



Speech by

Mr L. SPRINGBORG

MEMBER FOR SOUTHERN DOWNS

Hansard 30 May 2001

ANTI-DISCRIMINATION AMENDMENT BILL

Mr SPRINGBORG (Southern Downs—NPA) (12.35 p.m.): The opposition will be opposing this bill. The major effect of the Anti-Discrimination Amendment Bill is to create both the criminal offence of racial or religious vilification as well as the same lesser civil offence. There are a small number of other amendments that this bill seeks to make which I will turn to in due course. However, undoubtedly the main objective of this bill is to pass laws regarding racial and religious vilification.

The opposition opposes this bill on the basis that the provisions regarding vilification attempt to make people's opinions illegal. While we accept that the right to freedom of speech is not absolute, given such laws as defamation, we do not accept that the government should attempt to limit the freedom with which people can express their opinions. The limitation on the freedom of speech that the government is attempting to impose through this legislation is different from that which is imposed by the Defamation Act. The Defamation Act deals with untrue facts. The government proposes its legislation to deal with offensive opinions. It is far easier to determine whether a fact is untrue than it is to determine whether an opinion may be offensive.

The result of such a situation is that the possibility is left open for individuals who may feel slightly hurt by comments that others may make to bring frivolous actions before our already overloaded legal system. Furthermore, we should be striving to entrench in our law provisions that judge people on objective rather than subjective grounds.

The High Court has recognised in a number of cases that there is an implied right to freedom of speech in the Commonwealth constitution regarding the expression of opinions about the government of the day. This has been recognised in cases such as *Lange v. ABC* and *Theophanous v. Herald and Weekly*. If the High Court has held this to be the law under these circumstances, then it can logically be drawn that freedom of speech should be upheld when merely concerning opinions that may be considered to be offensive to an individual or even group within society.

I will now turn to the feelings of the community at large with regard to this bill. There are a number of groups within our community who are concerned that this bill will impede their practices. In particular, church groups are concerned that some of their teachings could be caught under the provisions of the bill. The then Catholic Archbishop of Melbourne, George Pell, expressed concern in the strongest of terms regarding the Victorian model of anti-discrimination legislation being proposed to deal with racial and religious vilification. Both the proposed Victorian laws and the proposed Queensland laws would be similar in operation to each other. As such, the same concerns as Archbishop Pell raises in Victoria are quite relevant to church groups in Queensland.

Archbishop Pell has questioned the need for such legislation to be enacted in Victoria. In his words—

There has been no recent upsurge of strife. What social evils have provoked this legislation?

The very same sentiments apply to Queensland. The Premier claims that multicultural groups have made him aware of the need for this legislation. However, have these groups called for laws which will enable action to be taken against those who actually commit crimes based on racial and religious hatred, or have they called for the laws being brought before this parliament that impede the right of society as a whole to freedom of speech, including their own right to freedom of speech?

The Premier claims that this bill is necessary to protect multiculturalism. This bill has a greater potential for multiculturalism and religion to be seen as being placed on a pedestal; that it has to protect people of different races and religions from racial and religious vilification. The result of this could easily be an increase in the instances of vilification taking place in our society.

While on the point of religious vilification, I turn to the Scrutiny of Legislation Committee's report. The committee has noted that although the Premier claims that this legislation is modelled on the New South Wales anti-vilification provisions, the New South Wales parliament never intended its legislation to extend to cover religious vilification. This is a very important issue in this debate, because when this point is examined rationally it becomes clear—as the Scrutiny of Legislation Committee points out—that it will be a very subjective matter to determine whether an opinion is vilifying on religious grounds.

The Scrutiny of Legislation Committee has called on the Premier for assurances that the bill provides sufficient safeguards for legitimate and constructive religious debate to take place. If there is any doubt over such matters in a bill, then this parliament has an obligation not to pass it. It is important that a government is not attempting, through the force of legislation, to deprive people of their often deep-held religious beliefs.

