

LEGISLATIVE COUNCIL

Wednesday 26 September 2007

INDEPENDENT COMMISSION AGAINST CRIME AND CORRUPTION BILL

Adjourned debate on second reading.
(Continued from 1 August. Page 599.)

The Hon. A.M. BRESSINGTON: I thank and commend the Hon. Sandra Kanck on her initiative in introducing this crucial bill to establish an independent commission against crime and corruption. I believe that it is one of the most important bills that may ever have to be debated in this state. I know that large numbers of constituents who contact not only my office but also the offices of all members of the parliament have great interest in observing the process by which we go about creating legislation and developing the model that South Australians will rely upon to keep parliament, the private sector, legal systems and administrative institutions honest, legitimate and, above all, accountable. It is for this reason, and with great reluctance, that I will not be supporting this bill in its current form. I want to see far greater community-driven consultation that is not determined by what lawyers, bureaucrats and politicians want for themselves but, rather, consultation that is driven by the needs of the ordinary person in the street—the shopkeeper, the plumber, the bus driver and the teacher—who is wronged by the political, government or legal systems to which we all are parties and which we can influence by decisions in this place.

Although it is important to consider the advice and input of professionals, such as lawyers who engage in the legal administrative processes that affect the lives of our ordinary citizens, it is far more important to know why the existing complaints mechanisms are failing and how we can limit the extent to which a future ICAC may become another useless institution. I must remind this place that South Australia was the first state to adopt a whistleblower protection act in 1993. To this day it has never successfully offered any whistleblower any protections, and no-one has ever had any relief from its existence, not because no-one has ever attempted to seek out its protections but, rather, because those vested with the powers to make it work have chosen to divest themselves of any responsibilities for the same.

This is demonstrated well in the case of Angela Morgan, for example. Ms Morgan alleged fraud by the wife of a senior WorkCover auditor. The circumstances by which she came across this information are not important. However, when the corporation got wind of her knowledge of the situation—and possibly much more than she was supposed to uncover about corporate investigation activities—Ms Morgan was coerced into giving a statement about the senior auditor's wife to the fraud section on threat of fines and other sanctions if she failed to do so. Although Ms Morgan initially declined to do so, she was issued with threats by the corporation compelling her to give evidence, at which time she sought assurances of confidentiality (to which she was entitled) under the Whistleblower Protection Act. Indeed, it would be many years later that the state Ombudsman would make such a finding and table it to parliament, to no effect—not enough to enable Ms Morgan swift or timely justice.

After being promised such confidentiality, Ms Morgan met with fraud officers only, she says, to be pressured into changing the nature of her evidence against a senior auditor's wife due to the scandal this would have uncovered for the corporation. When she refused to do so, her evidence was given to the senior auditor and used by him and his wife in their private defamation action against Ms Morgan. Although she was successfully sued by the senior auditor, his wife failed in her action. However, it did not stop a chain of tragic events all but destroying this woman.

But the story does not end there. When Ms Morgan was advised of the Whistleblower Protection Act and how she might use it she was informed of the need to make a public interest disclosure to a responsible officer under the act. It was a requirement at the time that all government departments had such a person nominated and trained. WorkCover, not having such a person, promptly appointed the very senior auditor against whom Ms Morgan sought to testify. As for the courts, Ms Morgan's matter was before a judge alone for over seven years. After endless delay tactics to obstruct discovery, finally her claims were struck out in the past few weeks. One might expect that, if her case had little or no merit, these claims would have been struck out years ago.

The greater travesty to this story lies in the fact that, in addition to Ms Morgan's years of legal battles to prove her innocence, and the lies and deceit of the corporation, all these details were supplied to a parliamentary select committee some years ago—which, ultimately, did nothing also. This is not good enough.

