



Speech by

Hon. Cameron Dick

MEMBER FOR GREENSLOPES

Hansard Tuesday, 4 August 2009

**CRIMINAL CODE AND OTHER LEGISLATION (MISCONDUCT,
BREACHES OF DISCIPLINE AND PUBLIC SECTOR ETHICS)
AMENDMENT BILL**

Hon. CR DICK (Greenslopes—ALP) (Attorney-General and Minister for Industrial Relations) (5.09 pm), in reply: At the outset I thank all honourable members for their contributions to the debate on this very important bill, particularly the members of the government. The Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Bill has three main objectives. Perhaps after the virago of misrepresentation and distortion that we have heard from members of the opposition today, it might be best to rearticulate them.

Firstly, the bill will implement two recommendations made by the Crime and Misconduct Commission in its recent report entitled *Public duty, private interests: issues in pre-separation conduct and post-separation employment for the Queensland public sector*. The CMC released this report on 18 December 2008. The CMC made five recommendations. Three of these recommendations have already been implemented. They related to the establishment of the Queensland lobbyist code and restrictions about post-separation employment. This bill contains legislative amendments to implement the remaining two recommendations.

The bill introduces a new offence of misconduct in public office in the Criminal Code. The offence will apply to a public officer who acts or fails to act in abuse of the authority of office and does so with the intent to dishonestly gain a benefit for, or cause a detriment to, any person. The new offence will also prohibit former public officers from using any information gained because of their former position to dishonestly gain a benefit for themselves or another person or to dishonestly cause a detriment to another person. The bill also clarifies the definition of 'interest' used in the Public Service Act. This will ensure the terms 'interest' and 'conflicts of interest' have their ordinary meaning under the general law.

Secondly, the bill amends various acts to ensure that Public Service Act officers and police officers cannot avoid serious disciplinary findings by leaving the Public Service. The legislation being amended includes the Crime and Misconduct Act 2001, the Misconduct Tribunals Act 1997, the Police Service Administration Act 1990 and the Public Service Act 2008. The amendments being proposed will allow investigations against individuals to continue despite their employment ending. The amendments will also provide for a disclosure regime to enable chief executives to make appropriate assessments of the suitability of persons who seek employment in the Public Service or Police Service or where public servants seek to transfer departments. The amendments will allow the CMC to lay charges for official misconduct against individuals whose employment has ended after the official misconduct occurs. It is not intended to enforce any penalty against a former public servant or former police officer. Rather, it enables a disciplinary declaration to be made stating the disciplinary finding and the disciplinary action that would have been taken had the person's employment not ended.

Finally, the bill amends the Public Sector Ethics Act 1994 to allow all members of the Legislative Assembly to seek advice from the Integrity Commissioner about conflicts of interest issues. These amendments are proposed on the basis that all members can be confronted with potential conflicts of

interest and should therefore be able to seek the Integrity Commissioner's advice. The bill also corrects an oversight in schedule 2 of the Public Service Act 2008 by including the office of the Integrity Commissioner as a statutory office holder who may not be removed from office by the Governor in Council.

Before turning to some of the specific matters raised in the debate, I wanted to reiterate to the parliament that this bill is about enhancing and expanding the integrity framework in this state. The majority of the recommendations incorporated in the bill were recommended by the Crime and Misconduct Commission. If members cannot seem to follow that, I would refer them to the bottom of page 2 and the top of page 3 of the explanatory notes. The explanatory notes state—

The Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Bill 2009 implements recommendations made by the Crime and Misconduct Commission ... in its report *Public Duty, Private Interests: Issues in pre-separation conduct and post-separation employment for the Queensland public sector* ... and the former Criminal Justice Commission ... in its report *Safeguarding Students: Minimising the risk of sexual misconduct by Education Queensland staff* ...

There was the barest of mentions of the CMC by the opposition in this debate. The barest of mentions was made of the report. This is the Fitzgerald architecture working. The reason those opposite do not like talking about it is because to their core they reject the framework that Fitzgerald recommended and was implemented in this state by successive Labor governments.

A number of frankly disgraceful comments were made during the debate. Many of them hung around the haste with which this bill was introduced. This bill has been in the parliament since 2 June. It is a mature bill. It has been before the House for two sitting weeks. It is capable of being debated at any time. It is the issue of the moment in our state and why would this parliament not debate it at this time?

We have this rejection. We have this virago of misrepresentation by members opposite that somehow this was a ruse to put this through. We had the words 'indecent haste' from the member for Gaven. We had the words 'a fallacious argument' from the member for Kawana. We had the member for Kawana saying that this came about because of what Tony Fitzgerald said last week. What a distortion. What a misrepresentation. They are twisting and turning, squealing and squirming. They do not want to deal with the nature of this bill which is the recommendations of the Crime and Misconduct Commission and the Criminal Justice Commission. Why would they not reject the recommendations of the Criminal Justice Commission—the very body they sought to undermine and remove from public administration in this state?

Those opposite have form. When they were last in government one of the prime things that the Borbidge government did was set up a royal commission to nobble, to undermine and to neuter the Criminal Justice Commission. Why? Because at their heart they cannot accept the public administration framework recommended by Fitzgerald.

We had this litany of allegations made against the government. This government is moving to reform criminal misconduct and misconduct in the public administration of this state because that process never stops. The opposition has been put to the test. The Leader of the Opposition has been put to the test in the last 72 hours. Where is the list of donors who attended the inaugural LNP annual conference? Where are they? Where are the participants at the business observers conference? Where is the list? All he has to do is come into this House and table it. Where is the list of businesspeople and individuals who attended the \$20,000 a plate fundraiser conducted by the then Leader of the Opposition, the now Deputy Leader of the Opposition and the presumptive and wannabe Leader of the Opposition, the member for Southern Downs? Where is the list of those people who attended the single largest fundraising function in the history of our state?

