

PUBLIC INTEREST DISCLOSURE BILL 2002

Second Reading

Resumed from 19 September 2002.

HON JIM SCOTT (South Metropolitan) [4.37 pm]: This must be one of the longest speeches I have ever made. I started it many months ago and I am still going. For me, it is probably a record.

Hon Simon O'Brien: It is a true mark of your genius that you have been speaking for months and have not really said anything.

Hon JIM SCOTT: That is right. I could have said it all in 15 minutes, which is exactly how long I had spoken. By way of a quick reminder, although I think the legislation is basically good the problem is the culture within the departments. The achievement of good outcomes depends on cultural change being made within departments, which tend to try to prevent the truth coming out when it may be detrimental to those departments. That important cultural change must occur before this legislation will work successfully. We have seen many examples of that in recent years. An issue was raised earlier this evening that fits that criteria perfectly. I was discussing the attitude of the Department of Environmental Protection concerning a number of the waste management and toxic waste sites around this State where on almost all occasions there has been an attempt to play down the problem and to not act on the advice the department has received. Rather than rock the boat, matters are suppressed. We will see this coming out much more in the future. We need to ensure that not only is this legislation in place, but also there is cultural change. Departments must realise that it is in their best interests to deal with problems the instant they arise and not to try to hide them. Too many people have been drummed out of the public service when they have blown the whistle.

Members will recall what happened a couple of years ago when a Main Roads public servant put out information about the lack of safety when the road building program was privatised. Rather than Main Roads doing something about the safety of the roads, the department tried to find out who that public servant was. It conducted a witch hunt costing many thousands of dollars. It put huge pressure on public servants to find out who might have released that information which was in the public interest.

That sort of behaviour on the part of departments is a disgrace. They need to know that they are acting for the public and not for themselves. I do not lay blame on the current Government. We will see whether this Government deals with cultural change. We have heard that the Government will introduce cultural change in the Department of Environmental Protection where problems have clearly arisen in recent times. It is not the only department; in many departments these instances are occurring. It is merely that the focus has been on that department. I urge the Government to deal with the culture of departments.

The Commission on Government report No 2, part 1, on page 148 refers to the phrase "the whistleblower-stress syndrome" coined by De Maria and Jan. The report reads -

They have specified the action they believe needs to be taken to vindicate and compensate whistleblowers:

It appears that the [whistleblower-stress] syndrome can only be negated through a satisfactory achievement of the following objectives:

- . disclosures are validated;

Clearly no action can be taken unless a disclosure is validated and properly dealt with. The next objective is that wrongdoing be investigated. It is clearly not much good validating and then not investigating. The next objective is that wrongdoers be brought to account and wrongdoing patterns arrested. That is extremely important. It is in the department's interest to deal with those patterns that create problems. The next objective is that the whistleblower's name be cleared. The names of whistleblowers are smeared and they are treated very badly. Everybody in a department seems to think that the whistleblower must be punished for revealing that the department has slipped up.

Whistleblowers are sometimes put under incredible stress and driven out of a department. A number of people who have come to me during the years that I have been in Parliament have had to move to new jobs or take sick leave. They have been treated very badly indeed, yet eventually their actions were vindicated. For those people, it was not worthwhile their opening their mouth and revealing the truth. The losses they suffered and the stress they were put under far exceeded the results. It is very important that such people are immediately listened to, the issues they raise are investigated, there is a genuine investigation into the case and they are not turned into victims and beaten up or put into some sort of limbo by the department.

The last objective is that the whistleblower's career be put back on track. In nearly every case that I have observed, people's careers have been destroyed. As I mentioned all those months ago when I first spoke on this subject, I am concerned about one particular case I am dealing with; that is, the case of Mr Winzer who ostensibly had the issue investigated. I understand the first investigation was not done properly. When he complained about that, the subsequent investigation merely arrived at the conclusion that the matter had already been investigated. It reiterated the findings of the previous investigation without conducting its own study. A third investigation referred to the two previous investigations, one of which investigated nothing. Therefore, a range of people did not get down to dealing with the problem properly. I believe that there was a problem and that taxpayers' money has been expended without services being provided. I hope that the Government will investigate such issues properly and not sweep them under the carpet.

The Notice Paper contains a number of amendments. I spoke to Hon Peter Foss who expressed some concern about the draconian nature of some of the provisions in the legislation. He has put forward some amendments to deal with them. I am sympathetic to his point of view, but I intend to listen carefully to the minister's response. I hope that we can come to an agreement that will make the legislation the best it possibly can be without unfairly imposing on people and at the same time ensuring that where wrongdoing has occurred, it will be dealt with and that whistleblowers will be vindicated.

I support the legislation and look forward to hearing debate on the clauses for which we have amendments.

HON JOHN FISCHER (Mining and Pastoral) [4.49 pm]: It is said that the quality of a democracy is defined not by the will of the majority but by the protection of the individual. This Bill should be about the protection of the individual who puts self-interest aside to bring to the attention of the public wrongdoings that occur within government.

Whistleblowers are people who speak out in the public interest, typically about corruption or dangers to health or to the environment. The objective of most whistleblowers is to have wrongdoings acknowledged and addressed and to have their good name, character and reputation restored, usually by way of a public apology. This sounds simple enough to do, but in reality it seldom happens. In fact, these courageous people often become physical and mental wrecks whose careers and personal lives are left in tatters.

