



Speech by

Hon. M. FOLEY

MEMBER FOR YERONGA

Hansard 1 December 1999

ELECTORAL AMENDMENT BILL

Hon. M. J. FOLEY (Yeronga—ALP) (Attorney-General and Minister for Justice and Minister for The Arts) (8.41 p.m.): I shall speak briefly to this Bill as I understand that the Opposition proposes to move an amendment referring the matter to the all-party Legal, Constitutional and Administrative Review Committee. The Government has no objection to that course of action. I do, however, think it appropriate that I should outline briefly the Government's concerns with regard to this Bill and summarise them for the benefit of honourable members.

The private member's Bill purports to be based on recommendations of the Legal, Constitutional and Administrative Review Committee report on truth in political advertising. It also purports to incorporate the elements of a Bill introduced in 1995 by the then Attorney-General, Denver Beaudin. The Bill was never debated due to the prorogation of Parliament.

Perhaps I could summarise it in this way: there are three areas of significant problem that the Government sees with the Bill. Firstly, it extends beyond statements of fact; secondly, the proposal in relation to optional lodging of sample how-to-vote cards is problematic; and, thirdly, there are some problems over practicability with regard to particulars of the authoriser and the printer.

Dealing firstly with the extension of the Bill beyond statements of fact: the Bill before the House differs fundamentally from the committee's recommendation in that it purports to prohibit electoral advertisements containing a statement that is "false or misleading in a material particular", not a "statement purporting to be a statement of fact", where the statement is inaccurate and misleading to a material extent. The Bill, therefore, would capture statements of opinion, belief or intention.

The impracticability of such legislation was recognised by all the members of the committee, not just the dissenting members. At page 28, the report states—

"The Committee accepts that some statements made during the course of an election will be littered with opinion, prediction and 'puff' and the Committee does not advocate that opinions and predictions of themselves be the subject of sanction. Indeed, as will be discussed below, there is a logical limit to the operation of truth in political advertising legislation."

In its report on the Bill, the Scrutiny of Legislation Committee also expressed the view that there is a genuine issue as to whether the nature of political discourse is such that it is possible to effectively identify statements which are false or misleading in a material particular. This, however, is not the only problem with the Bill.

For example, it is difficult to know what is hoped to be achieved by the optional lodging of sample how-to-vote cards under the proposed new section 163D(1). This provision appears to serve no useful purpose. It is not compulsory and not an offence to distribute unregistered cards. There is no scheme established so that on polling day the cards distributed at a polling booth can be compared to the sample cards lodged so that bogus cards could be readily identified and action taken.

The Bill allows lodging only in Brisbane and only by a candidate. Most cards are lodged by the party's registered officer. The Bill would also allow inspection of cards which were lodged to be avoided if the cards were lodged at the close of business on the eve of polling day.

The Bill also provides that a sample how-to-vote card which has been lodged with the Queensland Electoral Commissioner is evidence in any proceeding that it is the how-to-vote card of the candidate who lodged it and the matters contained in it. The Scrutiny of Legislation Committee has

expressed the view that the sample card should certainly not be conclusive evidence of these matters and queried whether it should even constitute any evidence of them.

Let me turn to the question of particulars of the authoriser and the printer. The amendments proposed for section 161—that is, the particulars that are to be included on materials containing election matter and how-to-vote cards—are totally impracticable. For example, the Scrutiny of Legislation Committee has queried the requirement that the "authoriser" of material which contains election matter must declare any membership of a political party. This is provided for in the proposed new section 161(2)(b). The committee has questioned whether this is a reasonable intrusion on personal privacy in the case, for example, of newspaper advertisements inserted by members of a community interest group.

It appears to have been inspired by the recommendations contained in the Mansfield petition judgment. However, this requirement is very different from the one proposed by His Honour—namely that a card distributed to obtain second and subsequent preferences states the name of the party on whose behalf or on whose candidate's behalf it is distributed. Unscrupulous candidates could easily subvert the objectives of the legislative obligation if, for example, a candidate's campaign manager authorised the publication of the election matter and he or she was not a member of the party to which the candidate belonged.

The proposed section 161(2)(c) should also be noted. It reinstates the requirement to state the name and address of the "printer" of advertisements, handbills, pamphlets or notices containing election matter. This requirement was repealed in 1997 on the basis that, with the increasing use of new technology, there is often no "printer". Such material is often produced by use of desktop publishers and photocopiers. The reinstatement of this requirement would greatly disadvantage independent candidates who are more likely to produce such material without recourse to a commercial "printer".

I set those matters out mindful of the fact that it is proposed that this be referred to the all-party parliamentary committee. I will not dwell at length on this stage on the Bill. The Government has substantial concerns about it, but I understand that the Opposition wishes to refer it for consideration to the all-party committee. In broad terms, the Government supports the proposition that electoral matters are best dealt with by the all-party process. It would be open, I think, to the House to take the view that the committee has already considered this matter and dealt with it in the manner that I have outlined. Nonetheless, if honourable members believe that this Bill would benefit from such a process, the Government will not stand in the road.
