

**MACHINERY OF GOVERNMENT (MISCELLANEOUS AMENDMENTS) BILL 2003**

*Second Reading*

Resumed from 4 December 2003.

**MRS C.L. EDWARDES** (Kingsley) [3.08 pm]: Although the machinery of government Bill is a large piece of legislation, it is fundamentally administrative in nature. It addresses many anomalies in other pieces of legislation and standardises chief executive officers' titles and so on. The legislation contains a number of new processes that also need to be highlighted. For instance, there are changes to the Department of Housing and Works, and I hope the Minister Assisting the Minister for Public Sector Management will explain those. It also provides a great opportunity to look at the public service and talk about what sort of public service we want. Much has been written about the public service over many years. Everyone generally agrees that the ideal public service is one that can serve the public without bias, does not need to curry favour, has no fear of reprisals, and cannot solicit benefits for itself. In a paper by Paul Hasluck entitled "Politics in the Public Service - The New Corruption", written in 1986, he says -

The ideal for which we have striven is a public service which can serve the public without bias and which does not have to curry favour, fear reprisals or solicit benefits for itself. By and large we have achieved that in Australia and the achievement was founded on the idea that appointments to the service and promotion within the service were open and competitive without political patronage or class favouritism.

He is basically saying that this is the ideal that we want to achieve for any Government at any point in time.

Public servants are expected to be politically neutral in their official work and to offer loyal support to the Government of the day, no matter which party is in power. Public servants are permanent. Although ministers may change, one of the benefits of being a public servant is that they have job security. Public servants may be required to execute policies with which they disagree. That is not supposed to affect their behaviour. They are trained to think of themselves as working out of the limelight and anonymously implementing policies on which they offer fearless advice.

The article by Hasluck states also -

In the contest between democracy and bureaucracy, nothing is gained and something may be lost by 'politicising' the public service for that would lessen the hope that an a-political and career public service might sometimes restrain despotic ministers and normally guide them along the traditional paths of parliamentary democracy.

This was referred to also in the report of the WA Inc royal commission, which states at paragraph 6.3.2 -

The Commission has concluded that the Public Service itself was devalued by what has occurred. Perhaps it was inevitable that there be some distrust shown by ministers of a body of officials who are constitutionally obliged not to be politically partisan, but who nevertheless are required to serve those holding government for the time being. But it is impermissible for a government to encourage allegiance by making the Public Service partisan at points of strategic significance.

This question has dogged all Governments of all persuasions over many decades in Australia. The WA Inc royal commission found that one of the major reasons that the public service failed at that time was the strong politicisation of the public service. If a minister has a particularly strong point of view, the public service may implement or reflect that view in some way in the advice that it gives. I suggest that that would not be good advice from the public service. Public servants should be able to give fearless advice. They should not have to fear that the advice they give will have an adverse effect on their career at a later time.

Over the decades, both in this State and throughout Australia, there have been many attempts to implement reforms in the public service. In my research I also found an article by Gough Whitlam. Gough Whitlam says in that article that he found it very difficult to come in as Prime Minister after a long period during which there had been a Liberal Administration and a public sector that he felt had developed conservative views. He talks in the article about the demands that were pressing on him in the challenging environment of the seventies and says -

One of these demands concerns the role of the Australian Public Service under a Labor Administration, as that Labor Administration responds to the immense challenge imposed upon it by the decision of the Australian people just under a year ago.

He states also -

All Governments are expected to make changes and to deliver benefits with a precision and promptitude never before expected or experienced. And when a new Government comes in after so long an absence, those demands, those pressures, are accelerated and intensified.

He found, having been elected with many issues on his platform that he had to introduce and implement, that he had to move very fast, and he was concerned that at times the public sector was not moving as fast as he would like. He said also that in developing an administrative and advisory support for the Government, five key elements were absolutely necessary. The first element is a public service that is impartial, responsible and professional. Therefore, there is the same view, no matter whether it is from Hasluck or Whitlam, about the need to have an impartial public service. The second element is task forces and committees of inquiries, with all or a large part of the membership consisting of outside experts, highly competent in their particular fields. The third element is commissions and other continuing authorities, drawing staff from inside and outside the service, investigating and managing new areas of government initiatives. The fourth element is priorities review staff - a think tank - providing a new form of long-term priorities advice. The fifth element is consultants and outside advisers to ministers. He then set about restructuring the public service to meet the new directions of the Government of the day. He was in government for only a short time, and history will determine whether he was successful in doing that. Some people may suggest that due to some of the dilemmas that that Government found itself in at that time, some of the advice that he received was not the neutral advice that he perhaps should have been receiving.

