

Legislative Council

Hansard

Wednesday 23 October 2024

The President, Mr Farrell, took the Chair at 11 a.m., acknowledged the Traditional People and read Prayers.

[excerpt...]

ELECTORAL AMENDMENT BILL 2024 (No. 25) Second

Reading

[4.58 a.m.]

Ms WEBB (Nelson) - Thank you, Mr President. It has been an interesting debate. I thank members for their contributions.

We are really engaged with this, because it is something that does fundamentally impact a core thing that we all experience, which is election time, when we do ask the community to give us a job or continue to give us a job, if we are seeking re-election. It is an interesting situation that we are making arguments about how that is handled and it is difficult, potentially, because it could be seen to be self-serving in some ways. However, I think it is quite marked that we are hearing a fairly concerted, comprehensive shared view come from independents in this Chamber, for example, about what is being proposed here. It is interesting because, were this bill to pass and we would have the newer, more slimmed-down version of section 196 in place, I am probably the first independent in this parliament to face election under that in May next year. For me, it is probably, of everybody here, the most pointed result and outcome that is likely to be faced. I am mindful of making a contribution standing in that position, and I certainly hope I am going to be as open and clear about my position as possible, that is seen to be a well-thought-through position and not a self-serving one.

I do not broadly support the removal - or in this case, the significant cutting down - of section 196. Not because section 196 is perfect or exactly what we would design to provide protections if we were starting with a blank page. I do think section 196 currently provides certain protections that, if we were to remove them, we would feel the effect of. It is not just about the protection of candidates. We have talked a lot about the protection of candidates in this debate. I have heard that from many people. It is beyond that. Yes, it is about how we might be protecting candidates or providing discrete protection to candidates as a class of people. More broadly, it is about protecting democracy: faith in our democratic process; faith that information is used truthfully and accurately; and faith that voters can go to a ballot box and make their choice on the basis of being exposed to information and assertions that are true or can be tested to be true is a fundamental health that our democracy requires.

When we are talking about the protections that are maybe provided under section 196 at the moment and contemplating their removal, we are not only talking about protecting candidates, we are talking about protecting democracy and whether, in removing section 196 in the way proposed here without anything accompanying it to come in behind and fill the gaps

that it leaves in the ways we have deemed to be appropriate and relevant, we are posing a potential problem.

Ms O'Connor - There is already a problem: the chilling effects.

Ms WEBB - Not just for me when I front up for my election in May next year, but for our democracy.

It is an interesting thing for us to be contemplating in an ongoing way. We need to more forthrightly and proactively address this so we can determine what is appropriate in the way of protection in a forward-looking way, not just about defending section 196. It is interesting that the member for Hobart spoke about how we talked about this a year ago and quite soundly rejected the idea of changing section 196. Here we are, a year later, having exactly the same debate.

The failure there is not of the members of this Chamber whose view on the concerns raised a year ago has not changed. The difference is that the government has brought us back something exactly the same as a year ago. That is a failure on the part of the government, quite frankly. Had they been listening here in this Chamber a year ago, listening with the intent to understand, collaborate and respond proactively and positively, they would not have brought back this bill, which is exactly the same thing we rejected a year ago. They would have acknowledged concerns raised. They would have approached us in this intervening 12 months. We would have had conversations about the specific nature of the concerns held, the specific things that we felt perhaps needed to be protected. We could have co-designed potential solutions so that when we did come to contemplate, as they wished to do so, removing section 197, we could have contemplated something to accompany it that may have weighed against what we were losing there with something positive in the way of protections and reasonable responses to put in alongside it.

That did not happen. It is a shame and a missed opportunity. When we comment on the 12 months that have elapsed since the last time we squarely rejected this prospect of removing section 196 in its substantive nature, no member here is at fault for maintaining the same view they had 12 months ago. It is the government who is at fault for bringing us back something that is exactly the same, without having had a conversation about how we could progress beyond that in contemplating it again.

That is something I absolutely assert. What a shame. I think the community expects politics to work a little bit differently now. We now have the mechanisms in this parliament to work differently if we want to: more collaboratively. If the government is looking for an outcome and wants to actually deliver a strong plan for our state, I tell you what, a bit of collaboration would not go astray. They could have been winning the day if that had happened and we could have all been moving forward with an electoral act that was improved, addressing the issues that section 196 presents. I agree there are issues that section 196 presents, but that could have worked to alleviate the things that would also be lost with changing it.