I will in due course cite other real cases, not hypotheticals, showing what has happened to ordinary whistleblowers who have tried to use the Whistleblowers Protection Act, but I will keep my comments brief today. Suffice to say I would not be happy to find in years to come that our ICAC in this state is another whistleblowers protection act and is useless. If we are not careful, I fear that an ICAC may only uncover the genuine so-called whistleblowers as only comprising of lawyers, departmental executives, ex-commissioners and political advisers, much as we now refer to cases involving suspected corruption.

I am advised by a member of the national committee of whistleblowers of Australia that the Western Australian Criminal Justice Commission had to mutate and clean up its act three times after it had become tainted by the allegations of engaging in corruption and secrecy itself. It is now known as the Corruption and Crime Commission. Although I am advised the current model is a big improvement and early indications are promising, it remains to be seen how it will function in the longer term, and with other less high profile cases than that of Mallard currently before it.

However, in both New South Wales and Queensland there continue to be many unanswered questions into the effectiveness of the New South Wales ICAC and the Queensland Crime and Misconduct Commission respectively, with a number of unresolved Whistleblowers Australia cases of national significance having not seen the light of day. If our ministerial officers, Ombudsman, commissioners for public employment, equal opportunity, health and community services complaints, Legal Practitioners Conduct Board, Medical Board, Police Complaints Authority, court authorities, and countless other such review and oversight bodies actually worked to deliver justice, we would not be sitting here having this discussion.

Whilst it is fortunate that, on occasions, these systems work in some small measure, often the victories to be had are hollow or so long in coming that they cannot help but serve to deny justice to the aggrieved all the same. One recent example highlighting this point is found in yesterday's judgment of *Keogh v The Medical Board of South Australia and Dr Colin Manock*, which the Hon. Nick Xenophon has already referred to in a previous speech. In the judgment delivered by the Chief Justice on 25 September it was made clear that, despite proceedings lasting some five years before the Medical Board in relation to Dr Manock, the members of the Medical Board had failed to understand the test that needed to be applied for determining unprofessional conduct, even though it was set out and clearly defined in a simple paragraph in the relevant act.

A pathologist and member of the Medical Board, Dr Coleman, had written an internal memo to the other members just two months before the Medical Board decision in the *Keogh-Manock* matter stating that Dr Manock's conduct was incompetent and unprofessional and fell below the standards which had been laid down in 1908. At least two other members of the five-member board agreed with those sentiments. Why was it, then, that the Medical Board then issued an opinion which cleared Dr Manock of any wrongdoing, while a man who may have been wrongfully convicted is sitting in gaol all these years? Why does it then take a further two years of court proceedings for the Supreme Court to recognise that the Medical Board did not know what it was doing? Why is it that the Medical Board now insists upon holding its meetings in secret, as in a matter concerning Dr Ross James, when Justice Gray stated in the *K-Generation* case that openness and public hearings were the very essence of any judicial tribunal procedure?

But this is not the only case of its kind. These stories are commonplace. However, it is abundantly clear that our legal, political and administrative institutions are not working for the common citizen and many appear to have become white elephants over time, perhaps captured or assimilated into becoming benign, if not malignant, in some cases. Whilst the Hon. Ian Gilfillan was on the record for many years advocating the establishment of an ICAC long before either government or opposition would support him on the idea, his inability to muster the support he needed is as much a testament to poor consultation and planning at the grassroots level as the lack of political will and support at the time.

My main problem with this bill is that it still leaves way too much power in the hands of the government, and I have consulted with a number of prosecuting lawyers, and also defence lawyers, who are saying that perhaps a completely separate commissioner needs to be established and that grievances be taken either to that commissioner or the department of public prosecutions rather than be handed to the Attorney-General for any sort of action to be taken.

That would be the idea of an independent commission against crime and corruption: that it is independent of the government and has independent bodies that would probably function a lot better than the ones we have in place now. Under the ICAC that would be established, some of those bodies themselves would perhaps come under scrutiny. I look forward to the ensuing debate and will be interested to see what happens in this regard.

The Hon. I.K. HUNTER secured the adjournment of the debate.