



Speech by

Mr SANTO SANTORO

MEMBER FOR CLAYFIELD

Hansard 11 November 1999

PUBLIC SECTOR ETHICS AMENDMENT BILL

Mr SANTORO (Clayfield—LP) (8.33 p.m.): In rising to speak tonight, I find it somewhat ironic that a Government which holds itself out as being at the leading edge of public ethics and morality has, over the past 18 months, engaged in a campaign of rampant cronyism and misuse of official power. We are debating today a Bill which is full of good intentions. Any Bill that seeks—if one reads its purpose in proposed section 25—to avoid conflicts of interest and encourage confidence in public institutions is to be applauded. Yet what we see with this Bill is a paper tiger. It has no teeth, it has no compulsion, and it is literally full of holes. On top of that, the tenure of the Integrity Commissioner is tenuous, to say the least.

Over the past few years, in many jurisdictions there has been an increasing trend towards establishing an office to give advice not just on conflict of interest issues but public ethics generally. As the Leader of the Opposition pointed out in his earlier contribution, there is a tremendous amount of community alienation with our political institutions and our political process. In that context, I recall reading Marian Wilkinson's book "The Fixer: the Untold Story of Graham Richardson" wherein she made this comment—

"Throughout Graham Richardson's twenty-three years in political life, from his first days as a young party organiser in Sussex Street, right through to his last days in the cabinet room, he never learnt the finer points of ethical behaviour. He always traded in favours, mateship and deals. There was very little in his world that was black and white but there was a lot of grey. And it was in the grey areas, between the blurred lines of right and wrong, that Graham Richardson had always operated, both personally and politically."

I am not having a go at Graham Richardson, but it is that sort of politics—epitomised by the Labor

Right in New South Wales and Queensland—which has gone a long way towards making people cynical about politics.

When introducing this Bill, the Premier, in his usual way, attempted to portray this third-rate, ham-acting Government as being somehow a paragon of virtue and defender of ethics and probity, and that this initiative was another glorious page in this lilywhite administration. In fact, as the Opposition has been pointing out continuously, this is a Government that is addicted to cronyism and nepotism and is riddled from top to bottom with conflicts of interest.

If a Bill like this is to work it needs to have teeth, and the Integrity Commissioner needs to be an independent, non-political individual who will have security of tenure. Unfortunately, none of these prerequisites for making this model work is present. It is a flawed model—one driven more by public relations than a genuine attempt to tackle the very serious and difficult ethical issues that always bedevil large public organisations. It was the coalition which introduced the Public Service Act, which specifically requires, in section 24, that Public Service employment must be directed towards "avoiding nepotism and patronage".

Section 25, which deals with work performance and personal conduct, requires that officers carry out their duties "impartially and with integrity". Then we have section 84, which deals specifically with conflicts of interest. This section requires that if a public servant has a conflict of interest situation, the public servant must disclose the interest to the relevant CEO and not take any further action in relation to the matter affected by the conflict unless the CEO authorises it. Finally, section 84 empowers a CEO to direct a public servant to resolve a conflict or possible conflict. Contravention of section 84 can result in

disciplinary proceedings being instituted under Part 6 of the Public Service Act. So here, in black and white, are positive provisions designed to weed out conflict situations and which are aimed at the whole of the Public Service. Section 84 is clearly drafted, positive in its approach and has enforcement teeth. In comparison, this Bill offers very little.

The Integrity Commissioner is to be a part-time job, and one backed up by only one and a half full-time equivalent staff from the Office of the Public Service. The Integrity Commissioner cannot initiate any investigations or action other than public education. Instead, it is up to the designated persons outlined in proposed section 27 to contact the commissioner. I have to say that giving the Integrity Commissioner a part-time job, few staff and next to no incentive for anybody to approach him or her does not fill me with much confidence that this position will achieve very much.

On top of that, the scope of the legislation is unduly narrow. The list of persons who can either contact the commissioner or about whom a request to advise on can be made is set out in proposed section 27. They are called "designated persons". What strikes me about the list of designated persons is that it only includes, in the context of the Public Service, chief executives and senior executives. Conflict of interest situations can arise in any number of circumstances. As the Premier would know, there are many public servants who are required to handle large amounts of money or grant licences which could involve windfall profits or enforce laws which could result in a business failing or succeeding.

