PUBLIC INTEREST DISCLOSURE AMENDMENT BILL 2003

Second Reading

MRS C.L. EDWARDES (Kingsley) [4.02 pm]: I move -

That the Bill be now read a second time.

The purpose of this Bill is simple: it is to remove the restriction on whistleblowers talking to the media about their claims and to enable them to defend themselves without threats of dismissal or discipline. The Bill represents another test of the Government's approach to whistleblowers and I welcome the opportunity to again challenge the Government to demonstrate that it is serious about supporting and protecting them. Everything that has been said and seen publicly so far indicates the opposite; it has become a matter of saying one thing and doing the opposite. Three separate episodes involving unacceptable treatment of whistleblowers point to a distinct pattern of antiwhistleblower behaviour by this Government. As I shall demonstrate, whistleblowers have suffered most for doing nothing more than their job in the interests of the people of Western Australia. If the Government were serious about supporting and protecting whistleblowers, it would never have restricted their ability to speak out. Indeed, on 7 May 2002 the Attorney General said in the Legislative Assembly -

The intention of clause 17 -

That is the clause that is being amended -

> is that although somebody who has made a public interest disclosure to the appropriate public authority is protected from defamation proceedings, he would lose that protection if he went to the media. That is what we tried to achieve through that clause. It was not intended that it would then expose someone to disciplinary action. The thinking behind the clause was that a person should not be able, effectively, to set up a scam whereby he goes through the right channels to make a public interest disclosure, and then goes public, saying that he is protected from defamation proceedings or other action because he has first made the complaint through the correct authorities

We propose to amend section 17 of the Public Interest Disclosure Act by removing that restriction on whistleblowers going public. We then propose to move a new section 13A, which will allow whistleblowers to go public once they have gone through all the appropriate steps that are outlined in section 5, other than the protections that will be retained in section 13B. However, the provision to take civil or criminal action against whistleblowers will be retained if they go public.

The Attorney General further commented at page 9964 of *Hansard* -

> In the light of the issue the member for Kingsley has raised, I foreshadow that this might be one of the areas included in that review. In my view, the purpose of clause 17 is to prevent people using this legislation for improper means, such as defaming someone; that is, it should prevent someone who has complied with the legislation to make a public interest disclosure from using the protection of the legislation for things that are not in accordance with the legislation. It was certainly not my view that this should extend to things such as disciplinary actions against a person who, for instance, made a proper disclosure and was interviewed by Paul Murray on 6PR a week later when the matter became a public issue. Of course, that person might well be sued for defamation for what he or she said on the radio station.

That is a different issue, to which I responded equally. The Attorney General went on -

> It places on the whistleblower a burden greater than that which we intended.

Later he said -

> . . . I can foresee that there might be practical problems with that clause.

I believe that we are now giving the Attorney General an opportunity to support an appropriate amendment that would lift the unnecessary restriction that he and I talked about more than a year ago when the legislation was before this Parliament.

Whistleblowers who follow the correct procedures in reporting suspected breaches should have the freedom to talk to the media without the fear of reprisals, such as the protections under section 13B: disciplinary action, dismissal, termination or any breach of a duty, secrecy or confidentiality or any other restriction on disclosure. Whistleblowers must still go through all the proper processes as outlined in section 5, which states -

> (1) Any person may make an appropriate disclosure of public interest information to a proper authority.

(2) A person makes an appropriate disclosure of public interest information if, and only if, the person who makes the disclosure -

(a) believes on reasonable grounds that the information is true; or

(b) has no reasonable grounds on which to form a belief about the truth of the information but believes on reasonable grounds that the information may be true.

There are therefore protections in the Act to ensure that a whistleblower cannot make malicious and false claims knowing them to be false, because it would not be an appropriate disclosure of public interest information. However, as the Attorney General and I have said in this place before, they should be allowed to go public if it is in the public interest to do so and they have made that information public in the appropriate way as provided for under the Act; and they should be able to do that without the threat of disciplinary action or the threat of dismissal or termination. The public is entitled to have all the claims of a whistleblower laid out before it. The public should not have to rely on government assurances that all it must do is trust the Government.

