimise the opportunity to engage in conduct directed toward obtaining a preference which, while lawful, is likely to exacerbate disillusionment with the political process. Justice Mackenzie also said there is compelling evidence that a number of voters were angry when they realised that the card was an ALP card, not a One Nation card in this case.

These cards could have cost the Liberal party the seat of Mansfield and for this reason I expect all members of the Liberal party to support this Bill. Regulating truth in political advertising is essentially striking the right balance between protecting electors from incorrect or misleading information and respecting the tradition of free speech which, while not enshrined in the Australian Constitution, is nonetheless something we all hold dear. While conceding that the issue is difficult, the Legal, Constitutional and Administrative Review Committee report on Truth in Political Advertising 1996 formed the opinion that it is possible to legislate in respect of truth in political advertising. The committee also recommended that legislation should be introduced to provide for truth in political advertising in Queensland elections.

In spite of the apparent demand for such legislation and in spite of repeated calls for such legislation from both sides of politics, none has so far been passed by this Parliament and made law. I believe that neither Labor nor the coalition really want truth in political advertising, as they have both profited from misleading voters during elections at various times. Seats can be won or lost, and even whole Governments changed, on the basis of a handful of votes or preferences, so it is very tempting for Labor and the coalition to engage in questionable practices such as distributing fake how-to-vote cards. The initiatives contained in this Bill follow closely the recommendations contained in the Legal, Constitutional and Administrative Review Committee report on Truth in Political Advertising.

In accordance with the recommendations of the committee report, we have also incorporated elements of South Australia's misleading advertising legislation. We have also incorporated elements of the truth in electoral advertising legislation, introduced into the Parliament in 1995, which was never debated due to the dissolution of the Parliament and never reintroduced. Under section 161, persons

authorising political material will now need to include their membership of any political party in the authorisation. The authorisation will now have to appear at the bottom of each page of any printed advertising material, including how-to-vote cards, in print no smaller than 12 point. In the case of printed material, the name and address of the printer must also be included in the authorisation. To avoid doubt, a concise definition of a how-to-vote card is provided in section 161. The maximum penalty for a contravention has been raised to 40 penalty units and 400 penalty units for a corporation to reflect the seriousness of the offence.

New subsection 163A prohibits a person from publishing or distributing an electoral advertisement that is false or misleading in a material manner during an election period. It is a defence, however, if a person took no part in preparing the material or did not know that the material was false or misleading. The maximum penalty for a contravention has been raised to 40 penalty units and 400 penalty units for a corporation.

New subsection 163B prohibits persons publishing or distributing a how-to-vote card that is false or misleading in a material manner or that is falsely represented as the card of another candidate or party. For example, if the Labor party produced or distributed a fake One Nation how-to-vote card with an incorrect allocation of preferences, this would constitute an offence under this section. The maximum penalty for a contravention has been raised to 40 penalty units and 400 penalty units for a corporation. It is a defence under this section, however, if a person took no part in deciding the contents of the card or did not know the material was false or misleading.

New section 163C requires that executive officers of a political party must ensure that the party complies with the truth in advertising provisions. In the event of a contravention by a political party, each executive officer of the party also contravenes the provision. An executive officer is defined as a person who is concerned with, or who takes part in the party's management, whether or not the person is given the title of executive officer. Under this Bill, the secretary of the Labor Party, Mike Kaiser, may have been fined \$3,000 for publishing those fake orange how-to-vote cards, along with any Labor party hacks who were involved in the production of that material. It will, however, be a defence under this section that the officer was not in a position to influence the conduct of the party or, if the officer was in a position to influence the party, then that officer exercised reasonable diligence to ensure that the party complied with the provision.

New subsection 163D allows a candidate to voluntarily lodge a sample of their official how-to-vote card with the Electoral Commission. The candidate may lodge a sample of their card by not later than the close of business on the day before the election. The commission will keep a register of any sample cards lodged and this register may be inspected by members of the public during normal business hours. The cost to the Electoral Commission will be very minimal and it should stop the distribution of fake how-to-vote cards, which the public find particularly offensive. A lodged sample is evidence in any resulting proceedings. This will avoid any disputes as to the authenticity of the candidate's official how-to-vote card and will make the detection and punishment of people distributing fake how-to-vote cards easier.

This Bill clarifies very clearly what is legal and what is not, particularly in relation to how-to-vote cards. Any post election disputes will be sorted out in the Court of Disputed Returns in the normal manner. Hopefully, the increased penalties for both individuals and party executives will discourage the production and distribution of false material by political parties and will make the detection and punishment of offenders much easier.

In conclusion, this Bill is not intended to undermine free speech, or the expression of opinion, or the criticism of policy; it is designed merely to stop the misrepresentation of matters of fact. It will still be legal to criticise parties and policies, but it will not be legal to subvert the electoral process by peddling lies.

The issue of truth in political advertising is important to members of this Parliament and the public is sick of dirty tricks at election time. The Legal, Constitutional and Administrative Review Committee has recommended legislation to fix the problem, but no legislation has yet been passed. We now have a great opportunity to clean up political advertising before we enter the next millennium. Let us make a commitment to clean up our elections. Let us have no more fake how-to-vote cards or misleading advertising. I commend the Bill to the House.