I will give one example. Let us say that we have an inspector who is required to test the accuracy of certain equipment. Let us also assume that the very same inspector's family has a business of keeping such equipment up to standard. Let us say that a member of that inspector's family has maintained the equipment that he has to check for accuracy. There may be nothing wrong with the work done by the other member of the family and the inspector may be a very honest person who would not be influenced one way or the other. That inspector may want to seek advice as to whether there is a conflict situation, to make sure that he or she complies fully with the requirements of the Public Service Act. Yet under this Bill, because the inspector is not a senior executive, there is no ability for that officer to seek advice. As I said, conflict situations neither start nor finish when a public servant joins the SES, and I would have thought that this Bill should have catered for that situation.

The next problem I have with this Bill is the inability of a Minister of the Crown to refer a potential conflict situation concerning one of the SES officers of his or her department to the commissioner. The Minister can refer it to the

CEO but has no ability to deal with a senior officer conflict situation. The other problem under this Bill is that, while the Minister cannot do this, the Premier can. For the life of me, I cannot see any logic or justice in stripping the responsible Minister of this power and yet handing it over to the Premier. It is clearly a situation which undermines the concept of ministerial accountability.

It is interesting to see in proposed section 32 that the Integrity Commissioner, in giving advice about a conflict of interest issue, has to have regard to codes of conduct approved under the Public Sector Ethics Act. I have listened with interest to the ongoing problems surrounding the Director-General of the Department of Justice and have observed a pattern of behaviour within this Government whereby her misuse of departmental email facilities to tout for witnesses in proposed defamation litigation has gone unchecked.

Let me use that outrageous situation as an example. If this Bill is enacted, the Bill makes it clear that there is no scope for the Opposition to refer to the Integrity Commissioner possible, or even blatant, conflicts of interest involving breaches of codes of conduct. Until now, despite my friend the member for Warwick referring the possible breach of the Justice Department's code of conduct to the Minister and then to the Public Service Commissioner, there has been no action—I repeat: absolutely no action.

The suggestion has been made by the Attorney-General that there is no conflict of interest—no breach of the code. If the Government was genuine about advancing ethics in a way that satisfies an increasingly disillusioned electorate, it should have provided that the Opposition is able to refer to the Integrity Commissioner some of the designated persons. Then we would have an independent person who could adjudicate on the matter and give advice which would be accepted. If there were no problems, it would put the matter to rest.

Instead, under this Bill, the Integrity Commissioner has no initiatory powers, and when we have a director-general as the focus of concern, unless the relevant Minister or the Premier agree to give the commissioner a referral, the matter just remains unresolved. So, if we have a blatant and totally and morally unjustified refusal by a Government to act to deal with a conflict situation, there is absolutely nothing in this Bill which is of assistance.

That is the situation at the moment with Jane Macdonnell, and there is not one thing in this Bill that I can see that ensures that the public interest is advanced—I repeat: absolutely nothing. It is no wonder that the public is cynical about politics. It is no wonder that 63% of Queenslanders knocked back the Sydney and Melbourne elite-driven republic model that was put on offer and so enthusiastically pushed by our Premier.

Mr Mickel: And your leader.

Mr SANTORO: I heard what the honourable member for Logan said. At least in the Liberal Party our leader, and our leaders, gave all members the freedom to be able to exercise their right of conscience, and the freedom to be able to speak out as free-thinking minds and souls, as opposed to what was not afforded to members of the Labor Party who were all herded—undoubtedly under threats regarding preselections and whatever else—to all vote and to all think the same way.

Mr Mackenroth: When was the last time you voted on the same side as Labor?

Mr SANTORO: I have just given you an example. The last time when I voted differently from some members of my party was last Saturday when I voted "No", "No". Some of them voted "Yes", "No". That interjection does not make sense. The Minister asked for an example, and he got it. Let us see if, on the issue of the Liquor Amendment Bill, which we will be debating in the near future, the Labor Party will give its members the chance—

Mr DEPUTY SPEAKER (Mr Reeves): Order! I remind the member of the Bill which is currently before the House. I would also remind the member to speak through the Chair.

Mr SANTORO: Just this week I was pointing out the misuse of public moneys by the Director-General of the Premier's Department and the highly questionable appointments of Jacki Byrne and Peter Bridgman. I raised the possible conflict situation that existed between Glynn Davis as director-general and joint author of a book with Bridgman, and his subsequent appointment.

Instead, the Premier rose in this Chamber and accused me of making the public cynical about politics. What a joke! That was similar to the Premier's response about the questionable pay deal and the appointment of Helen Ringrose as Deputy Director-General of the Premier's Department. At that stage, we did not even mention her secretarial arrangements and the transmigration of her personal staff from the Brisbane City Council to the Executive Building. That can wait until another time. Instead, the Premier got up in this Chamber, and then went on ABC Radio and said that the Opposition did not like women. He even suggested that the Leader of the Opposition hated women. Perhaps the Premier did not even hear the loud background laughter in the ABC studios, so ridiculous and over the top was his performance that morning. I heard it myself. That is the sort of behaviour that makes the public cynical about politics. More than that, it is the sort of behaviour being practised in one department after another by various people appointed by this Government that puts the Premier's words and the Government's actions so far apart.

