



Speech by
**Hon. NITA
CUNNINGHAM**

MEMBER FOR BUNDABERG

Hansard 27 November 2001

MINISTERIAL STATEMENT

Local Government Act

Hon. J. I. CUNNINGHAM (Bundaberg—ALP) (Minister 10.16 a.m.), by leave: I wish to speak to the House today about the judgment of the Queensland Court of Appeal last Tuesday that invalidated section 224A(b) of the Local Government Act 1993. Section 224A(b) provided that a local government councillor ceases to hold office as a councillor on becoming a candidate in a federal election. I am disappointed with this result, but I repeat what I said in my public statement last Wednesday: I accept the judgment of Queensland's Court of Appeal. Therefore, the state will not be seeking leave to appeal to the High Court.

I want to emphasise that the state government took a principled stand in deciding to legislate on this issue, because it believes that councillors should not be able to use ratepayer funds to run for higher office. It believes that councillors standing for higher office, either in the state or the Commonwealth parliament, should be treated the same as members of this House who stand for higher office. It believes that a real potential exists for conflicts of interest to arise where councillors seek to pursue their own political careers without regard to the concerns of those who elected them to councils.

As I said during the debate on this provision, this stance was supported by the public, both in submissions received in response to a discussion paper and in responses to a community survey. The court has held that section 224A(b) is invalid as it is beyond the legislative competence of the Queensland parliament and it is inconsistent with certain sections of the Commonwealth Electoral Act 1918. Accordingly, Councillor Mary Lyle and Councillor Pam Stallman did not vacate their offices when they nominated for the recent federal election. As no vacancies exist, no by-elections will take place in the Eacham and Murilla shires and all arrangements made to date for these by-elections are of no effect. The respective returning officers and other affected parties have been notified.

As to the comments of those people who argue that the policy intent of section 224A(b) was morally wrong or inappropriate, it is worth noting that the President of the Court of Appeal, Justice McMurdo, recognised there were 'substantial considerations why the occupation of an office such as local government councillor during the period of a federal election campaign may be undesirable' and referred to considerations raised in my second reading speech on the Local Government and Other Legislation Amendment Bill 2001.

I have considered the proposal for legislative change put forward by the Local Government Association of Queensland after the judgment of the court. The LGAQ has suggested a change to replace the invalidated section 224A(b) relating to federal elections with a new provision affecting councillors who nominate for either a state or Commonwealth election. I undertook to examine this proposal and report on it to state cabinet. I have done so, and I now report on this proposal to the House.

I find it curious that the LGAQ is proposing legislation which its own legal representative has indicated would be invalid. During the course of submissions in the hearing before the Court of Appeal the LGAQ's legal representative stated that state legislation requiring a councillor to stand down during a Commonwealth election, as now proposed by the LGAQ, would also interfere with the Commonwealth Electoral Act and would therefore be invalid. This statement was made in response to a

specific question asked by the president of the court, and I table the relevant extract from page 57 of the transcript of the hearing.

Therefore, if the state government legislated in the manner proposed by the LGAQ, the legislation is likely to be invalid for the very same reasons given by the Court of Appeal in striking down section 224A(b). The government therefore proposes to repeal the invalid provisions of section 224A(b) of the Local Government Act 1993 regarding councillors vacating their office on becoming a candidate for a federal election. Section 224A(a), which requires councillors to vacate their office on becoming a candidate for the state parliament, will remain in force.

The government took a well-considered and principled stand on this issue. We acted to protect the interests of ratepayers and electors. But the court has determined that, despite the merits of the issues about which we were concerned, this parliament has no power to legislate to achieve such an outcome where a Commonwealth election is involved. This government is not afraid to introduce legislation that we believe is in the best interests of the people of Queensland. In this case, one section was challenged and we accept the umpire's ruling.