One Nation supports this Bill, but acknowledges that its passage will not change the culture in the public service overnight. Today, equal opportunity is becoming a reality, but this has taken a tortuous 15 years since the passing of the Equal Opportunity Act. I say "becoming a reality", because inequality still exists, but today most reasonable people recognise that both sexes should be given a fair go in opportunity, remuneration and general benefits. We are seeing a change in public perception, which is what I hope the Public Interest Disclosure Bill will ultimately achieve. It will not change the entrenched views overnight, but it will begin a train of thought that disclosure by whistleblowers is often in the public interest. This change in perception will progress if the Government is seen to be supportive of this change and protective of whistleblowers. We talk about accountable government, but if we do not encourage an examination of government, and a willingness to bring about change and prosecute wrongdoing, then the Government is accountable in rhetoric only and not by action.

While watchdog agencies currently exist to investigate whistleblower allegations, they have proved themselves to be thoroughly inadequate. They are not set up to investigate the type of allegations that are most often brought to light by whistleblowers. I believe that an office should be set up specifically for this purpose. This office would provide a front end for whistleblowers, which would give due credence to an open and accountable Government. A whistleblower would make this office a first point of contact, and the office would be empowered to carry out sufficient inquiries to determine whether there was a case to answer, and provide the support to investigate the case further when considered necessary. Very often, all that is required is for a whistleblower to speak to an impartial third person who can advise an acceptable course of action. This office would provide such support and advice, while ensuring the protection of the whistleblower. Without such an office, this Bill will fail to legitimise whistleblowers or allow them the credibility to put forward their complaints.

As it is, the Bill fails to address the plight of current whistleblowers. I can think of two current cases - those of Chris Read, who worked for the Parliamentary Commissioner for Administrative Investigations, and brought to the attention of the Anti-Corruption Commission irregularities within the office; and Stuart Downing, who brought to light serious problems within the City of South Perth council. The concerns of both these men have been vindicated, and yet their lives and careers remain in tatters. I question the sincerity of this Government in bringing this Bill before the Parliament while continuing to ignore the plight of these men. I have spoken to Mr Read about his situation, and believe I can comment on his predicament. He was removed from his level 7 position within the Ombudsman's office after he made complaints to the Anti-Corruption Commission. He had worked in the office for almost seven years, and would surely have been considered to be an experienced

investigator. His complaints, as I pointed out, have been vindicated, and as expected he applied to have his position reinstated. However, the new Ombudsman, Deirdre O'Donnell, told him that she could not employ him, because her organisation is forward looking. In other words, she will not involve herself in the wrongdoings of her predecessor. How convenient for her. It is hardly the action one would expect from an Ombudsman. Her organisation is set up to look at irregularities. By its very nature the Ombudsman's office looks to the past. It looks to things that have happened. It is not meant to be forward looking, but rather to consider the past. Ms O'Donnell has told Mr Read that her organisation is guided by principles of fairness, equity and accountability, and yet he cannot get his job back. This is totally hypocritical. Talk is cheap, and if the Ombudsman's office is really interested in fairness, it should give this man his job back. If not, we must question the suitability of the people employed in the role of Ombudsman. If we cannot rely on the Ombudsman to do what is fair and reasonable, how can we expect any other agency to do it? The Ombudsman has nothing to fear by reappointing Mr Read, and yet the case has been totally stonewalled.

What is the point of considering legislation to protect whistleblowers, when there is a current case that nobody will address? How many other victims are there? Will this Government give a commitment to clean up these outstanding issues? So far it has failed totally in its duty to do so. If this Bill cannot ensure that we progress with a clean slate, it has achieved absolutely nothing. On paper, it brings us into line with the other States, but in reality it is meaningless. If there is no will in this Government to solve the personal predicaments of these whistleblowers, the Parliament is wasting its legislative time considering this Bill at all. Mr Read wants his job back, and I cannot see why he does not deserve his job back. With a small amount of will on the part of this Government, it could be achieved quite simply. If the Government can address this issue, it will be seen as honest in its intentions to protect whistleblowers with legislation.

As an aside, I must reflect on the Lewandowski case, and the fact that he was led to believe that he would not be charged at all. The action taken against him was absolutely incredible, and I wonder how on earth we can get through royal commissions when we begin with this kind of conduct. It has done nothing at all to induce any corrupt policeman, or any policeman who is suspicious that corruption is taking place, to come forward and spill the beans.

I started my speech with the quote that the quality of a democracy is defined not by the will of the majority, but by the protection of the individual. We are here debating the protection of an individual, while a man who had the belated courage to come forward and bring to the attention of the public the wrongful imprisonment of the Mickelbergs was given an immunity that was not worth anything. It calls into question any assurances at all from the Director of Public Prosecutions. How in God's name can we expect any corrupt person to come forward with the truth if we cannot guarantee the protection of that person? Why would any other corrupt cop come forward? How can we turn a blind eye to such a situation? If we cannot protect Mr Lewandowski, we should not be discussing this legislation at all. It is a total farce, and all we are doing is turning ourselves into a hypocritical Chamber, spouting ideas that mean nothing in the real world. How can anyone be brought to justice when our law enforcers will not stand by their word? People already believe that there are many corrupt police out there, and the evidence coming out of the royal commission confirms this.

I believe the philosophy of this Bill is excellent; however, I doubt it will afford the protection it is meant to when the law enforcers of this State cannot be trusted. If the Government is fair dinkum about introducing protection for whistleblowers, it must very quickly prove that it is indeed prepared to go to certain lengths to protect them when they come forward with evidence that is beneficial to the Government and the State.

Debate interrupted, pursuant to standing orders.

[Continued on page 5056.]