I would like to take the opportunity to quote from that report of the Scrutiny of Legislation Committee. I note that there have been subsequent responses from the Attorney-General. He may indicate on behalf of the government that they have addressed these issues, but I do not necessarily believe that that is the case. The report states—

The committee draws to the attention of Parliament the broadening by the bill of previously-understood notions of racial vilification, and the imprecision of the concepts of 'religion' and 'ethno-religious'.

On the previous page, the report states—

The committee is concerned that there is no attempt to define 'religion' in the bill and these decisions illustrate the difficulties associated with the concept. Religion, unlike race, is usually a peculiarly private set of beliefs and values relating generally to a supreme order, conscientiously held, which are shared to a greater or lesser extent by others.

I think that is a very valid point, because only last year legislation was passed by this parliament which decriminalised witchcraft. We can argue about the rights or the wrongs of that, but many people deeply hold the view that witchcraft is a religion. However, a lot of people out there hold the view that witchcraft is something generally very repugnant and should not be encouraged in our society. That goes to show the difficulty in defining what a religion is. Some things that start off as a movement, that start off in that early semi-cult stage, something which is an opinion held by people, can be easily categorised and classified as a religion. Certainly, the Australian Bureau of Statistics has a very loose way of interpreting the definition of a religion when it comes to providing data on our census.

The report continues—

The committee seeks information from the Premier as to whether he is satisfied the exemptions in s.124(A)(2) provide a sufficient counter-balance to the bill's limitations on free speech, particularly in relation to religious debate.

The report goes on—

The committee has concerns about two aspects of the proposed criminal offence, namely:

Its extension to religious vilification;

The nature of the requisite mental element or 'guilty mind' that is required before an offence is committed.

And also the issue of knowingly and recklessly inciting racial or religious vilification. The committee goes on to say—

However, the committee notes that even if the use of the word 'knowingly' might be thought to require something akin to an intention to incite, the word 'recklessly' clearly does not. Moreover, 'recklessly' may not require any subjective state of mind at all. Recklessness is not defined in the Act and is also not a term used in Queensland to express the mental element required for an offence.

The report continues—

The committee draws to the attention of Parliament the apparently low threshold that needs to be satisfied before a criminal offence is committed under this provision, and also the imprecision in the use of the mental elements of 'knowingly' and 'recklessly'.

The committee seeks information from the Premier as to why there is not a requirement of proof that a person *intended* to incite or, at the very least, that the person *wilfully* incited before they can be guilty of a criminal offence given that, if the New South Wales view is correct, it need not be proved that anybody was in fact incited.

That is a very, very important point: it need not be proved that a person necessarily was in fact incited. The report continues—

The committee draws to the attention of Parliament the potential that an offence of religious vilification has to stifle legitimate debate, where that debate includes incitement of contempt by condemning members of a religious group for their beliefs in a way that includes threats which the defendant genuinely believes are justified.

The committee notes that the present Commissioner—

that is, the Anti-Discrimination Commissioner—

has 'actively lobbied successive governments' in Queensland for the introduction of the present laws and 'disputes suggestions that the push for new laws is simply a response to political correctness and contradictory to the notion that we are a tolerant society'.

I want to place on record my utmost confidence in the current Anti-Discrimination Commissioner in Queensland. I think that she has done an excellent job. She has fulfilled her obligations under the legislation in Queensland particularly well, and I think she has pursued issues of significant importance to the community. Notwithstanding that, I do hold philosophical differences from hers on a number of issues. I also am concerned that when you are dealing with something where it is your job to pursue these particular issues, sometimes the other things which are important to the community, and the other things that may be at risk with the need to extend legislation to cover things that you may be genuinely concerned about, may seek to restrain and confine the rights and liberties of the community at large.

The report continues—

The committee seeks information from the Premier as to why the final decision to prosecute for a criminal offence is not left to the Attorney-General or the Director of Public Prosecutions, thus ensuring an additional filtering process exists in relation to criminal prosecutions.