The 1976 Coombs Royal Commission on Australian Government Administration suggested that the public service needed to move towards accountable management and that its task was to devise performance measures for both the organisations and the individuals; to implement long-term budgeting; and, very importantly, to introduce flexibility into duty statements. That is the first time the word “flexibility” has been introduced into the public service. Those reforms were put in place by Dawkins, who said in an article in December 1983 entitled “Reforming the Australian Public Service” -

The objectives of the Government’s proposal are to develop an administration that:

- is more responsive and accountable to ministers and the Parliament
- is more efficient and effective
- gives all Australian citizens an opportunity to compete on merit to join and advance within it, and which provides greater opportunities for disadvantaged groups, and
- has a more streamlined and independent system for protecting the rights of staff.

He continues -

To meet these objectives the proposals focus on three main areas:

- the senior public service
- central resource allocation and review, and
- personnel policies and methods for handling grievances and appeals.

When the Minister Assisting the Minister for Public Sector Management made his ministerial statement yesterday following on from the Costello report, none of the concepts and ideas, even though we are in 2004, are new. All the research, and all of the reviews and papers that have been written over the years, are just a repeat of what has been said in the past. All we have had is a constant renaming and rebadging, and a constant implementing of things in a different way, to achieve a public service that is more efficient, more responsive and accountable to the elected representatives of the people, and more in harmony with the diverse needs of the community it serves. I wonder sometimes whether talk about a more efficient and responsive public service is just words. How does a new Government, following a period of another Government, ensure that the public service will give it the advice it needs, not the advice that the public service believes it wants? There is often a conflict between ministers and/or Governments of the day and the public service; that should not be the case. How does the Government of the day get a very strong, independent public service that is also responsive? Some people suggest the American system in which the senior echelons of the public service or the administration come in and go out with the Government. I do not support that system. I do not believe Western Australia is yet at a stage that would support constant changes at the top in that way. One strength of the Westminster system has always been the independence of the public service so that ministers and Governments can come and go but a strong historical knowledge in the public service continues to survive Governments. As I have tried to demonstrate, nothing really changes. Every Government of the day seeks the golden egg of a more effective and responsive public service. The question ultimately is: what sort of a public service do we want?

Brian Burke became Premier in a Labor Government in 1983, after a long period of a previous Liberal Government, and issued a paper in 1986 on the Government's position headed "Managing Change in the Public Sector". He referred in that paper to meeting the challenge of change and the implications of change to the public sector, and said -

As a consequence of changing trends, traditional static structures are now inappropriate.

I do not agree with that statement. I believe that the static structures of a public service protect Governments and ministers. Governments and ministers can get into enormous trouble when they do not listen or respond to strong, independent advice from someone who has been in the public service for a long time on issues that do not change but arise decade after decade. I have found that although public servants hold strong views on particular issues, they never go out of their way to deliberately undermine a Government or a minister. The public servants in the Department of Environmental Protection were passionate about and shared some concerns of the community, and I found that their strong views permeated their advice in the public service policy position that was put forward. However, by and large, public servants are enormously loyal, irrespective of the politics they obviously hold in a country such as Australia, where it is mandatory to vote. In my time as a minister I never received partisan advice that reflected negatively on my administration or that of my Government.

Brian Burke talked about inappropriate traditional static structures in 1986. That question comes back to the sort of public service that we want. The current Government has endeavoured to restructure departments and agencies and reduce them to a very small number. In that process, several chief executive officers and senior staff found themselves without positions. In doing that, I believe the Government lost an enormous information base from the public sector that it will not be able to pay for again. A major cost to government is the wages of public servants, so it is nice to be able to say that the cost of wages to taxpayers has been lowered. However, at the same time the Government cannot look at the issue from a totally economic view. The other side of the coin is the impact on the community of the delivery of services. Brian Burke continued in his paper -

Public sector organisations must:-

- become more flexible in their working arrangements;
- become more adaptive to changing technology;
- become more efficient and effective;
- be more responsive to changing community needs;
- facilitate the activities of non-government community-based groups; and
- initiate programs themselves.

