Speech by

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MEMBER FOR TOOWOOMBA NORTH

Hansard 16 May 2001

ELECTORAL AND OTHER ACTS AMENDMENT BILL

Mr SHINE (Toowoomba North—ALP) (3.53 p.m.): I rise to speak in this debate on the appeal provisions of the Electoral and Other Acts Amendment Bill which interest me. The act itself is a reforming one, and the government and minister, in particular, are to be congratulated on the reforms to be introduced.

The bill, as it relates to the Electoral Act, contains four major areas of reform. As we have heard, it is principally concerned with the reform of how-to-vote cards and improving the quality of information that voters receive when casting their votes. It covers not only state elections, about which we in the Legislative Assembly are concerned, but also local government elections.

The second major area of reform is the availability of an appeal provision, which I will say more about later. Both of these recommendations arose from the recommendations of the Legal, Constitutional and Administrative Review Committee as contained in report No. 18: *Issues of electoral reform raised in the Mansfield decision* concerning the 1998 election result in that seat.

The other two areas of reform in this bill—which are of a more minor nature compared with the others, and which were not the subject of comment in report No. 18—relate to the recommendation for the earlier return of writs in circumstances where political certainty is desired. There could be circumstances in which political certainty could be encouraged by testing the government's confidence on the floor of the House.

Lastly, the bill also refers to amendments to the Referendums Act to bring it into line with the appeal provisions that have already been referred to. Since we became a state, the appeal provisions have had a chequered career over the course of various legislation. At times, appeal provisions have existed in legislation and, at other times, they have not, depending on the attitude of the House at the time. As I understand it, the first time an appeal provision was provided for was in the Ryan government's Elections Act of 1915. This provided for an appeal from the Elections Tribunal which, at that time, consisted of a judge of the Supreme Court. So there was an appeal from that judge to the full bench of the Supreme Court. Prior to that, the Elections Tribunal consisted of a judge of the Supreme Court and six assessors. This was provided for under the Elections Tribunal Act of 1886. Prior to that, the body that determined disputes was the Parliamentary Elections and Qualifications Committee. That was contained in the Legislative Assembly Act of 1867. So it was not until the Ryan government's legislation in 1915 that this major reform in the provision of appeal from whatever tribunal or judge decided the issue was inserted.

Section 101 of the Ryan act dealt with the establishment of an electoral tribunal. As I said, it was to comprise a judge of the Supreme Court; it was to be a court of record; and it was to deal with election petitions and questions referred to it by the Legislative Assembly concerning the validity and qualification of its members. Section 102 of that act also provided that in January of each year the Chief Justice was to notify the Speaker of the judge who was to constitute the Elections Tribunal for that year. In other words, there could be no chopping and changing of the judges during the course of that year.

The next time the appeals provision was looked at was during debate on the Elections Act 1983, which again provided for the provision of an Elections Tribunal, but on this occasion provided for an appeal to the Full Court. Under the 1983 act, the Elections Tribunal comprised a judge of the

Supreme Court sitting alone with provision for an appeal to the Full Court on questions of law. That was the position as it applied until 1983. Members will recall that the Fitzgerald inquiry ensued in the late 1980s. As a result, the Electoral and Administrative Review Commission released a report in December 1991. That review by the commission recommended the abolition of appeals to the Full Court as this would, in its view, 'shorten the time taken to determine a dispute'. It made about eight or nine recommendations, the last being that the 'determination of the judge shall be final and without appeal'. That was the position as at 1992.

The commission's review was followed by a review by the Parliamentary Electoral and Administrative Review Committee. That committee substantially adopted the recommendations of the commission and recommended the abolition of—

... the Elections Tribunal and replace it with the Supreme Court sitting as the Court of Disputed Returns empowered to hear electoral disputes and petitions, such disputes and petitions to be heard within a timetable specified in the draft Bill ... and to remove the limitation on costs on electoral petitions and empower the court to award costs against the Crown.