We have heard that other jurisdictions do not have a similar provision in their electoral statutes, and that is true, but I think that is a really simplistic justification to say that is why we should remove it from ours, as I said in the briefing this morning, given the changing context in which we hold elections now in a modern age with social media and the like. With AI, with people able to make deep fakes and all those things barrelling down on us and developing at a pace of knots, it may be that we are the best-protected jurisdiction. Others will start to think

about - not necessarily adopting our section 196, I do not think anyone would do that because it is flawed - how to adopt some of the protections that are in it and put them into their own arrangements going forward so that people are better protected. That is what we should be doing here.

The argument being made - because I heard responses saying that section 196 is flawed, I think it is absolutely acceptable to admit that - is before we remove it, we have something else alongside to address the concerns of the valuable things that will be lost when we remove it. Why should we be left without the protections that it does afford in some positive ways, when thought and care has not been given to putting something in place to replace it?

I think the community value the idea; all polling done on this matter certainly shows that they do. They value the idea of truth in political advertising and truth in politics, quite frankly. I know it seems a novel concept to many of us who are in this space but there has been recent research, through the Susan McKinnon Foundation, looking into how people regard truth in political advertising laws that are present in other jurisdictions, and it has been very positive in its findings. The report that has come out of the Susan McKinnon Foundation research - they have had an interim report with various stakeholders who are involved in truth in political advertising laws, such as current and former premiers, ministers, MPs, electoral commissioners, political party directors, secretaries, civil society groups. They looked primarily at South Australia but they also did interviews with people from New South Wales and Victoria, jurisdictions that currently do not have those laws. That report found that truth in political advertising is generally well supported. Truth and political laws, I should say, are generally well supported.

It was considered that it has changed the face of electoral campaigning in South Australia. It was considered that the electoral commission of South Australia's reputation for impartiality was unaffected by administering those truth in political advertising laws that they have in that jurisdiction, and the Electoral Commission continues to enjoy strong public confidence there.

It considered that truth in political advertising laws have been increasingly used as a political tool, and they may not adequately deal with matters such as misinformation, disinformation and artificial intelligence. They are not perfect but they are quite positively regarded and are not having some of the detrimental effects that we are warned of. I firmly believe that we need to proactively look at such arrangements for this state. If we were, we would be in a better position to contemplate addressing matters relating to section 196.

I think there are current community concerns about negative, attacking election campaign behaviour. I think section 196 likely alleviates some of that in this state. We do not know.

Ms O'Connor - That is a big call. That is a really big suppositional call.

Ms WEBB - We do not know that. I am about to say we do not know that because I do not believe it has been looked into, to make an assessment about the degree to which there is a more generally protective function occurring through the presence of section 196 that means we do not get the sorts of negative attacking campaigning here that we might see in other jurisdictions.

In seeking to make the assertion that section 196 has no value to offer us, if you have not actually looked into whether it is providing a protective mechanism, then we cannot say

that it has no value. We have not assessed that. I asked in the briefing if that had been assessed in the terms of the TEC requesting or putting forward the idea that the act could be amended to reduce section 196 in the way that the bill provides for. Has the TEC made a full assessment of the role that section 196 currently plays in our elections? They have certainly been able to be clear they feel they are not well resourced to deal with it or that it is burdensome for them to administer. That is fine. We can accept that as information from the TEC. That certainly presents things to be resolved or dealt with. Resourcing can always be discussed and potentially dealt with. However, in terms of the actual impact on the tenor of our election campaigns, I am interested to know what section 196 actually does before we contemplate gutting it.

I acknowledge there are concerns regarding freedom of speech and the right to holding one's individual point of view and being able to express that freely. Those sorts of things are fundamental cornerstones of our democracy. However, it is widely recognised, both via court deliberations as well as more broadly in the community, that none of us have an absolute right to freedom of speech. There is also a reasonable expectation if you choose to engage in public debate and share your personal opinion that some effort has to be made to make informed speech or truthful speech.

During an election campaign, this is particularly sensitive. It is incumbent on everyone to be accountable for how they may try to seek to influence both the conduct and the outcome of elections. The expectations of responsible accountability cover candidates and the broader electorate. Of course, ideally that is what we would like to see play out.

Section 196 does seek to promote that and ensure that accountability for candidates and campaigners and the broader electorate. It is for only a very limited period of time, from the writs for the election to the poll day. It is not entirely constraining what people can say. It does constrain in specific ways. The reasons it is constrained to that time frame is because that four-week time frame is when people are casting their vote. That is when, if there is, for example, a determined spread of misinformation about a candidate, it is going to influence the way people vote and there is no mechanism that candidates can use potentially to address that except section 196 at the moment. You cannot bring an action of defamation in time to be able to then correct the record before people are walking in to vote.

You may not be in a position to be able to spend your way out of it and put the correct information so broadly into the community - certainly not with our spending caps in this place - to counteract the misinformation being put out about you.