The best way of ensuring that there is an ethical administration, whether at the Government

level or in terms of public administration, is ensuring that there are tough, effective accountability mechanisms. One of them is a Parliament where abuses are highlighted, and I can assure the Premier that, so far as cronyism is concerned, the coalition will continue to expose this Government for what it is. I would only suggest that, if he is going to make same or next day parliamentary responses, he actually deals with the issues raised.

The other means of ensuring ethics is having extra parliamentary bodies that will operate effectively, fairly and in a bipartisan manner—bodies which have the confidence and support of both sides of politics.

If the Integrity Commissioner is not going to become a very expensive waste of time, this Bill needs some radical surgery. I ask the Premier: what happens if, say, a senior departmental executive and the chief executive of the department ignore the finding of the commissioner? Is there any comeback, or does his advice simply get thrown in the wastepaper basket?

Mr Beattie: You do not understand this Bill, do you?

Mr SANTORO: The Premier says that I do not understand it. I look forward to the Premier telling me in his reply why I do not understand it. I appreciate that, if we are to encourage a compliance culture and get officers to actually refer matters to the commissioner, there needs to be confidentiality. For that reason, I have no problems with the amendment to the Freedom of Information Act set out in Part 3. I have read, and generally agree, with the concerns and comments made on this area by the Scrutiny of Legislation Committee.

However, there is also a wider issue that needs to be factored in, and that is the extent to which the Integrity Commissioner can be effective if he has no initiatory powers, his advice can be ignored, his activities cannot be accessed under FOI and his reports under proposed section 43 will be so vague.

I draw the attention of the House specifically to proposed section 43. Under that provision, the Integrity Commissioner is required to present to the Premier each year a report about the commissioner's functions. I presume that the report will have to be tabled in this House, but I seek some information from the Premier on that point in his summing-up. However, the part of the provision which concerns me is subclause (2). It provides that the report must—

"be in general terms and must not contain information likely to identify individuals who sought the commissioner's advice about a conflict of interest issue."

I can understand why there is the requirement that persons not be identified, but to provide that the report be in "general terms" leads me to

question whether the activities of the commissioner will be shrouded in mystery. How will the public and this Parliament know what is going on? How will we know if the commissioner is being effective or not? How can we properly hold both the commissioner and the Premier accountable when we will not get any information by which useful milestones can be gleaned?

So in the context of a Bill of this type, I fully support proper confidentiality. However, by the way in which this measure has been drafted, confidentiality has been elevated to such an extent that accountability is rendered next to non-existent.

The final matter that I want to raise is the security of tenure of the commissioner. This was a matter that was raised by the Scrutiny of Legislation Committee in Alert Digest No. 8. The committee pointed out that the commissioner can be dismissed by the Governor in Council where it has formed the view that the commissioner—

"cannot satisfactorily perform the Integrity Commissioner's duties."

The committee quite rightly pointed out how vague that is and how much scope it gives the Government of the day to step in at any time and sack an Integrity Commissioner for any reason.

In his response to the committee, which is set out in Alert Digest No. 9, the Premier stated—

"Unsatisfactory performance is undefined, as the range of possibilities, though not limitless, is broad enough to render further definition problematic."

I agree total with the Premier that the range of possibilities for sacking is indeed almost limitless. Certainly, I would have thought it appropriate and prudent that the grounds for sacking the commissioner can be set out clearly. The reality is that the Premier of the day could ask the commissioner to investigate a conflict situation involving, say, a Parliamentary Secretary. It could be highly political. As I read this Bill, the Premier could even ask the commissioner to look into the activities of one of his Cabinet colleagues. A commissioner placed in that situation, and with the risk of being sacked ever present, would not approach the task in a position of either confidence or power. So I see the inherent insecurity of tenure of the commissioner as a significant drawback and an ongoing practical, albeit background, limitation on his or her independence.

In conclusion, I support the concept of a person giving advice on conflicts of interest. Other Parliaments have gone down this path. It is appropriate that we have an effective model as well. Unfortunately, we are debating a very weak model and one which, as I have just stated and other members on this side of the House have stated, has enormous drawbacks. The sum total of these drawbacks is such that it is problematic whether a Queensland Integrity Commissioner will achieve much at all and could, in fact, exacerbate a disillusioned electorate by promising much but delivering little. In these circumstances, I hope that the Premier considers favourably the amendments to be moved by the Opposition.
