

CORRECTED EVIDENCE

ELECTORAL MATTERS COMMITTEE

Inquiry into whether the Electoral Act 2002 should be amended to make better provision for misleading or deceptive electoral content

Melbourne — 18 August 2009

Members

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Ms C. Campbell

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Witness

Mr P. Cleary.

The CHAIR — Thank you for joining us, Mr Cleary.

Mr CLEARY — It is a pleasure.

The CHAIR — All evidence taken at this hearing is protected by parliamentary privilege, as provided by the Constitution Act 1975 and further subject to the provisions of the Parliamentary Committees Act 2003, the Defamation Act 2005 and where applicable the provisions of reciprocal legislation in other Australian states and territories. I also wish to advise you that any comments you make outside the hearing may not be afforded such privilege. Can you please state your full name and business address?

Mr CLEARY — Philip Ronald Cleary, 21 Hoffman Street, West Brunswick.

The CHAIR — Are you attending in a private capacity or representing an organisation?

Mr CLEARY — In a private capacity.

The CHAIR — The evidence you give will be taken down and will become public evidence in due course. I now invite you to make a submission.

Mr CLEARY — I will start with just a brief assessment of the question as it has been framed. It has been framed around the pamphlet that was issued by the Labor Party, I think under the auspices of Steve Newnham, who I believe was state secretary of the ALP. It read ‘A vote for Les Twentyman is a vote for the Liberals’, and I would respond accordingly.

A vote for Les Twentyman in the Kororoit by-election, given he was preferencing the Labor Party, could never have been interpreted as a vote for the Liberals. It is blatantly incorrect on the basis of any logical analysis to claim that a vote for Les Twentyman was a vote for the Liberals. Of course Steve Newnham, ALP state secretary, could engage in the usual cant and say that if Les had been elected, that would have meant the defeat of the ALP candidate, and therefore that such a vote was a vote for the Liberals. This is mere deceit. Only a fool would subject such a proposition to public scrutiny, and if it reflected the quality of the person’s thinking, it would hardly warrant inclusion in that person’s CV.

In Kororoit Mr Newnham was in fact engaging in a deliberate and calculated scare tactic based on a lie, that lie being that Les Twentyman was a closet Liberal or a Liberal stooge. It had no basis in fact and should have been described for what it was — a blatant lie. The reason for perpetrating such a lie was simple. The majority of people in Kororoit were always going to vote against the Liberal Party. By effectively describing Les as a Liberal the ALP hoped to play on the genuine and historic aspirations of the majority of the voters of Kororoit.

There is no shortage of irony in the deceit practised by the ALP in Kororoit. If, for example, the Liberal Party had described Les Twentyman as ‘a Labor stooge’, what could Les have said or done? He would have protested his independence but he could hardly have said he was the mortal enemy of perceived or purported Labor values when he was giving the ALP his preferences ahead of the Liberals.

As is always the case with Independent candidates, Les would have had to argue that despite some affinity with Labor he believed that a vote for him was a better option for the voters in that it was not at odds with their core values, values he believed the ALP had jettisoned. What the answer to this hypothetical question — a question the Liberal Party could reasonably have been expected to ask in the cut and thrust of politics — reveals is that a vote for Les Twentyman was not and could never have been described as a vote for the Liberals.

The ALP’s tactics in Kororoit deserve to be condemned on a number of fronts. It is not just about the impact that these tactics had on an outcome of the by-election but also on the political process. To lie to the electorate in this calculated way is to treat the electoral process and the electorate with contempt. To lie to the electorate and then brag about it being part of the cut and thrust of politics only compounds the problem. That the Premier, John Brumby, turned a blind eye to these tactics is extremely disappointing and regrettable. What is the point of westerners pointing the finger at electoral abuses in other countries — East Timor, Iran or anywhere else — whilst allowing political parties, and governing ones at that, to print deceitful lies in electoral pamphlets with impunity? Why should this kind of intellectual electoral fraud be acceptable, and, if it is, what does this mean for our political system?

