



Speech by

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MEMBER FOR HINCHINBROOK

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WHISTLEBLOWERS (DISCLOSURE TO MEMBER OF PARLIAMENT) AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—NPA) (3.00 pm): I rise to make a contribution to the debate on the Whistleblowers (Disclosure to Member of Parliament) Amendment Bill 2006. The explanatory notes accompanying this bill describe its objective as allowing public interest disclosures to be made to members of the Legislative Assembly and to extend whistleblower protection to people engaged by public sector entities on an individual contract of service.

The same explanatory notes indicate that the rationale for the bill gives effect to recommendations from the Parliamentary Crime and Misconduct Committee's three-year review of the Crime and Misconduct Commission report No. 64 that there be a review of the Whistleblowers Protection Act 1994. The review was subsequently undertaken by the Public Service Commissioner but the report was delayed pending completion of the Forster and Davies inquiries into Queensland Health. This has clearly been a sensible decision in view of the seriousness of the issues that were being considered by those two inquiries.

In the wake of the Queensland Health Systems Review—the Forster report—and the Queensland Public Hospitals Commission of Inquiry—the Davies report—the review of the Whistleblowers Protection Act 1994 being undertaken by the Public Service Commissioner was expanded to take into consideration recommendations concerning whistleblower protection in these two documents.

The Whistleblowers Protection Act 1994 was legislation enacted to provide a mechanism to protect whistleblowers in the Public Service in Queensland from any form of discrimination, disadvantage, intimidation, harm or reprisal as a result of their actions and to make it possible for them to continue their work in the Public Service. The act protects the whistleblower from civil or criminal liability for making a disclosure. Clearly the act is an extremely important piece of legislation and it is of paramount importance that its provisions provide an appropriate level of protection for whistleblowers in Queensland developed in accordance with the best advice that the government of the day has to hand.

As such, it is of concern that this is not the case with respect to the Whistleblowers (Disclosure to Member of Parliament) Amendment Bill 2006. The government advises that this bill is based on the recommendations of the PCMC report No. 64 and the recommendations of the Forster and Davies inquiries. The PCMC report No. 64 was tabled in March 2004. At the time the fifth PCMC cited a number of concerns with the existing scope of whistleblowers' protection—concerns that have previously been discussed and highlighted by its predecessor committee, the fourth PCMC. In particular, the fourth PCMC had noted that while the act imposed legislative obligations on public sector agencies to deal effectively with public sector disclosures and protect whistleblowers from reprisals, if there was not a strong commitment to the Whistleblowers Protection Act 1994 within a particular organisation, the effectiveness of the legislation could be limited. Specifically, the committee pointed to what it perceived to be a gap in the provision of support programs to whistleblowers in the public sector and, as such, there was inadequate protection of whistleblowers under the current act.

Like the fourth PCMC, the fifth PCMC, which tabled report No. 64, recommended that the government give consideration to a full review of whistleblower protection in Queensland, including the provisions of the Whistleblowers Protection Act 1994 as the review recommended by the fourth PCMC had not been implemented. Both the fourth and fifth PCMCs gave an opinion that such a review would address issues with respect to the roles of the Criminal Justice Commission and the Office of Public Service Merit and Equity, the need for an oversight body and an interagency committee, training and support of public sector managers and other public sector employees, research needs in the area of whistleblower protection and reporting to parliament on whistleblower protection.

Subsequently, the recommendation of the fifth PCMC for a review was implemented and a reference committee was formed comprising representatives of the Crime and Misconduct Commission, the Office of Public Service Merit and Equity, the Office of the Ombudsman and the Department of the Premier and Cabinet. The reference committee was to conduct a whole-of-government review of the experience of public sector agencies in relation to the operation of the Whistleblowers Protection Act 1994 and make recommendations for amendments to the act in light of that review.

The finalisation of the report was delayed in 2005 because it was considered likely that issues relevant to the protection of whistleblowers might be canvassed during the Bundaberg Hospital Commission of Inquiry and the Queensland Health Systems Review. The working group was re-formed in March 2006 and it prepared a report that took into account issues raised in the Forster and Davies reports in relation to the protection of whistleblowers.

Of particular interest were comments made by the Queensland Ombudsman in his submission. The ombudsman stated—

In my submissions to three inquiries arising from problems at the Bundaberg Hospital, I have argued that the current decentralised whistleblowing model, whereby the recognition, investigation and resolution of a public interest disclosure (PID) can be handled totally within the agency whose officers are the subject of the PID, needs to be modified.

In summary, my recommendations to these inquiries were that:

1. PIDs received by an agency, other than those involving official misconduct, should be referred to the Ombudsman in the first instance (under similar arrangements to those whereby PIDs involving official misconduct are referred to the CMC); and
2. The Ombudsman would either investigate the disclosure or refer it back to the agency to conduct the investigation, which the Ombudsman would be empowered to monitor, take over or review (as the CMC is empowered to do with PIDs involving official misconduct).