Paul Hasluck had very similar views, although they came from a different outlook. He said -

The merits of good administration include regularity, predictability, routine efficiency and enough stability to underpin sound planning both of the measures to be taken and the means for ensuring that they are effective. All of these merits can be attained without being resistant to reform or innovation but they cannot be attained if administration becomes subject to uncertainty and rearrangement at every flare-up of a general election.

Hasluck was saying that he wanted to achieve the same sorts of changes that Brian Burke wanted to achieve, but there was a way of going about implementing those sorts of changes. He meant that Governments do not get good administration and good services delivered back to the community if the public service is constantly under the threat of restructure. The Department for Planning and Infrastructure is a key example of such a failure. It is an enormous exercise to bring two major departments, planning and transport and roads, under one chief executive officer. Even now, three years later, there are delays in planning despite the money that has gone into those departments. Good people from those departments have been lost, morale is low and there are constant delays. Because those delays are in planning, they impact on the economy of the State and, therefore, increase the cost of lots and subdivisions. There is also a huge unaccounted-for cost in the restructure of a government department when two or three agencies are brought together in an endeavour to reduce the number of chief executive officers, senior executive services and public sector agencies if the Government does not consider the corresponding side of the coin on the delivery of services back to the community. That cannot always be done on a dollar basis. I encourage the Government to look seriously at the rest of the Costello report. I ask the Minister for Consumer and Employment Protection how he will implement the proposal he put forward yesterday on shared corporate services reform. I will come back to that matter shortly.

I referred to the 1986 Burke paper. A number of reports on this State have been released and a subsequent number were released following the WA Inc Royal Commission into Commercial Activities of Government and Other Matters. There were reports by the Commission on Government, McCarrey, Fielding, Hicks and Costello.

No-one has seen the Costello report. Will the minister explain why the Costello report, which cost and will continue to cost taxpayers of this State a lot of money, has not been made a public document? I know why we cannot get it. It went through Cabinet and therefore is not subject to FOI. However, there does not seem to be a rational reason for that document not to be made public, other than perhaps it might highlight a few changes the Government wishes to implement that it does not want the public service to know about. As such, one can be cynical about the report's content.

I have identified reports looking at public sector change and restructuring, but others have been prepared, including those regarding the Department of Health and education. When the Labor Party came to government, its policy paper headed "A commitment to the public sector" read -

Labor is committed to re-building and maintaining a strong State public sector.

...

An efficient and effective public sector can make a real and positive difference to the Western Australian community; but only if the government of the day gives it the chance to do so.

I do not think members opposite have achieved that in certain areas. Some departments and agencies are working well, and some are working less than effectively. There are serious morale problems in quite a large number of departments. Redundancies are an issue. As always when trying to reduce a large number of people in any organisation, it is often the good ones who take up redundancy. That happened in the first couple of years of this Government. As such, some very good people were lost to the public service and its provision of services to the community. The dilemma then for the Government is that once people have had 12 months out of the public service, and want to return, whom does the Government choose? If a person was known to perform a job well as a good public servant, that person is tapped on the shoulder again. Even though that person has had the redundancy package, that person will return to the public sector. Therefore, nothing is achieved by the State giving that person a redundancy package.

Another paper written back in the late 1970s proposing administrative reforms referred again to the four principles of accountability, responsiveness, efficiency and effectiveness. This was prepared as a lead-in to Brian Burke's coming into office in 1983. The paper was presented by Dr Wood to the Australian Institute of Public Administration. It clearly highlighted many of the issues I have outlined. Some dilemmas arise in public sector reform and restructuring in the delivery of those principals.

I have referred to comments by Paul Hasluck that are worthy of further mention. When considering the sort of public service we want, where politics can be volatile, the administration should be stable. That was the tenet of Hasluck's paper. Although he stated that the service should be ready for change and not be resistant to change, ultimately, uncertainty can undo a good public sector administration. We have seen it occur in the past, and I believe we are seeing it now.