On this point, I must admit to the parliament that the Attorney-General has introduced amendments this morning. I have not had a brief on them, but I take it from my reading that he has sought to address that issue. I commend him for that, because I think that that is a legitimate concern, and it is something which is recognised in the provisions of New South Wales law. However, that does not mitigate in any way the fundamental concern that the opposition has about the overall focus of the bill.

The report continues—

The committee is concerned that cl.126A may have the effect of overriding at least the spirit of the protection of s.16 of the *Criminal Code*.

The committee seeks clarification from the Premier as to why it is not sufficient for the Anti-Discrimination Commissioner to choose between the avenues of referral to the Tribunal or making, with the consent of the Attorney-General or Director of Public Prosecutions, a complaint to the Magistrates Court where allegations of contravention of proposed s.126 are made.

Furthermore, there is significant concern that this bill does not require high enough standards of proof in relation to the criminal offences of racial and religious vilification contained in the bill and further to what I outlined in quoting the Scrutiny of Legislation Committee report. It is absolutely unacceptable, in a state like Queensland, to firstly take away the right to free speech or stifle or in any way define the right of free speech, but then, on top of this, impose criminal penalties for speaking freely. There is no doubt, however, that legislation should be put in place to deter racial and religious crimes, and legislation should be in place so that when crimes are committed based on racial or religious hatred, there is a form of recourse available against those who perpetuate the crimes.

As such, the opposition has introduced into this parliament the Racial and Religious Offences Bill 2001. This bill will address racial and religious vilification by increasing the penalty for any crime committed that is motivated by either race or religion. I am mindful of the standing orders of this parliament when it comes to referring to other legislation. However, it is important to make a couple of points on the different concepts of the bill.

As well, the penalty will be increased in circumstances where the committing of a crime incites others to threaten physical harm towards the person or property of an individual or group of persons. The result of legislation such as this being passed, as opposed to that which the government is proposing, is that punishment for racial and religious vilification will be based on an actual crime that has been committed - something which is far more objective than subjective.

This legislation will not impose penalties for merely spoken words that may be construed as being vilifying to those of different religions or races. However, this legislation will provide a form of recourse against those who commit offences based on racial and religious hatred without limiting in any way the innocent public's right to free speech.

The result of this bill being implemented would be a model of punishment for racial and religious vilification, more like that in place in Western Australia where only actual cases of racial and religious vilification would be heard objectively by the courts rather than subjectively, which would be the case under the government's proposal of making illegal the opinions that people may express.

There are a number of other amendments to the Anti-Discrimination Act that this amendment bill serves to put into effect that I would like to cover briefly. Firstly, there is the issue of giving anti-discrimination laws extraterritorial operation outside of Queensland on boats and ships registered in Queensland.

The opposition recognises that any government has an obligation to regulate the work practices and work environment of its people in the interests of both the employer and the employee. There is no reason, if a boat or ship is registered under Queensland law and is employing people from Queensland, that the anti-discrimination laws of the state should not apply to the owners or operators and the workers on that boat or ship.

This bill also makes other mechanical amendments that the opposition would otherwise have no objection to. However, in the view of the opposition, the government should not have attempted to bundle together other amendments with proposed laws as controversial as those concerning racial and religious vilification. As a result of the government taking this action, the opposition has no alternative but to oppose these other amendments on the basis of the opposition's position on the anti-vilification laws that the government has proposed. However, as all honourable members are aware, the government can easily move the other amendments contained in the Anti-Discrimination Amendment Bill at a later stage.

Therefore, the opposition has introduced the Racial and Religious Offences Bill as the most appropriate means of addressing the issue of racial and religious vilification and hate crimes. The opposition believes that penalties should be imposed only when a crime has been committed and our proposed legislation would achieve this.

I thank the honourable member for Mudgeeraba for her bipartisan sympathy. That has given me time to get over my cough. I feel a bit like my leader at the last state election.

