NON-PROFIT BODIES (FREEDOM TO ADVOCATE) BILL 2015

Bill introduced on motion by Mr Paul Lynch, read a first time and ordered to be printed.

Mr PAUL LYNCH (Liverpool) [10.13 a.m.]: I move:

> That this bill be now read a second time.

It gives me pleasure to introduce the Non-Profit Bodies (Freedom to Advocate) Bill 2015 on behalf of the Opposition. The object of the bill is to prohibit State agreements from restricting or preventing non-profit bodies from commenting on, advocating support for or proposing changes to State law, policy and practice. The origins of the bill lie in democratic principle and in the principles of good governance. One of the core principles of democratic societies should include free and open discussion with no unnecessary artificial constraints. In 1859 John Stuart Mill, in Chapter II of his classic *On Liberty*, wrote:

> No argument, we may suppose, can now be needed, against permitting a legislature or an executive, not identified in interest with the people, to prescribe opinions to them, and determine what doctrines or what arguments they shall be allowed to hear.

He also wrote:

> … speaking generally, it is not, in constitutional countries, to be apprehended, that the government, whether completely responsible to the people or not, will often attempt to control the expression of opinion, except when in doing so it makes itself the organ of the general intolerance of the public.

It is more than ironic that some people who often quote Mill are also those who sometimes advocate gag clauses in government funding agreements. Neither opinions nor silence should be bought. Not-for-profit bodies, ranging from but not restricted to community legal centres to human service non-government organisations, should not be gagged from expressing their opinions for fear of having government funding withdrawn. They should not have to agree in advance of accepting funding to submit to a gag. That goes to a basic democratic principle: opinions should not be bought. It is only too tempting for government, especially conservative ones, to try to silence criticism of their policies by denying or withdrawing funding. Organisations should not have to choose between funding on the one hand and speaking out publicly on policy issues that affect their sector on the other.

These are not merely matters of democratic principle, important as they are. They are also important considerations as to how governments get their policies correct. As Mill argues, one arrives at accurate positions by confronting contrary views. Non-government organisations [NGOs] will often have detailed, on-the-ground knowledge of problems and social issues. Their knowledge often will be different and superior to the official knowledge that government may have. Frankly, often they know more about issues than do government officials. They are frequently best placed to know how to improve things and deal with existing problems. They are exposed to large clienteles, which gives them an opportunity to recognise systemic patterns. If government wants the best possible policy, the best possible programs, the best possible governance outcomes, then the advice, opinions and lobbying of the non-government sector are essential.

The role of legal centres, for example, in developing policy in areas such as domestic violence, sexual assault laws and work and development orders is a powerful argument to not restrict the capacity of such organisations in lobbying and campaigning. The work that NGOs do is often about assisting some of the most marginalised and disadvantaged communities, families and individuals. Doing so systemically just makes it more effective. Regarding community legal centres, the Productivity Commission report entitled "On Access to Justice Arrangements" argued that such advocacy was an efficient use of resources. It addresses systemic issues and not just individual cases. That benefits

the community more broadly. The Productivity Commission said this about community legal centres:

> Strategic advocacy and law reform that seeks to identify and remedy systemic issues, and so reduce the need for frontline services, should be a core activity ...

This is even more so in a context where other longstanding sources of advice to government have been or are being restricted. In New South Wales, the criminal law review division no longer exists. The NSW Law Reform Commission has been lacking a chair and a full-time director for two years and has not had a reference from Government since late 2013. In this context, even greater effort should be made to have NGOs provide the benefit of their experience and expertise.

The provisions of the bill are quite simple. Clause 3 provides the relevant definitions. Clause 4 is, in effect, the operative provision and prohibits agreements between State agencies and non-profit bodies that contain prohibited content. To the extent that they do contain such content, they are void. Clause 5 provides that prohibited content is any requirement that restricts or prevents a non-profit body from commenting on, advocating support for, or opposing change to any matter established by the law, policy or practice of the State.

These are simple provisions but they enshrine significant principles. This is not the first such legislation in Australia. As I indicated earlier, the bill is based on a Federal statute that passed through the Commonwealth Parliament in 2013. At the time it was supported by the Liberal Party and The Nationals and was proposed by the Labor Party in Government. I note in particular the effusive speech in support by Senator Fifield, who is now, as he was then, on the Coalition front bench. At the time States were called upon to pass complementary legislation.

The bill seeks to prevent the throttling of the voice of the vulnerable. It seeks to stop the stifling of public criticism. It makes government decision-making better informed. It listens to bodies that are often in a unique position to provide feedback. The fears of stifling the not-for-profit sector are not unrealistic concerns. The Howard Government, for example, had contracts for funding with organisations from the community sector that regularly and routinely included gag clauses. It also reserved the right to censor public statements before they were released. This policy was overturned after the 2007 election by the incoming Labor Government. It was followed by the 2013 legislation, to which I have referred. That in turn was followed by the Not-for-profit Sector Freedom to Advocate Act 2013 in South Australia.

The Newman Government in Queensland imposed gag laws on community legal centres and subsequently proposed legislation to that effect. This was done in conjunction with funding cuts. The Federal Government has also attempted to use tax policy with the revocation of charitable status to silence some NGOs. It pursued proceedings concerning organisations such as AidWatch and the Hunger Project.

<3>
Some commentators perceived an agenda to control and silence civil society. These concerns have not been absent from New South Wales. I note that while this bill deals, as it should, with the not-for-profit sector generally, much of the recent debate surrounds community legal centres and legal assistance services.

In 2012 in this State the Government foreshadowed changes that many saw as replicating the Queensland example, and it was described precisely as that. Anna Cody, then chair of Community Legal Centres New South Wales, expressed concern at this possibility and pointed out that a government should be able to manage criticism. The proposed New South Wales Legal Assistance

Services funding principles caused great concern. At a time of funding cuts and defunding of services, the gag clause is an even greater threat. As Federal funding cuts are potentially posing an existential threat to community legal centres [CLCs], there is presently an even greater pressure for compliance on the part of CLCs.

These issues are particularly topical now, because recent reports suggest that the Federal Government is again pushing for provisions on funding agreements that prevent CLCs from advocacy and lobbying and contacting politicians. The agreements are proposed to be joint State and Federal. That means, if these reports are correct, that the States, including this State, will be signing up to a gag clause. A strong, innovative, independent not-for-profit sector is essential to getting government policy right and building a fairer community. I commend the bill to the House.

Debate adjourned on motion by Mr Daryl Maguire and set down as an order of the day for a future day.