I also refer to the issue raised in the WA Inc royal commission; namely, the possible politicisation of the public sector. It can happen quite easily. Governments come to power and have to consider whether the public service will be responsive to it after being under a different administration for a decade or so. They then ask how public servants will deliver for the new Government. They appoint friends, immediate family, relatives, former members of Parliament and the like to positions. This Government is no different. "Friends of Geoff" is an ever-growing group of people in the public service, in ministers' offices and on boards, committees and consultancies. This has included members of the Labor Party and Labor mates who worked in the public service during the Dowding, Burke and Lawrence years. Some are spouses of former ministers, former members of Parliament, union officials and former Labor Party candidates. Although recognising that some of these people are qualified to perform the job to which they are appointed, having such a large number of friends of Geoff in the arms of government is dangerous. It is reminiscent of the WA Inc years. The resultant WA Inc royal commission found that the public sector was affected adversely. The commission concluded that the public service was devalued. As I cited earlier, this resulted from appointing political allies and friends to key roles. The friends of Geoff employment practices also fly in the face of the commission's finding that it is impermissible to encourage allegiances to make the public service partisans at points of strategic influence. Friends are put into positions of strategic influence so that the advice received is what is wanted to be received, not necessarily the advice that is needed and proper. This FOG employment principle is dangerous because, as alluded to in the WA Inc royal commission, there are substantial reasons to believe that the merit procedure can be placed in jeopardy. The practice and procedure for making appointments to the personal staff of ministers occasioned considerable concern to the royal commission because of its effect on the principles that undermine the public service system. If members look at answers to parliamentary questions and follows the media and word of mouth, they will find an enormous number of friends of Geoff have come into the public service in

positions of strategic influence. Therefore, one will not have a good public service, or good public sector administration. Where does one draw the line in accountability?

The WA Inc years lacked a public sector to blow the whistle. This Government has brought in whistleblower legislation. I have been at pains to say in this House that the words in the legislation do not matter unless a change is made to the culture of the public service. One will not change the culture of the public service simply by holding up the legislation. Equal opportunity legislation came in the mid 1980s. However, it took a decade for it to be accepted. I suggest that the Equal Opportunity Commissioner today will state that pockets in departments and agencies still have no proper equal opportunity principles. Indeed, the Anti-Corruption Commission referred last week to people in the Department of Education and Training who did not understand the difference between harassment and sexual abuse. They did not understand the difference between teacher upon teacher as opposed to teacher and student. That is the case many years after the equal opportunity legislation was introduced.

Whistleblowers in this State will not be blowing the whistle for at least another decade. Chris Read has been pilloried. He has become the demon. Jean Thornton was pilloried. Neil Winzer has been treated appallingly, even though his complaint has not been proved. His case is one of the worst cases of human resources management I have ever come across. In the term of the previous Government, he said that there was an issue with an industrial agreement. It was never investigated. This Government, when in opposition, castigated us for not following the matter through. Neil Winzer was a strong member of the Labor Party. The then Leader of the Opposition said that he would look after these people and what a disgrace it was by the Court Government. This Government has done absolutely nothing to resolve Neil Winzer's situation and have his complaint investigated. Putting that issue aside, Neil Winzer is receiving no income. It is a disgrace. He is a public servant who is not on redeployment; he is doing nothing and is not receiving any money. Nobody will sit down with him and explain to him why. I have never seen a worse case of very poor human management relations, and I can give the minister a number of cases. I implore the Minister Assisting the Minister for Public Sector Management to get involved in the matter. A number of ministers have been involved in the matter. Right from the beginning, commitments and promises were made to this man and it is unfair and wrong to allow him to sit there like a shag on a rock. It impacts on not only him and his health, but also his family and his family's health. If the minister thinks that the matter should not be investigated or that it is not worthy of being investigated, for goodness sake, he should deal with this man as an individual. He is a public servant who has provided service to this State, and he needs to be treated properly.

The issue I want to raise about the whistleblowers legislation relates to the politicisation involved when people are put in positions of strategic influence and decision making. What is the other safeguard? Whistleblowers are the safeguard. The 2003 report of the Commissioner for Public Sector Standards found it extremely concerning that 53 per cent of respondents to a questionnaire by the Public Sector Standards Commissioner feared retribution if they reported wrongdoing or unethical behaviour. Worse than that, 21 per cent knew of unethical behaviour and did not report it. Of those who responded to the questionnaire, 53 per cent were concerned about retribution and 21 per cent knew of unethical behaviour and did not report it, because obviously they also feared retribution. They have seen how the Jean Thorntons, Neil Winzers and Chris Reads of this world have been treated. Again, that is a major indictment of this Government.