During my four years in the federal Parliament between 1992 and 1996 I saw firsthand the lengths to which some political candidates would go to win an election. Independents were rare in the early 1990s, and the first catchcry used by the major parties was 'A vote for an Independent is a wasted vote'. As much as such tactics were frustrating for Independent candidates, they came with the territory, and as much as it could be shown to be untrue, it was not sort of issue you could take to the electoral commission; after all it could always be argued as a point. Given the number of Independents in parliaments across Australia now, such catchcries have little or no cachet these days, but it is hardly a sobering thought that, given the legitimacy Independents now have, the ALP in Kororoit should have decided that the only way to ensure victory was by distributing a leaflet based on perpetrating a lie. The electorate, the Parliament and the Victorian Electoral Commission should be outraged and should devise legislation to outlaw these kinds of practices.

The CHAIR — Thank you, Mr Cleary.

Mr O'BRIEN — You were the public contact officer for Mr Twentyman's campaign for the by-election in Kororoit, is that right?

Mr CLEARY — Was I that? I cannot be exactly sure what my title was on that. I think it was. I was doing it kind of as a friend, but is that what it said in the papers?

Mr O'BRIEN — That is what is on the bit of paper in front of me.

Mr CLEARY — I will not dispute it, but I am not part of a political party, so whether I had some official role or not is questionable.

Mr O'BRIEN — That is fine. Mr Newnham, who you referred to, gave evidence earlier today and he said that his evidence that a deal had been done between the Liberal Party and Mr Twentyman was that the Liberal Party would place Mr Twentyman second on its preferences. Given the Labor Party had also placed Mr Twentyman second on its preferences, I was wondering, can you give any evidence as to whether you are aware of any deal that had been done between the Liberal Party and Mr Twentyman?

Mr CLEARY — It is ridiculous to claim that because one of the major parties puts a third party — an Independent — before other people on its ticket that a deal has been struck. It is standard practice in elections for the major parties to put Independents ahead of each other. If the major parties want to put each other first, let them do it. But the way we hear them argue in the Parliament, it would hardly seem proper for them to do that. So it is a nonsense to argue that that is the basis or can form the basis of an argument that a deal was struck. In every election people discuss preference arrangements. Les Twentyman was going to preference the Labor Party. Why? Because the people of Kororoit were more disposed to Labor or less disposed to Liberals and, running as an Independent, he was expressing views within that general framework, so it is as simple as that. The Labor Party putting him second, as I say, is what the Liberal Party would do and what the major parties do in all elections. It is complicated by the arrival of the Greens from time to time only.

Mr O'BRIEN — From your involvement with the campaign, are you aware of what impact this pamphlet had on the campaign?

Mr CLEARY — We cannot empirically quantify the impact. How are we going to know that? That could be disputed, but we have to go by political history. We have to base it on anecdotal references, and I discovered anecdotally that there was much concern from people based on this leaflet. The fact that the leaflet, as I understand, was dropped on the death knell — it was not out a week or two weeks before the election, am I correct in saying that?

Mr O'BRIEN — I understand that is right.

Mr CLEARY — Let us ask Mr Newnham, 'Steve, why did you wait until a day before the election to put the leaflet out — because you knew there would be no public commentary on the leaflet?'.

Mr Newnham knows why he put that out, because it would scare people and would not allow Mr Twentyman the opportunity to ventilate those issues in a public forum, so I say look at the tactics. The tactics will tell you a story about why it was put out. You do not put the leaflet out if you do not think it is effective, so the Labor Party thought it was effective, so let us just stand by Labor. They think it was effective enough to do it.

Therefore, it probably had an impact, and secondly, the anecdotal evidence was that people were genuinely frightened, and, as I said in this submission, these are people who were predominantly going to vote against the Liberal Party.

Mr O'BRIEN — Just finally, Mr Newnham gave evidence this morning that he would do the same thing again tomorrow. What is your response to that?