I have raised in this place many times the case of proved whistleblower Chris Read, who blew the whistle on the public waste of hundreds of thousands of dollars by former Ombudsman Murray Allen. Mr Read has been vindicated at every turn, but his only reward has been punishment. He has been victimised and has suffered tremendous detriment as a direct result of his courage and integrity. He is a man who had a happy family life, was happily married with two children, loved his job, was articulate and did what we would expect any public servant to do; that is, look after the interests of the people of Western Australia. When he saw something amiss, he followed the correct procedures in reporting the problem and subsequently exhausted all internal avenues of appeal. However, what happened? The Premier, who would have us all believe that this Government will protect whistleblowers, refused even to meet Mr Read and said in this place that Mr Read's allegations were regarded as incorrect, until the Auditor General subsequently proved that they were not wrong. Chris Read eventually went to the media. It is interesting to note that at that stage journalists were then told that Mr Read was very unstable. We have heard that sort of allegation before, about Ms Jean Thornton. Mr Read was right about the waste of money: the Auditor General found that the Ombudsman had wasted hundreds of thousands of taxpayers' dollars and had breached several administrative requirements. However, what has happened to Mr Read since he blew the whistle? He has lost the job that he loved so dearly all because he had the courage and the integrity to speak out and to do his job. Mr Read understands why his wife and kids have found the pressure intolerable. That pressure should have never been allowed to build up in the first place. If allowing someone to lose a happy family life and a job is how this Government protects whistleblowers, its legislation will be worthless.

After the experiences of people such as Chris Read, Jean Thornton, Neil Winzer and others, no public servant will ever put his or her hand up to raise a concern about some government activity. These are not idle words. Senior public servants are already expressing the fear that they will receive the same treatment. They are not about to take that risk and end up as the Chris Reads of this world have done: being treated as the offender. Chris Read's case is not isolated. The media are already well aware of the treatment that has been handed out to Jean Thornton, who showed the same sort of courage and integrity in raising matters in the public interest, only to be ostracised and punished for her action. Ms Thornton exposed serious accountability issues and breaches in the funding protocols of the Office of Aboriginal Health that resulted in $1 million of taxpayers' money going missing. What has happened to Ms Thornton? Instead of thanking her for her courage in coming forward, the Premier has presided over her being shunted sideways. Instead of investigating her claim of being bullied by the former health minister, the Premier has taken the minister's word that this simply did not happen, even though there is independent support for Ms Thornton. One must question why the whole affair was allowed to languish for more than 12 months before the police were involved; why the former Minister for Health was so quick to act on other matters but so slow on this one; why the Premier has refused to apologise to Ms Thornton for anything but the delay in having the matter investigated; why the Premier failed to check with independent witnesses about whether his minister's behaviour had been bullying or threatening; and why the former health minister did nothing for more than 12 months, considering that only days after taking office he said that he likes to go through things very clearly and investigate them properly and, at a later stage, that he likes to listen to people, lay down all the evidence, do a strengths and weaknesses check and talk to all the stakeholders before making any recommendations in relation to the portfolio. I wonder how much investigation the minister did on this occasion. How much did he listen? Did he lay down all the evidence? How much did he talk to all the stakeholders? I suggest that we all know the answers.

The third case involves Mr Neil Winzer, who initially lodged public interest claims about the administrative process utilised and the standards observed by senior officers when switching agendas for organisational change at the then Department of Transport. These changes revolved around changing from enterprise bargaining arrangements to individual employment contracts. Mr Winzer first raised this matter several years ago - indeed, when the Liberal Party was in government - but it is still awaiting proper investigation and most certainly

resolution. All that has happened in the interim is that the file of letters backwards and forwards continues to grow larger. Mr Winzer's case has been raised in another place by the now Minister for Agriculture. I can do no better than quote what he said on 6 September 2000. He described Mr Winzer as a professional and talented public servant of longstanding who had risen to a senior level in the then Western Australian Department of Transport. I will quote the member precisely -

> Mr Winzer took his duties as a public servant extremely seriously and, charged with the responsibility of ensuring that the enterprise bargaining agreement and the obligations it imposed were being properly administered by his employer, the Department of Transport, he became concerned that the Department of Transport was failing to meet those obligations. He did then what any good employee would do - particularly any good public servant: He raised the matters with the appropriate person; that is, his immediate superior in that department.

