Speech by

ANDREW McNAMARA

MEMBER FOR HERVEY BAY

Hansard 17 April 2002

ELECTORAL [FRAUDULENT ACTIONS] AMENDMENT BILL

Mr McNAMARA (Hervey Bay—ALP) (8.51 p.m.): I am sure the Leader of the Opposition will listen favourably to my arguments in view of the courtesy I have extended him.

I rise to oppose the Electoral (Fraudulent Actions) Amendment Bill 2001. I understand the intent of the honourable member for Southern Downs in bringing this legislation to the House. We all want fair elections, and I have a strong distaste for the rorters who caused so much harm to my party by their actions in nearly derailing the fine efforts of the first Beattie government. But the bill before the House attempts to crack the nut not with a sledgehammer but with a nuclear bomb.

I would like to raise some problems which I see with the consequences of this bill being passed and ask the member for Southern Downs and the Leader of the Opposition to reconsider whether or not this bill is not fatally flawed. I endorse the comments of the Attorney-General regarding the potential constitutional invalidity pursuant to section 109. I will say no more on that point; it has been well covered. I ask the honourable member to more broadly consider the potential for injustice in the application of mandatory sentencing in these matters, particularly when combined with the removal of any statute bar or time limit on prosecutions.

The bill provides a mandatory minimum period of imprisonment of three months for someone found guilty of, for example, enrolling in the wrong electorate or attempting to enrol someone else in the wrong electorate if the person is aware that they are not entitled to be enrolled in that electoral district. The problem with mandatory sentences is that they take away a court's power to consider the facts of an offence and also act as a severe disincentive to accused persons pleading guilty. Just think of the case of a young person aged 18 or 19 influenced by someone older to get on the roll somewhere. Twenty years later, this comes out. By then they may have a family, a career, a life. They may not only be blameless in every other way but could indeed have contributed substantially to the good of their community over some 20 years or more. No court in this land would send someone to prison for three months for a youthful indiscretion that did not involve physical harm to another person and which came to light after the passage of so many otherwise good years. But pass this bill and that is what will happen. Do we want to see children deprived of parents for errors of judgment committed long ago? Honourable members will know that these examples are only barely hypothetical. I have spent enough time in court rooms to know that every case is different, and our judges and magistrates think very carefully about the circumstances that lead to the commission of an offence and the culpability of any guilty person.

One of the furphies that underpins the push for mandatory sentencing in general is the demonstrable untruth that all offenders get off with a so-called slap on the wrist. The reality, as the Minister for Police and Corrective Services and the Treasurer know all too well, is that, in the last five years of the 20th century, Queensland's prison population doubled. We went from having around 2,500 people in prison to having over 5,000 incarcerated in just five years, and yet some people will try to tell you that no-one is ever sent to jail in this state. Judges and magistrates do not need mandatory sentencing legislation in order to send people to jail. They do it every day, but they do it after considering all the circumstances, as required by the Penalties and Sentences Act, the Criminal Code and, in these matters, the Electoral Act.

I suggest that it may not be in the interests of our society as a whole to, say, send a single mother of three children to prison for three months for an offence committed long ago. It may not be in the interests of our society for children to have to go into care or for families to lose their breadwinner. The issue of whether imprisonment is the right sentencing option should be left to the judge or magistrate who hears the facts and any relevant submissions. We have fines, probation, community service orders and intensive correction orders as alternatives to imprisonment. Judges have a discretion in sentencing, and that is how it should stay.

Apart from my objection to the principle of mandatory sentencing, I also suggest that this bill creates an unwise type of strict liability offence, in that it deems a person to have acted with intent to fraudulently influence the outcome of an election if they enrol in a district and are aware that they are not entitled to be enrolled in that district. I suggest there are many individuals around this state who will find themselves on very dangerous ground if this bill were to be passed, although they have no actual intention to fraudulently influence the outcome of an election.

There are many people who split their time between two homes—who work, for example, in Brisbane four days a week and spend three days a week up the coast or on places like Fraser Island at a beachside home. In their hearts, they may believe that home is the place where they actually spend less time and enrol at that address. They could do so in anticipation of retiring shortly, or for any number of reasons which might be legally or technically wrong but are certainly not part of any deliberate attempt to fraudulently influence the outcome of an election.

This bill, if it were law, would send people to jail for making a mistake, for an error of judgment, regardless of whether they had any interest in the electoral process at all. It deems intent, thereby effectively reversing the onus of proof. That is the effect of proposed amendment 2. This is particularly dangerous when set against some very vague language. I suggest that the wording 'an act to fraudulently influence the outcome of an election' is horribly vague and dangerously wide in its scope. I suggest the wording allows for letters to the editor which contain an untruth to be caught by this legislation.

All members know how annoying it is to see letters in our local papers falsely claiming that we did or did not do, or do or do not support, some thing or proposition which is demonstrably untrue and urging people not to vote for us because of that reason. They might be annoying, but do we really want to start jailing those colourful characters in our electorates who march to the beat of a different drum? Some are malicious; some are just plain silly; some are sufferers from mental illness. I do not want to jail them when they urge people not to vote for me because they write that I have called for the River Heads barge to be closed—which I have not—or that I receive instructions on how to vote via a silicon chip in my head put there by aliens from the Planet Bufuntox—which I do not.

What about the dreadful fraud of standing as an Independent or a member of a party and then jumping ship soon after the election? Is that not fraudulently influencing the outcome of an election? Bring me a bill that perhaps considers incarcerating people who do that and I will be interested. I will have a very close look at that one. I am sure the members of One Nation might be interested! But the wording of this bill is just too wide. It would fill our courts with people who go over the top in the lead-up to every election.

No-one likes electoral fraud. It is repugnant. But people make mistakes. Fraud is a crime that requires mens rea—intention. Any legislation that sets up mandatory sentences in a fraud offence but then weakens the requirement for proof of intention, that says someone is taken to have done an act with intent to fraudulently affect an election outcome, is bad law.

Finally, let me ask what we hope to achieve by this. Does anyone really think that this sort of over-the-top penalty will stop silly or misguided people doing these things? How many 18-year-olds can name the penalty range for any offence? I am not a big believer in tough penalties being a deterrent—otherwise, I would suggest, there would be nobody on death row in America. Political parties have an obligation to keep their noses clean, and I am proud of the response by the Premier and the ALP to the problems which we had. But consider this: the people who were involved in these matters are no longer members of this House. Notwithstanding that there was a statute bar on prosecution, they have lost their positions because of the political reality of their transgressions.

I suggest that this amendment bill is unnecessary. Worse, it carries terrible consequences for freedom of speech and political discourse in this state. I think the scale of the penalty is by and large out of all proportion to the penalties applied to other offences under our criminal law.

The legislation we passed yesterday cleans up our electoral system and makes this bill redundant. The Electoral and Other Acts Amendment Bill provides for the Electoral Commission to randomly audit candidate selections, set jail terms of up to 10 years for electoral rorters and ban convicted rorters from joining parties and standing for public office. I suggest that is enough.

In all the circumstances, while being in sympathy with the desire of the member for Southern Downs to promote a clean electoral system, the government has delivered on this issue. The Electoral

(Fraudulent Actions) Amendment Bill 2001 should not be voted for. It should be voted down, unless of course the member for Southern Downs has thought better of it and has chosen to withdraw this unfortunate and clumsy amendment bill.