Mr CLEARY — Mr Newnham likes to engage in the old standard bravado as these political apparatchiks do. Good on him. If he wants to demean the political process, then one day it will come back to bite him on the backside because maybe the Premier will not be looked on so well at the next state election when these issues are raised again, and if the media raises them properly, if the media takes on the role of that fierce fourth estate, let us see what impact it does have. It is all very well for Mr Newnham now to bask in the glory of winning one by-election, but it might be a Pyrrhic victory for him. But apart from that bit of rhetoric from me, it is just a bit unfortunate that he thinks that that is appropriate; he is really saying that deceitful pamphlets based on lies are all right. Ask members of Parliament in the Parliament if they think that is good practice. When they stand and argue about being misrepresented, when they complain about public utterances, as we have seen again and again, do they sound like the people who are happy to be misrepresented in the public forum? If they are misrepresented by the media, are they happy about it? They are on the phone immediately, and yet Mr Newnham, as a Labor Party apparatchik, wants to big note about some Pyrrhic victory. It is pathetic.

Ms BROAD — Mr Cleary, in addition to your involvement in the Kororoit by-election, you have been a candidate and a member of Parliament, and I think most people would agree that you have been pretty robust in your participation in political debate.

Mr CLEARY — Yes.

Ms BROAD — And have expressed yourself pretty forcefully about your views on a whole range of matters and your opponents?

Mr CLEARY — When you say 'opponents', I mean — okay. I will answer your question. I will wait till the question has ended.

Ms BROAD — Other candidates?

Mr CLEARY — Yes.

Ms BROAD — In political contests that you have been involved in?

Mr CLEARY — If I say that I think it does not reflect well on Mr Brumby that this pamphlet was issued and that he made no criticism of it, I am not accusing Mr Brumby of being something he is not. I am just putting a fact there that I say reflects poorly on the office of the Premier. Now if you think that is a personal attack, I would be happy to hear it. I would not call it that. I think we should be able to critique people on the basis of an idea or a practice. Mr Twentymen was not critiqued on the idea of a practice or an idea but on a lie that a vote for him was a vote for the Liberal Party. It was not the only thing that was said about Mr Twentymen in that Kororoit by-election too. You would be aware there were other leaflets put out about heroin injecting rooms and the like, which had been ALP policy, of course, and the ALP had been happy to canvass Mr Twentymen's support on those matters but then threw it back at him in a way that I think was also deceitful but was not a matter for the electoral commission, but anyway, yes, I am prepared to say I am robust in political life, yes.

Ms BROAD — Thank you. I am glad you acknowledge that. So you were supporting the electoral commission to have a role and have that role through changes to the electoral laws in Victoria so that the electoral commissioner would be making judgements about the content of election material. How do you think that would work, including in circumstances where candidates such as yourself want to have the freedom to robustly express strong views about a range of matters?

Mr CLEARY — I am the first to admit that this is not an easy question to resolve. I would not be looking at the Parliament or looking at this committee and condemning the committee for not being able to resolve the issue satisfactorily, because it is very complex in that we are going to talk about ideas and matters of opinion, and in a robust political system we do want that. But I think this might be no more than a starting point for a

proper discussion about political life which will be valuable. And if the issue is not resolved by this committee, maybe at another time this will have laid the ground work for further discussion.

The fact that we have this discussion occurring is the starting point and a good thing. When it comes to resolving it, we have to be clear about what we think is appropriate. Was this leaflet a statement of fact or a statement of deceit? Was it a lie or was it a truth? This committee can make a decision on that, and I do not know what your position would be, Candy, on this. You as a Labor person, would you pick the leaflet up and say, 'Yes, I agree. That is a lie. A vote for Les Twentyman was not a vote for the Liberals; he was preferencing Labor'.

And if you do conclude that, do you then move to a position that says, 'We will try to outlaw lies from leaflets. You can have opinions on a leaflet, but we will outlaw lies'? And if you can say that this is a clear, discernible untruth, then the commission can act and every politician will know what is a fact and what is not a fact. Steve Newnham knows that what he put on that leaflet was not a fact, and he would have gone into the election knowing that. If he was told afterwards, 'What you put on there was not a fact', he would not have been surprised one bit. In other words, he would not have done that if there were teeth in the legislation. The starting point is: distinguish between fact and opinion, and there are some things we know are facts.