The member went on to say -

> From that point on, Mr Winzer claims - and there is some evidence to support that claim - that he was harassed, that he was separated from the mainstream of decision making, and that in fact a contractor was brought in to perform the duties he was employed to perform . . . He did his job correctly . . . He did the right thing . . . Even though he had done his job properly he found himself sidelined and harassed.

Mr Winzer's life has gone downhill since he did what he was paid to do. His mental and physical health has suffered, his family has suffered and he is currently unemployed and has no income. Mr Winzer's case was also taken up by Professor Allan Peachment, who wrote to the Premier on the issue in June 2001. Professor Peachment is on such good terms with the Premier that he was able to begin his letter with "Dear Geoff". He pointed out that with the strong backing of the then Opposition, now the Government, he had tried to have the Winzer case reviewed. Professor Peachment's letter in part states -

> Complicated though Winzer's case is, a brief study of his file by an <u>independent</u> barrister would provide an opinion as to the veracity of his case.

Further on he states -

> I am aware that Winzer has recently been made an 'offer' of a 'without prejudice settlement' by the Minister for Planning and Infrastructure but acceptance of this would infer that he does not contest the gross injustices I believe he has suffered in recent years.

Professor Peachment advocated financial relief and the opportunity for Mr Winzer to clear his name and reputation and to return to employment in the public service. Professor Peachment also wrote to the Attorney General. Again, he knows the Attorney General well enough to address his letter "Dear Jim". I will refer to a couple of parts of his letter. He states -

> I believe that some of the above 'watchdogs' -

They were the Commissioner for Public Sector Standards, the Auditor General, the Anti-Corruption Commission and a Legislative Council committee, and only the latter gave him cause for hope -

> were precluded from examining Neil's allegations because of their terms of reference however; I did examine a communication to Neil from the PSSC and found it to be seriously flawed in its analysis. I made this point in responding to the PSSC.
>
> In addition to all the above official activity, I note that while in Opposition several of your colleagues made strenuous attacks on the then government in relation to Neil, this included a letter from Michelle Roberts in her capacity as Acting Leader of the Opposition. This raises the point that if there was substance in Winzer's allegations when Labor was in Opposition, why has interest now evaporated?

I now move forward two years to August 2003. Mr Winzer is still battling the bureaucracy and a Government that expressed such support for him when in opposition. As late as 26 August this year Mr Winzer wrote to the State Ombudsman, Deirdre O'Donnell, in the following terms -

> It is most alarming that after the years during which every other possible 'responsible' individual and agency has, I say wilfully, resisted my public interest claim, you argue that I should have come to you sooner.
>
> I consider the perspective apparent in your "preliminary" determination most inappropriate. Why should I have been solely responsible for the correct and timely administration of this legitimate public interest claim? My view is that you would now have to do a complete about-turn in order to act in the public interest and I don't think you have the will to do that.

> The similarities between my disclosure experience and all others, including that of Mr Chris Read (Ombudsman's Office) and Ms Jean Thornton (Health Department), are quite frankly, scary. For example I note that in the current Health Department matter, as in my case, both Mr Mal Wauchope and Mr Sean Walsh had the opportunity to act appropriately. If you wish, I still have . . . copies of the note and relevant documents I provided to Mr Walsh back in 1999.

