Legislative Assembly

25/09/2002

Parliamentary Electorates And Elections Amendment (Party Registration) Bill Hansard Extract

Second Reading

Mr WHELAN (Strathfield-Parliamentary Secretary), on behalf of Mr Carr [7.31 p.m.]: I move:

That this bill be now read a second time.

In 1999 the public of New South Wales was forced to use the largest ballot paper ever for a Legislative Council election. Between 1995 and 1999 the number of parties contesting the election jumped from 27 to 81. Further, at that time it had become well known that the electoral system for the Legislative Council allowed at least one or two candidates to be elected virtually by chance. Legislative Council elections became a lottery, where parties were formed and people contested the election under a catchy party name in the hope of winning the prize of election to Parliament. Complex preference arrangements between parties meant that the individual voter would have little understanding of where his or her vote might end up. In light of the community concern regarding this situation, the Government took decisive action to rule out the lottery approach. This included measures to tighten the minimum requirements for registration as a political party to ensure that only those parties with a level of community support could contest elections.

As a result of the Government's amendments of 1999, the Parliamentary Electorates and Elections Act 1912 now provides that in order to be registered a party must be able to demonstrate that it has 750 eligible members. Declaration forms from each member need to be submitted. Finally, parties must be registered for 12 months before they can effectively contest an election. Since the reforms these requirements have applied to all existing parties and to all new parties applying for registration. To ensure that the minimum 750 members identified by parties were in fact members, the Electoral Commissioner established a practice whereby he wrote to 300 of the 750 minimum members submitted by the party applying to be registered. The Electoral Commissioner asked that each of the 300 members confirm their membership by returning in a stamped addressed envelope a form to confirm that they are indeed members of the relevant party. If the Electoral Commissioner received confirmation from 225 of the 300 members-being a 75 per cent response rate-the registration process would proceed. The Electoral Commissioner applied this test for the first time following the reforms.

Save Our Suburbs [SOS] applied to be registered as a party in November 2001. By early 2002, because of the requirements that parties be registered for at least 12 months before they can contest an election, it became critical that parties satisfy the Electoral Commissioner's test quickly. If they did not do so, they would not be registered in time to contest the 2003 election. At the cut-off date for registration in order to contest the election, the Electoral Commissioner had received confirmation of party membership from only 215 of the 300 members for the party. As a consequence, the party was not registered in time to endorse candidates for the 2003 election. The party commenced proceedings in the Supreme Court. The judge found that the commissioner was not entitled to apply a test to verify membership involving direct contact of individual members. The judge was of the view that any doubt about the construction of the Electoral Commissioner's powers should be resolved in favour of the party because it involved the abrogation or suspension of a fundamental freedom-that is, the right to participate freely in elections.

The Government agrees that the right to participate freely in elections is of fundamental importance. However, it is the Government's view-and it was Parliament's view in 1999-that to ensure elections are fair, voters need to know that any party that gains registration is a genuine party. To achieve this objective the Electoral Commissioner needs to have appropriate powers to check the eligibility of parties seeking registration. It was never the intention of the Government that the commissioner would be forced to take the application of a party at face value. The Government does not believe that this was Parliament's intention either. However, this is the effect of the court's decision and as such it cannot be left to stand. Item [2] of schedule 1 to the bill, therefore, expressly authorises the Electoral Commissioner, on receipt of an application, to conduct preliminary tests and inquiries for the purpose of determining if the party is an eligible party, or if the application for registration is duly made. The commissioner will have a broad discretion to determine what tests and inquiries are appropriate.

Item [5] of schedule 1 to the bill makes it clear that the test already developed by the Electoral Commissioner of requiring a fixed percentage of any or all members to verify they are in fact members of the party is appropriate. As well as authorising the specific test already applied by the commissioner, the bill will specifically allow the Electoral Commissioner to adopt any other test for verifying membership of the party or to make other inquiries. This provision will ensure that the commissioner can take necessary steps to establish whether persons nominated as members are really members. Item [7] of schedule 1 will also allow the commissioner to require a member of a party to provide a statutory declaration to verify membership.

Item [3] of schedule 1 will clarify that the requirement to advertise the application pursuant to section 66DA of the Act can be delayed while such preliminary tests are carried out. This will ensure that resources are not wasted on the advertising of applications that fail to meet the criteria. The bill also makes it clear that these tests can be used by the Electoral Commissioner to establish if the party is entitled to ongoing registration. A failure to meet the test in these circumstances could provide grounds for cancellation. Either the current test or any new test developed by the Commissioner can be applied for this purpose. This will ensure that the register of parties is kept under active and ongoing scrutiny. There are a number of transitional provisions in the bill that need to be explored in detail. First, item [8] of schedule 1 validates the specific test already applied by the Electoral Commissioner in assessing applications lodged prior to the March 2002 cut-off date to contest the 2003 election.

The practical effect of this is that a number of the applicants that failed to meet the Electoral Commissioner's test will be stopped from taking legal action to gain registration. The Government is firmly of the view that the policy adopted by the commissioner was fair and appropriate to ensure that only eligible parties obtain registration. The Electoral Commissioner's acceptance of a 75 per cent response rate-rather than requiring a 100 per cent response rate-is not onerous. As I said, all parties in this Parliament have satisfied it. All applicants were notified as early as possible of the requirement and were warned about the cut-off date for registering to contest the 2003 State elections. The validation of the commissioner's policy will not, however, affect the order of the Supreme Court to register Save Our Suburbs.

So that the party can contest the 2003 election, the bill specifically provides that registration is to be taken to have been effected on 1 March 2002. This backdating of the party's registration has been made necessary because there is currently no power in the Act that would allow this to be done. While the judge accepted that he had no power to order registration from an earlier date, he suggested that there may be scope to register the party and then amend the register to backdate its registration. The Solicitor General has advised the Government that there is currently no power in the legislation that would enable the register to be amended in such a way. Proposed subsection 66FA (5) will put this question beyond doubt. The amendment is being made for the avoidance of doubt. Without the amendment the Electoral Commissioner would be in an uncertain position if a party made an application to amend the register to backdate the date of registration. This is not the appropriate way to address the problem arising from circumstances where an act of the commissioner is found to have inappropriately delayed registration, and that delay has the effect of preventing a party from endorsing candidates at an election.

There may be other cases where the commissioner fails to process an application through inadvertence or misadventure. As such, an express power to backdate a party's registration has been included. This power is closely confined so that it can only be used when the application was wrongly delayed. Proposed section 66FA (4) makes it clear that the power to backdate cannot be used to backdate a party's registration once the election has been held. This provision is necessary so that a party denied registration before an election cannot delay the commencement of proceedings until after that election, thereby creating uncertainty if it is found the party should have been registered so that it could contest the election. In summary, this bill will ensure that there is no repeat of the table cloth ballot paper that occurred in 1999. It will provide certainty and will ensure that people are not misled into voting for parties that are not genuine. I commend the bill to the House.