Ms BROAD — I have a follow-up question. Earlier today in evidence it was indicated to the committee that there was more than one how-to-vote card from Mr Twentyman and the earlier how-to-vote cards did not allocate preferences. Have you got any comment about that?

Mr CLEARY — No, I have not. I cannot remember, to be perfectly honest, and I am not trying to fob the question off at all. I wish I could answer that properly. I suppose the implication is that therefore — —

Ms BROAD — It is just a question of fact.

Mr CLEARY — Yes, I know, but I can see the implication, Candy, and we should discuss it. I suppose the implication is that because there might not have been a card with preferences Les Twentyman was in the process of doing a deal with the Liberal Party. That is what the implication might be.

Ms BROAD — I am simply asking a question about fact.

Mr CLEARY — No, you are not.

Ms BROAD — And if you cannot recall — —

Mr CLEARY — I do not think you are, I do not think you are simply asking a question about fact. What is the point of the question?

Ms BROAD — It is either true or it is not.

Mr CLEARY — I could say, 'Do I know that that was the case, no, I do not' I cannot ring Les up and ask him, but I would be surprised, it was probably — I would imagine from my experience in elections that sometimes you get a leaflet out quickly to say that you are running and here are your policies while you are working out these other processes, and time comes into play, but it sounds to me like that would be a position put by someone who was trying to defend the leaflet. Would that be right?

Mr O'BRIEN — Chair, in fairness to the witness, I think he should be informed that Mr Newnham, who gave this evidence, conceded there was only one registered how-to-vote card, and that registered how-to-vote card allocated preferences to the Labor Party.

Mr CLEARY — Yes.

Mr O'BRIEN — Just so that the witness is fully aware that there was only one registered how-to-vote card that we are discussing.

Mr CLEARY — I think I was imagining that that was the nature of the question, wasn't I?

The CHAIR — Mr Cleary, I will just get back to Ms Broad and then we can take it from there.

Ms BROAD — I was actually referring to how-to-vote cards, not pamphlets.

Mr CLEARY — Okay, so did Les put out two how-to-vote cards, or one?

Ms BROAD — I think everyone around this table would be aware that it is possible but difficult to have more than one registered how-to-vote card, but the committee was advised, and Mr Newnham is not the only source of that information, that there was more than one how-to-vote card distributed. I was simply asking whether you know if that is correct or not?

Mr CLEARY — No. Could I ask you, just so I can better answer the question, are we saying that there was a further how-to-vote card? That there was another how-to-vote card? Is that what we are saying?

Ms BROAD — The committee has been advised that there was more than one.

Mr CLEARY — The committee has been advised that there was another how-to-vote card; what were the preferences on that how-to-vote card? There were none.

Ms BROAD — The committee was advised that it did not have preferences.

Mr CLEARY — It was not a how-to-vote card, was it, if it did not have preferences? How could it be a how-to-vote card with no preferences on it?

Ms BROAD — Such things do exist.

Mr CLEARY — They might exist in someone's imagination, and that to me sounds like the standard ploy of someone trying to defend the leaflet by way of, 'Mr Twentyman was hedging his bets and was preparing a number of how-to-vote cards'. Untrue, untrue. If Les Twentyman had put out a how-to-vote card preferencing the Liberals, he would have been pilloried in that election. You cannot do it.

Ms BROAD — Mr Cleary, a moment ago you said you could not recall. Are you now recalling these matters?

Mr CLEARY — I am saying to you that if I was advising Mr Twentyman about a how-to-vote card, I would be saying clearly to him, and I am sure I would have said it to him, 'If you are contemplating preferencing the Liberals, you may as well not run in the election because you will lose', so there is no way known, to the best of my recollection, that Mr Twentyman ever considered that.

But that was not your question. Your question was, 'Did I know of a leaflet', and I cannot say to you that I know of a how-to-vote leaflet. I cannot say I know of that, no, I do not. But when I ask you, 'What were the preferences on that leaflet', Ms Broad, you cannot tell me. Can someone tell me, was that a separate how-to-vote card with preferences on it that were different from the official one?

Ms BROAD — That is what the committee was advised, yes.