He goes on to make the points -

- How can you reasonably argue that my claim is "out of time" when my circumstances which have developed as a direct consequence of my attempt to make a public interest disclosure, continue to deteriorate? Try telling the bailiff that his/her claim against me is "out of time".
- In the past, misstatement of my claim involving reference to the enterprise bargaining part without reference to the privatisation and contracting-out part has enabled agencies to consequently wrongly categorise my claim as "industrial" in nature and then argue it is not within their jurisdiction. I am effectively asking you to look at the administration involved in the introduction of privatisation and contracting-out at Transport;

In his closing paragraph he states -

> I also make the following point in regard to that part of your lengthy argument 25.7.03 about it not being in the public interest for you to devote resources to investigate this matter "out of time", given you have to consider your finite resources to deal with "approximately 3,000 complaints a year". As you have confirmed 25.7.03, my claim has never been investigated.

This man has been treated unfairly. A termination package has been offered to him on the basis that he drop his allegations, separate out the termination package and leave his allegations behind. The modus operandi is: let them suffer financially, personally and in their family lives, and force them to drop their allegations in order to survive. That is totally unfair. All these cases have involved unacceptable treatment of the three individuals concerned. Public servants who are whistleblowers are not treated with the respect that should be afforded to human beings. All these people are asking is to be treated with respect because they are doing their job as public servants. They are identifying waste, as required under the Public Interest Disclosure Act, which ensures that public interest information is investigated.

From the Premier down, there has been no support whatsoever, which is in sharp contrast to the Premier's professed support for the whistleblower legislation. What is the legislation worth if everyone from the Premier down at best stonewalls and at worst blocks attempts to investigate and resolve allegations and leaves whistleblowers hanging out to dry? In Ms Jean Thornton's case a private and confidential letter was addressed to the Premier at his electorate office. It was taken to the Premier's office. Before the Premier saw it, as he claims, it was sent for response to people at the Department of Health - the very people in the very Department of Health about whom Ms Jean Thornton was complaining. No-one should be surprised that the response that came back was that everything was okay. Because the Premier believes that the letter sent to him at his home in February 2001 highlighted allegations about waste at the Office of Aboriginal Health, in order to save his own neck, he published it without reference to the whistleblower, not only identifying the whistleblower but also the people referred to and the allegations made in the letter. The allegations were not about financial mismanagement, but about serious mismanagement of human resources that was occurring in the Department of Health.

This Premier has not accorded to Ms Jean Thornton the respect she deserves as a proven whistleblower, nor the respect and protection that a whistleblower should be accorded under the Public Interest Disclosure Act. What is the legislation worth? The answer is that it is not worth the paper it is written on. Clearly, there is no genuine protection for whistleblowers against discrimination and victimisation. The examples I have quoted serve only to underline the difficulty of encouraging any future potential whistleblower to come forward. They serve only to underline how little the Government really cares about whistleblowers and how little it really wants allegations of impropriety in government raised, let alone investigated. It is no use the Premier or any other member of the Government saying that the culture within the public service will change. It will not change unless the Premier shows some leadership. The only way it can change is for the Premier to show leadership on the issue and to demonstrate to public servants, especially those in senior positions, that public servants have not only a right but also a duty to raise matters they believe need to be raised. If the Premier were serious about supporting and protecting whistleblowers, he would cut whatever red tape is in his way and intervene in the three cases I have outlined to achieve a satisfactory solution for all, but especially a satisfactory solution for the whistleblowers.

We have seen public servants jump many grades to other positions, whether they be acting, temporary or permanent, yet the salaries of whistleblowers are maintained at the level of the positions they held when they

blew the whistle. They will not be appointed to similar positions, but will be removed from their positions. Instead of the people about whom they are complaining being removed, the whistleblowers are removed. The whistleblower then becomes the victim. That is wrong. Until the Premier acts, he cannot expect public servants to follow his example. They will not change if the Premier and the former Minister for Health act in the way they did to Ms Jean Thornton. If the Government were really serious, it would provide one small illustration of support for whistleblowers by supporting this Bill and allowing whistleblowers the freedom to talk to the media about their allegations once they have raised them through the correct channels. Our democracy demands no less. I commend the Bill to the House.

Debate adjourned, on motion by Mr M. McGowan (Parliamentary Secretary).