I have said before in this place that the quickest way to change the culture in the public sector in terms of whistleblowers is for the Government to say that it was wrong about Chris Read. He needs to be appointed to the same level he had reached in the Ombudsman's office before the Ombudsman, who was discredited, got rid of him. Chris Read reported wrongdoing in the Ombudsman's office, and the Ombudsman got rid of him before the Ombudsman was discredited. Chris Read's career path has been seriously jeopardised ever since. The minister needs to say to the public sector that Chris Read will be looked after, and he is no longer the pariah of the public sector; that Neil Winzer is a human being and a public servant who has provided strong service to this State; and that Jean Thornton was right and needs to be protected and not sent to some odd agency where she will never be heard from again. If the minister does not hold those people up to the public service, he will always find that 53 per cent will never report wrongdoing because they fear retribution. What do the 21 per cent of respondents to the questionnaire know? What unethical behaviour do they know of that they have not reported? Surely that must be of concern to the minister. If 21 per cent of respondents to the questionnaire know of unethical behaviour in the public service, he needs to find it. He needs to know whether it is costing this State money and its reputation. It may have nothing to do with the Government, but because the Government will not do anything about the matter, it will reflect on the Government. That is the serious element of this issue. That is why there must be a strong static public service. It cannot keep going through change.

When I was Attorney General, I introduced a major change to the Ministry of Justice. People do not understand the impact of service delivery until they undertake a major restructure. I know that the Minister for Planning and Infrastructure understands that a little. The public service has no confidence in the Government or that, under

the whistleblowers legislation, they will not be pointed out, threatened or intimidated or will not lose their jobs, careers or families if they do the right thing and report wrongdoing. I have raised the issues of the friends of Geoff, and the bullying style tactics of the union movement. These are the ingredients with which a Government could potentially allow behaviour that is not accountable. This Government came to power on strong principles of accountability, but it is doing absolutely everything to ensure that it applies.

Another major issue that has arisen is a serious conflict of interest. The Acting Information Commissioner has threatened to sue *The West Australian* for libel in a story about her appointment. The story pointed out her connection with the Labor Party and the fight for the preselection process for the seat of Ballajura. This is not an attack on whether she is capable of doing the job. She has worked in the Office of the Information Commissioner for a long time. She was also a policy officer with a former Minister for Police in the Court Government. This is not an attack on her as an individual. This is about the perception of a conflict of interest. I believe she has a serious conflict of interest in threatening *The West Australian*. I do not know whether she has proceeded with her action; I do not have that information, other than that *The West Australian* had to publish some form of clarification. This is a matter of the independence of the Acting Information Commissioner and her ability to carry out the job without fear or favour from her political masters in the Labor Party of which she was, if not still is, a member. That raises a major question about her independence. The Freedom of Information Act is an important tool for accountability. It has a unique role to play to ensure accountability. The acting commissioner must be given the benefit of the doubt, and the Opposition wants to give her the benefit of the doubt. However, she has a major conflict of interest when she takes on the major newspaper in Western Australia, which is an avid applicant for information about governments, local councils etc under the Freedom of Information Act. She would face a conflict of interest if she had a writ against the paper and the paper requested an appeal to her. I am glad that the Attorney General is in the Chamber. The acting commissioner received very bad advice to take on *The West Australian*. This is not about her capacity to do the job or her position in the Labor Party; it is a question of her independence when taking action against the major newspaper of this State, which is an avid applicant under the Freedom of Information Act. She has said that it wrote a bad story about her and she did not like it. What will be the perception about any decision she takes for, against or with *The West Australian* in the future? The Attorney General must ensure that that issue does not have a continuing effect on the position. An independent Information Commissioner is needed.

The Attorney General will introduce freedom of information legislation later this year to deal with privacy and the like. However, the current Acting Information Commissioner is taking action, or has threatened to take action, against *The West Australian*. That is a serious conflict of interest. She received very bad advice on that matter.

Debate interrupted, pursuant to standing orders.

[Continued on page 1930.]