Speech by

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PUBLIC SECTOR ETHICS AMENDMENT BILL

Mr GRICE (Broadwater—NPA) (9.45 p.m.): I find it richly ironic that tonight we are debating a small Bill which has next to no powers, aimed at promoting ethics in the public sector and in the Government, when we have an administration that has done more to advance cronyism and nepotism than all recent administrations of all political persuasions combined. Only this Government would have the cheek to bring to this Parliament a Bill which will achieve next to nothing and claim that it is advancing morality in Government—a Government which has appointed 11 chief executives without even a merit and equity selection process, a Government which has awarded special pay deals to selected people and then had the gall to claim that anyone highlighting this malpractice is sexist, and a Government which sneaks through amendments to the Freedom of Information Act in a Schedule to a coalmining safety Bill, and—we now see—with possibly corrupt motives.

Mr Johnson: It awards contracts without going to tender for rail carriages.

Mr GRICE: As the member said, on many occasions this Government has awarded rail contracts without going to tender.

This is a grubby Government, an incompetent Government, a Government that has viewed with sheer and utter contempt the very principles that underline the cornerstone of a modern Public Service. Under the coalition, the much-maligned—and now the much-used—Public Service Act was put in place with the clear aim of ensuring that there was a stable career path for career public servants. One of the cornerstones of that Act was the principles enshrined in it to underpin a modern and well-respected Public Service.

The Act makes it totally clear, in section 24, that one of the guiding principles in Public Service employment is avoiding nepotism and patronage. Another principle is basing selection decisions on merit, and another is treating Public Service employees fairly and reasonably. Then, when we move to section 25, we see that there is a section enshrining the principles of work performance and personal conduct. There we see that the Act requires that public servants carry out their duties impartially and with integrity. Then, when we turn to sections 56 and 84, we see that the coalition put in place a comprehensive legislative scheme for dealing with conflicts of interest in the Public Service.

All public servants—and that includes everyone from a temporary employee to a chief executive—are required to disclose conflicts of interest. So we already have in place a comprehensive regime, so far as the Public Service is concerned, for dealing with conflict of interest situations. Now, if this Bill was aimed at adding to this and improving it, I would be rising in this debate to give it my wholehearted support. But in all fairness, I rise without much enthusiasm at all for this Bill. I do so because there is not much to it. To a large extent, it is all rhetoric and not much substance.

Under this measure, we will be getting a part-time Integrity Commissioner supported by 1.5 full-time staff seconded, I presume, from the quaintly named Office of the Public Service Commissioner—1.5 full-time staff. At least under the coalition it was named after a commission rather than an obviously egotistical commissioner—and one, I might add, who is achieving next to nothing. This will be a commissioner with no power to activate any inquiries. The commissioner will have to sit on his or her hands until somebody actually sends anything to him or her. The commissioner cannot even make any suggestions to the Premier about a matter which may have come to his or her attention. The

commissioner must just sit mute and await a referral from either the Premier, a Minister, a chief executive or a Parliamentary Secretary.

When the commissioner gives the advice, it is just that—advice. It has no effect, no compulsion, no nothing. It can be worthless. I would accept that the commissioner is not supposed to be an enforcement agent, but I would have thought that at least there would have been something in this Bill that would indicate that advice from the commissioner could not be ignored with absolute impunity.

When I read further, I discovered that the pool of persons about whom the commissioner can give advice is quite limited. In the Public Service arena it is limited to CEOs and senior executives. I must admit that I fail to see why the bulk of the Public Service, where the bulk of the conflict issues arise, are left out. Perhaps there is a good reason for this, but I cannot think of any.

When we read the Bill we see that the Integrity Commissioner really does not have much power or authority and, possibly worse than that, he is placed in a very precarious position. One of the most important factors in determining how independent and effective a statutory officer will be is to see what security of tenure that officer has. In this case, we see that the commissioner is both appointed and dismissed by the Governor in Council and can have a term of up to five years. But the important provision is proposed section 41, which sets out the grounds for termination.

The commissioner can be sacked if the Governor in Council—and read here the Cabinet—is satisfied that the commissioner cannot "satisfactorily perform the Integrity Commissioner's duties". The Scrutiny of Legislation Committee quite rightly highlighted this open-ended and vague clause as a point of concern—and it really is of concern. This gives the Government of the day the power to sack the commissioner whenever and for whatever reason it sees fit.

The Integrity Commissioner has no security of tenure. The holder of this office stays there as long as he or she has the favour of the administration in control. I am not against the Government having the power to dismiss a statutory office holder, but a person in this critical position should be given far greater security of tenure than this Bill provides.

The other matter that surprised me when I read this Bill is the extent to which members of the public and the Parliament will be excluded from forming an opinion on the effectiveness of the legislation. It is clear that if people are to have the confidence to approach the Integrity Commissioner they need to be satisfied that there are appropriate confidentiality provisions in place.

Proposed section 33, which deals with secrecy matters, and the amendments to the Freedom of Information Act, can be justified on this basis. However, at the end of the day, there must be some accountability. The taxpayers need to be assured that they are getting value for money and that the commissioner is actually doing the job that is mandated. What concerns me is that the only means of knowing what is going on is by virtue of a report to the Premier which the Integrity Commissioner is required to provide under proposed section 43.

The issue that needs to be closely examined is that subsection (2) provides that the report need only be in general terms and not contain any information likely to identify individuals who sought the commissioner's advice. I can think of instances when individuals should be identified. What happens if a person has sought the commissioner's advice when activated by bad motives? Has the Premier actually considered that the referral power outlined in proposed section 30 could be used in other than a proper sense? What happens if a person misuses the Act to embarrass a colleague—and God knows, we have all seen that—and the commissioner determines that this is the case. I would hope that this would be a very rare occurrence, but, if it occurs, I would have thought that the commissioner should be in a position to name that person in the report to the Premier.

However, the greater problem lies with the fact that the report must be in general terms—whatever that means. When we look at the scheme of the Bill, we see that there is next to no way that anyone will know exactly what is going on other than by virtue of the section 43 report. If that report is to be couched in potentially vague and meaningless language, I fail to see how this Parliament, or anybody else, would have a clue whether the Integrity Commissioner is a raging success or an absolute failure.

So, on the whole, I see a Bill which is motivated by the best of intentions. Any Bill which aims at curbing conflict situations in Government and in public administration is a worthy Bill. However, the problem I see is that the worthy intentions are not backed up with a piece of legislation that gives adequate powers to the Integrity Commissioner, that gives adequate security of tenure to the Integrity Commissioner, that allows adequate scrutiny of the operations of the Integrity Commissioner and which excludes almost all of the Public Service.

There is no doubt that in Parliaments around the English-speaking world there is a trend for establishing an office designed to advise and advance integrity in Parliament and in the Public Service. Anyone who has read the Nolan report from the United Kingdom would appreciate that. The debate

tonight is not about that issue—we all accept that. It is something that is quickly coming in in most jurisdictions.

Since 1994, we have had a Public Sector Ethics Act. In the intervening period, the Legislative Assembly has been advancing far better codes of conduct for this House. The matter that we are debating tonight is not the merits of an Integrity Commissioner, but the model advanced by the Government and whether it will achieve the results that the Premier has claimed.

Having closely read the Bill, I have come to the conclusion that this Bill will advance ethics only slightly, and because it may raise expectations unduly it could well, unfortunately, have a net negative effect. I hope that the Australian Labor Party considers very carefully the amendments foreshadowed by the Opposition because they will help to improve what is, unfortunately, a very flawed model.