As a result of both the commission and the parliamentary committee's investigations, an act was passed in 1992. The issue as to the provision of appeal was not deliberated upon in any detail in the then minister's second reading speech. The only mention of an appeal was 'to abolish the Elections Tribunal and replace it with the Supreme Court sitting as the Court of Disputed Returns empowered to hear electoral disputes'. With respect to appeals specifically, there was no mention in his speech of the abolition of the right to appeal. The 1992 act under clause 141 provided that an order or other action by the Court of Disputed Returns is final. There were no discussions in the act, the explanatory notes or the deliberations in this place as to whether or not the right to appeal a tribunal or judge's decision should exist.

The next occasion on which this matter was dealt with related to the case in relation to the Mansfield election in 1998. As a result, the Legal, Constitutional and Administrative Review Committee produced report No. 18 covering in some detail the entire judgment of Mr Justice Mackenzie arising from that case. In particular, it also dealt with, and timely so, the question of the appeal. The chairman's foreword to that report states—

The issue of appeals raises the competing policy considerations of ensuring the quick resolution of disputes, especially important in the formation of Parliament and hence Government after general elections, and the need to provide parties to a dispute with procedural justice. The committee believes that it has achieved an appropriate balance between these two considerations by recommending the introduction of a right of appeal from the Court of Disputed Returns on questions of law only, together with certain other procedural requirements designed to ensure that appeals are dealt with expeditiously.

During its investigations, it was revealed that—

In relation to appeals, the electoral legislation of all Australian jurisdictions—except Tasmania—bars appeals from the determinations of their respective Courts of Disputed Returns or equivalent electoral tribunals. The electoral commissioners of these jurisdictions informed the committee during this inquiry that there has been no recent consideration in their respective jurisdictions to introduce an appeals process.

It would appear that up until the late 1990s there was no great push to reinstate appeals throughout Australia generally.

That committee investigated the matter in some depth and obtained submissions from various experts. Amongst them were Dr Reynolds, a political commentator, the Chief Justice of the Queensland Supreme Court and the Queensland Law Society. On balance, those bodies favoured the reintroduction of an appeal provision based on matters of public interest and justice. The report quotes the Law Society, which said—

The Society views the right of appeal in these matters and the speedy resolution of such appeals as singularly important because of the significant effect that such determinations may have for government and for the entire community ... It is appropriate that appeals to the Court of Appeal be re-established so as to ensure that decisions dealing with fundamental principles which underpin democratic government are resolved by the highest judicial authority in the State.

Consequent upon that committee's report, the then Attorney-General, the Honourable Matt Foley, presented his ministerial response to the committee's report and, in essence, with respect to the appeal provision, adopted and agreed to recommendation No. 3 of the committee, which states—

The committee recommends that the Attorney-General, as the Minister responsible for the Electoral Act 1992 ... insert a new division 4 ... into part 8 of the act ... to provide for appeals from judgments or orders of the Court of Disputed Returns on questions of law.

What we have today is the result of that initial committee examination of the matter and the minister's response to the committee's report.

The only other matter on which I want to briefly comment relates to the how-to-vote provisions of the act. How-to-vote cards in the Mansfield election were mentioned earlier. I point out to the House that those how-to-vote cards, which are exhibits Nos 1 and 2 on page 58 of the Legal, Constitutional and Administrative Review Committee report, were in fact authorised. That point may not have been made by other speakers in this debate.

Mention has been made of the substitution of how-to-vote cards given to people at entry points to polling places with a photo or how-to-vote card pinned to the wall of the booth in which one has to

vote. My own experience—I am sure it is the same as that of most, if not all, members of this House—is that there are a lot of people in the community who are very confused by the electoral process, who require the utmost guidance, who do trust the party of their choice to give them that guidance and who would be lost if they did not have the opportunity to go up to a member of their chosen party and ask for their how-to-vote card. Some people suffer immense confusion, even in cases where there are only two candidates. It is quite astonishing that every assistance needs to be given to these people. I would worry if there were an abolition of the current practice whereby people are able to be handed how-to-vote cards near the entry to polling places.