Mr CLEARY — Did Mr Newnham bring it in with him as a piece of evidence? What, he just floated it as speculation, did he? That sounds to me to be ridiculous.

Mr DAVIS — Mr Cleary, I have several questions but I will set them out in summary without verballing Mr Newnham, but in essence his points were, this morning: that there was a deal with the Liberal Party; it was the truth — that is, that the pamphlet therefore was representing the truth; that it was within the law; that it was a legitimate political strategy; and that he would do it again tomorrow.

My questions, and I put this question to Mr Newnham, are: if it is the truth, what is the evidence? He said the evidence was obvious because of the preference arrangement with the Liberal Party: the Liberal Party preferred him first. So I ask you the question: was it the truth, was there a deal?

Mr CLEARY — Mr Newnham could hardly sit here, I suppose, and say that he would not do what he did, because if he said to you he would not do what he had previously done, he would be admitting guilt on the question of the leaflet and accepting the proposition laid down here. Mr Newnham has to exclude that and

defend his actions. He seeks a way of defending his actions and, as I said in here, it is no more than cant — it is rubbish.

The Liberals have to preference someone. They are not going to preference the other major party first, although they have contemplated it. They contemplated it in Wills when I was standing as an Independent because that, at least, would have kept me out of the Parliament. But they generally do not do it because the public critique would be too strong and they would lose face. The notion that because Les was preferred by the Liberals in a deal is rubbish, and Mr Newnham knows it.

Mr DAVIS — Okay.

Mr CLEARY — There was no deal, except that — the only thing that you would do is that you would talk to people about preferences. If I ran tomorrow for a state seat, for the seat of Brunswick, I would ask the Liberals for preferences, and the Labor Party would ask me to preference it. This is standard political practice. That is not a symbol of a deal. You have to preference. You explain where your preferences going. If I were standing in the seat of Brunswick, I would hardly be preferencing the Liberals, because that would cost me the election. They would immediately say, ‘A vote for Cleary is a vote for Liberals’ in a territory where people will vote in the majority against the Liberal Party. So finally, there was no deal.

Mr DAVIS — Thank you. Further, he also said it was a legitimate political strategy. Do you have a view about that?

Mr CLEARY — Yes, I do. If that is a legitimate political strategy, then nothing matters anymore. There is nothing virtuous about the body politic. It is all about deceit and if that is the way we want to go, if we want to march down that path, then forget all the sanctimonious speeches in the Parliament about faraway places of authoritarian nature and stop meddling in the affairs worldwide where we believe democracy is not featured because it is hypocrisy. If Mr Newnham says it is a legitimate practice, I will just repeat: that debases the political process, not on the basis of the cut and thrust of politics, or robust opinions or critiquing someone’s ideas or actions, but on the basis of the fact that what was stated in Kororoit was a lie.

Mr DAVIS — Okay, thank you.

Mr CLEARY — Discernible, objectifiable lie.

Mr DAVIS — Mr Newnham also said he would do it again tomorrow, and I take it that you have just answered — responded.

Mr CLEARY — Yes, I have answered that.

Mr DAVIS — But in conclusion he also said that it was within the law, and I have to confess that the electoral commissioner has, in his review, said it is within the law. Your view is that, in fact, something needs to therefore be changed, or do you think that is a matter for the dignity and respect that we have for society, for people involved in political debate, to regulate themselves?

Mr CLEARY — It would be great if everyone regulated themselves, but society is not doing too well out of self-regulation, privatisation and the like, I would have thought. Civic society has suffered because of those policies, I would argue.

We do need a framework that at least makes a statement about what we think is proper in an election, and even if you set up a framework based on good ideas and intentions and it can be manipulated, so be it, but at least you have made an effort and you have improved the status and the standing of the body politic, and that would be a good thing. You know what happens. You modify via legislation, you establish a framework, you see the problems and you continue to modify, so it becomes the start of a good process, and I would welcome that. I welcome the discussion that we are having about it, and what sort of legislation might follow.

The CHAIR — Thank you, Mr Cleary. You will receive a transcript in about 14 days.

Mr CLEARY — Okay, thank you very much.

Witness withdrew.