The Ombudsman cited comments by Commissioner Davies in his report on the Queensland Public Hospitals Commission of Inquiry in November 2005 where he stated—

At present there is no single body charged with overseeing public interest disclosures within the Queensland public sector (save where that public interest disclosure involves official misconduct). In my opinion this is a serious shortcoming. As the facts revealed in this inquiry showed, it was futile to expect Queensland Health to manage public interest disclosures about itself with no external oversight.

There was agreement between Commissioner Davies and the Queensland Ombudsman on these matters during the Queensland Public Hospitals Commission of Inquiry. In that report Commissioner Davies adopted the Queensland Ombudsman's recommendations for improving whistleblowing in Queensland. In particular, Commissioner Davies recommended that—

The Queensland Ombudsman be given an oversight role with respect to all public interest disclosures save those involving official misconduct and that all PIDs be referred to the Ombudsman who may either investigate the disclosure itself, or refer it back to the relevant department for investigation, subject to monitoring by the Ombudsman.

The categories of persons who may make a PID protected by the WP Act be expanded in cases involving danger to public health and safety, and negligent or improper management of public funds, to include any person or body.

Commissioner Davies further recommended that—

Whistleblowers should be able to escalate their complaint in the event that there is no satisfactory action taken by the relevant department within 30 days. If the matter is not resolved in that time to the satisfaction of the Ombudsman, the whistleblower should be able to make a PID to a member of parliament.

If disclosure to a member of parliament does not result in resolution, to the satisfaction of the Ombudsman, within a further 30 days, the whistleblower should be entitled to make a further PID to the media.

The fifth PCMC supported the views of the Queensland Ombudsman and Commissioner Davies and on 9 October 2006 submitted to the Queensland parliament report No. 71 containing five recommendations that I placed on the record in February this year during debate on the Queensland coalition's Whistleblower Protection Amendment Bill. Given that those recommendations have already been placed on the record and again today by the member for Caloundra, I do not propose to list them again save to say that they were significant recommendations and, given that they were put forward by the Ombudsman and Commissioner Davies and then supported by the fifth PCMC, they deserve to be seriously considered by the government for implementation.

We can see that there is a high degree of consensus concerning the nature of changes required to ensure that appropriate levels of protection are afforded to whistleblowers in Queensland and that there are well developed concepts in these recommendations which provide a strong basis for amendments to the act reflecting the best advice that the government of the day has to hand. The question is then: why are these recommendations absent from the Whistleblowers (Disclosure to Member of Parliament) Amendment Bill 2006 which is currently before the House?

The bill was introduced by the Premier on 31 October 2006 subsequent to the tabling of the fifth PCMC report No. 71 on 9 October 2006. The government demonstrated a willingness to delay the work of the reference committee reviewing the Whistleblowers Protection Act 1994 to consider the findings of the Forster and Davies inquiries, and rightly so. I have acknowledged that this was sensible. However, why would the government not consider it similarly opportune to incorporate into this bill the recommendations of the fifth PCMC report No. 71, which reflected the considered opinions of the Queensland Ombudsman and Commissioner Davies with respect to shortcomings in the Queensland whistleblower legislation? This would have been sensible and it would have brought the whistleblower legislation up to date.

None of the recommendations from the fifth PCMC report No. 71 are provided for in this bill. There is no mention of referring matters to the Ombudsman. There is no provision for the categories of persons able to make a public interest disclosure to be expanded. There is no mechanism for whistleblowers to escalate their complaint in the event that the matter is not dealt with by the department appropriately. There is no provision for the Ombudsman to take a greater role in monitoring the application of the Whistleblowers Protection Act by government departments. Finally, there is no provision for the development of guidelines to assist government departments to deal with public interest disclosures professionally. All of these things are in the fifth PCMC report No. 71. The fifth PCMC said that these were important steps to take in the development of up-to-date and effective whistleblower protection legislation in Queensland. These views had previously been advanced by the fourth PCMC, yet here we are debating a bill which deals with a far more narrow set of matters relating to how a public interest disclosure may be made to a member of the Queensland Legislative Assembly.

The government even had the benefit of listening to the debate on the Queensland coalition's Whistleblowers Protection Amendment Bill earlier this year which highlighted these issues. It then could have moved to update the provisions of this bill to make appropriate changes, but this has not occurred. At the very least, the government is wasting an opportunity to bring Queensland's whistleblower legislation up to date. In light of the serious difficulties faced by a whistleblower in the recent past which exposed serious management issues and accountability problems in Queensland Health, it is remarkable that the government is not moving to implement the full recommendations of the Parliamentary Crime and Misconduct Committee report No. 71. Let us hope it is not too long before it catches up.