It is very different to a regular citizen going for a regular job somewhere else. This is not the same as a normal job and a normal job interview process or the other. What we are seeing in this situation is about people seeking a job, but it is also about the functioning of our democracy. The functioning of our democracy requires free and fair elections. The functioning of our democracy - a healthy democracy - requires informed voters who are able to cast an informed vote on election day. The four-week period leading into that - and, in fact, voting happens, as we know now, through early voting in the weeks leading into an election - is a very important period of time in which our democracy and the health of it is being given effect to.

There is every reason for us to contemplate how we protect truth during that period of time. That is how I would emphasise it: not how we protect candidates but how we protect truth. If we were to be going forward, looking at how we might most constructively do that in future, if we wanted to modernise and move away from section 196, that is where our focus would be. It is actually not about protecting candidates in that four-week period. It is about

protecting truth and protecting voters and their right to be informed, truthfully, leading into an election and placing their vote. That is probably where we would look if we were thinking about better ways to be protective of our democracy. It is a by-product that in protecting our democracy, candidates will have some forms of protections conferred on and around them because protecting the process, most likely, is going to involve protection of candidates to some extent.

I have other points here. I am aware that many other members have made similar points, and I am appreciative of that. We have talked about a modern context. We do live in an age of information overload. There is a lot of information coming at us. Sometimes it is hard to judge what is true and what is not. There are all sorts of ways, as a community, we are contemplating how we can protect ourselves broadly as citizens in our communities and our societies when it comes to matters relating to misinformation, disinformation, deepfakes and the like.

The context of our democracy and our electoral systems is one aspect of that. I have no doubt that it warrants and requires specific consideration in terms of protections and arrangements to deal with these modern contexts. Does section 196 do that now? Absolutely not. However, it does do something and if we remove it without putting something in behind it to start the task of addressing our modern context and the protections that are going to be required, then we are just leaving ourselves short of relatively light protections at the moment.

People can use candidate names in all kinds of contexts during that four-week period that are not captured by section 196. I can put out a media release with the candidate's name in it and make comments about it. The member for Hobart could have done that instead of making a social media post in the illustration of the example she provided to us. It could have been put in a media release during that campaign and that would have been entirely acceptable.

Ms O'Connor - Why should it be so restricted?

Ms WEBB - I am pointing to the fact that it is entirely restricted.

Ms O'Connor - These are surprising arguments coming from you, I have to say.

Ms WEBB - Yes, it is a difficult and complex situation. I do not think anyone has stood here and said that they insist section 196 should stand as it is forever. I think we all accept that, ultimately, it needs to be looked at and developed. There are ways we can do that. A logical and responsible course of action is to refer this matter to the Joint Standing Committee on Electoral Matters. That committee was established to look at issues such as this: matters relating to our electoral laws and the way we conduct elections. We have the committee before us. It has already been referred to in this debate when other members were quoting from correspondence from Dr Robin Banks. Dr Banks made us aware of it - it is in the public domain; it is on the website at the moment - that she had made a submission to the Joint Standing Committee on Electoral Matters in the current review of the elections from earlier this year. The issues around section 196 were raised in that submission and that is why she brought it to our attention for this debate too.

In some ways, that committee is already contemplating, potentially, because it is in evidence before it and I am not pre-empting the committee in any way in how it may contemplate that evidence. It certainly has evidence before it that references this matter. That is a natural opportunity. It is an opportunity that I would hope we might contemplate in this Chamber as a constructive way forward. Having a close look at this through a committee process allows us not just to do the straightforward cut that is there at the moment in this bill,

cutting back section 196. It allows us to think about what might go alongside that, given the clear concerns and issues that have been raised, not just in this place but by others elsewhere.

Mr President, that is probably a longer contribution than I had thought to make, to be honest, given others' very valuable thoughts being shared on this. I do not support this bill as it stands, just as I did not a year ago. I am disappointed to be having to address it again in exactly the same form essentially, when we could have collaboratively contemplated differently if we had spent the intervening time talking to each other about this and acknowledging things that were raised in the previous debate. I would not be as worried about supporting this bill if we had put truth-in-political-advertising arrangements in place. I would not be as worried if we had, in other ways, strengthened our democracy and our electoral system through better donation disclosure and campaign arrangements. The more we strengthen and make our democracy healthy through rigorous arrangements on those fronts, the less it is problematic when we want to potentially contemplate removing protections like this.

I hope we move forward on all those matters. I believe and hope that, as a Chamber, we are going to contemplate sending this for a closer look, given the concerns that have been raised here. I really hope that this time around, it has been a take two for the government and we can work together to look at how to take this forward in a way that is not just seen as negative by a whole lot of people in this Chamber who are representing their community and are cognisant of the impact that it might have.