Mr Welford: You're about as effective, too.

Mr SPRINGBORG: That is the end of bipartisanship for you, old mate. The legislation that you wanted to get through by 30 June: we will filibuster on that for about three days.

Mr Reeves: You're pretty good at it.

Mr SPRINGBORG: The member had better read the *Hansard* record to see that what he says is not necessarily true.

Furthermore, the opposition stands by people's freedom of speech and believes that only in very limited circumstances, such as defamation law, should this right be abrogated in any way or form. Therefore, we oppose the government's Anti-Discrimination Amendment Bill.

It is very important to say a few parting words on the issue of subjectivity. We all know that as members of parliament we have differing views on differing issues. Certainly that is no different to the views and the opinions that are held by the community at large. Basically, this parliament is a very broad reflection of the community, because one does not need any particular qualification to be elected to this place. That is good and great, and it should never change because the objective of this place is for a person to be selected by his or her peers to represent the people in the parliament.

However, as I said, the opinions of many people can be very different. Something that I might find offensive or that I am concerned about or motivated by may motivate or concern another person to a different degree. That is of particular concern as we try to decide what is being laid down in law by this bill, that is, what is racial or religious vilification. This subjective test is going to exist as a result of what is proposed in the parliament today.

If one looks around the world, many people feel very passionately about the issue of race and religion. In some cases, there are state-sponsored religions. In other cases, the state tacitly, implicitly or explicitly persecutes other races. Australia now is a broad church. It is made up of people from over 140 different nationalities. When those people come to Australia, they bring with them different views, different tolerances and different intolerances. That is quite clear when one speaks to people in the general community. Some people bring with them the predisposed views that they had from their mother country and their tolerance may not be as great as that of others.

Through this bill we run the very real risk of developing a situation where somebody might be offended by something and another person may not be offended by it. However, it may easily be seen as inciting hatred or vilification towards another section of the community because of the different way that people are concerned and offended by it.

Mr Reeves: Do you have any support on your side?

Mr SPRINGBORG: I suppose at the end of the day, so long as one does it once and does it well, that is all that really matters.

Mr Welford interjected.

Mr SPRINGBORG: We are talking about the presence and the representation. It is obvious to see where the Attorney-General's mind has been on this debate. This is the official view of the opposition. The opposition has concerns about the legislation. The opposition leader will be making a contribution to this debate, but he is currently engaged with media duties. He is most interested in this subject.

As I indicated earlier, if one looks at the parliament, very clearly there is a situation in which an issue which offends some people, and which they may see as the worst issue or the worst matter that could possibly be raised as it subjugates the rights and privileges of the people of Queensland, is seen as a ho-hum issue by others. They do not believe that there is any offence. Therefore we must be very

Careful when we implement this legislation, and it will be passed because the government quite clearly has the majority that is necessary to pass it through parliament.

I say to the Attorney-General that we will be watching the effect of this legislation. We will be watching the implementation of the legislation. We hope that the concerns that we raise today are not going to manifest themselves through the implementation process. It will require a very clear oversight from the Attorney-General to ensure that they are not manifested. When issues of legitimacy are raised by us and others, it would behove the Attorney-General to listen very carefully to them.

The Scrutiny of Legislation Committee is an all-party, bipartisan committee that has operated well in the parliamentary process for over half a decade. That committee has raised concerns about the legislation. Over time it has raised concerns with governments of all persuasions about issues that affect the fundamental rights and liberties of people. It does that in a bipartisan way and we need to listen to it. The Attorney-General has addressed some of the concerns in his response. However, I am of the opinion that he may have been exercising a little bit of wishful thinking or idealism. The particular concerns that were raised by the Scrutiny of Legislation Committee need to be addressed in a far more forthright and legitimate way.

We will be watching this legislation very closely. We share concerns about racial and religious attacks in this state. We believe our legislation is a far better option for addressing some of the legitimate concerns of the community.