Those opposite run and hide. They have no policy initiative for this state. They want to adopt a small target. It is not a small target strategy. It is a black hole strategy. All of it went in there. The Liberal Party's principles went down. All of it went down the drain because they do not have the ticker and the character to match the commitment of this Labor government and this Labor Premier, Anna Bligh.

The member for Moggill said it is about the government and not the opposition. That was his contribution to public debate. He said, 'We do not have to table these documents. It is not a matter for us.' Why? Because they want to continue their cosy, hidden relationship with business and they do not want to expose it to sunlight. That is what they do not want to do.

Frankly, the matters put forward by those in the opposition were hypocrisy in the highest order and distortion. Some of the matters that were put before the parliament were sickening. We had the reiteration of the whole contempt of parliament issue. All I can say is two words—Denver Beanland. He was the then Attorney-General of this state. A motion of no confidence in him was passed by this parliament. What is the history of conservative parties in this state? What did they do when the will of the parliament was demonstrated, when this parliament said, 'We have no confidence in you as the Attorney-General'? They did nothing. Denver Beanland did not resign. It is one of the few times in Westminster parliamentary history that someone against whom a motion of no confidence was passed did nothing. He held on, gripped on to the ministerial leather, with no integrity and was supported by his Liberal and National Party colleagues.

Frankly, the opposition is craven in its desire to assume power in this state. It is not looking to reform. It is not the party of reform. It is not the party of change. It is not the party of policy initiative. It is the party of no ideas. Those opposite are hiding. They do not want to engage in the most serious debate this state is facing. They want to walk away from it. It is not good enough. The Leader of the Opposition has been found wanting for 72 hours. The clock is still ticking but there has been no answer yet.

I was disappointed by the comments of some of the members opposite concerning the amendment to be moved in the consideration in detail stage. It was never the intention of the government—and I have expressed that directly to the Leader of the Opposition—that the Premier should be able to seek advice on conflicts of interest for members opposite. When the matter was raised the government acted and addressed it, as the government should. I am sorry that members opposite sought to distort that.

I was greatly disappointed by the contribution of the member for Gaven. He seems on occasion to be a thoughtful man, but on this occasion he was completely wrong. He made allegations that we are amending the Criminal Code in a way that would make the code more complex, that would obfuscate the code, that would deviate from the truth, and that the laws were being made in a rushed fashion. Can I say again that we are implementing reforms recommended by the Criminal Justice Commission and Crime and Misconduct Commission. The struggle in respect of confronting criminal conduct in the community, including criminal conduct at the highest level of government, the receipt of secret commissions by certain individuals, including Gordon Nuttall—the whole nature of them being secret—never ends. Labor will not shy away from the hard decisions. We will ensure the reform process continues.

There was a whole range of issues raised by the member for Burnett. One wonders about some of the issues that he raises. Many of them were not germane or relevant at all to the bill before the parliament, but he raised concern about the safety of himself and his family and others. Can I suggest to the member for Burnett that if he has any concern at all about the safety of himself or his family—it is something that I cannot leave unaddressed—he should immediately contact the Queensland Police Service.

Mr Messenger: Which is what I have done.

Mr DICK: I am absolutely certain that he will be afforded the full protection of the law and the full protection of the police if he feels threatened or concerned in any way. No-one in this parliament should be threatened. No-one in this parliament should fear living in the community. If he has any concerns, I would suggest he do that straightaway.

There are some specific matters I also want to raise. The Leader of the Opposition raised issue with the Department of Justice and Attorney-General conducting a review of the existing provisions of the Criminal Code, suggesting that such a review should have been completed earlier. I want to clarify for the Leader of the Opposition that the intention of this review is to assess the various existing offence provisions in chapter 13 of the Criminal Code which are narrowly defined. In the context of the introduction of the new offence, it is not to determine whether the new offence is required.

The member for Southern Downs made attempts to represent the Premier's transfer of the debate of this important bill to me as some evidence of a dark and dangerous conspiracy. Sadly for the Deputy Leader of the Opposition, he has for the umpteenth time completely failed to understand the portfolio responsibilities for the portfolio he purports to be the shadow minister for. The bill makes significant and important amendments to a number of pieces of legislation for which I am the responsible minister, including the Crime and Misconduct Act 2001, the Criminal Code of Queensland and the Misconduct Tribunals Act 1997.

It will come as no surprise to anyone in this House, except perhaps the member for Southern Downs, that these pieces of legislation, as I have said, fall within my ministerial responsibilities. The only dark and dangerous conspiracy here is the one posed to the Queensland people if the member for Southern Downs was ever to hold executive office in this state.

While warming to his misunderstandings, the member for Southern Downs also raised the issue of government owned corporations and whether they should be the subject of CMC investigation. Regrettably, he has no interest or deliberately misrepresents things that are appearing in the portfolio for which he is the shadow minister. As he knows quite well, this specific issue was raised by the Parliamentary Crime and Misconduct Committee in its report on the three-yearly review of the operations of the CMC this year. The government appreciates the work of the committee on this issue and for its report—a bipartisan committee represented by both sides of the parliament. The report is currently under consideration and a response will be released in due course.

Members opposite raised the issue of amendments increasing the scope of the Integrity Commissioner's powers. The Integrity Commissioner has the power to give advice to designated persons about conflict of interest issues. Section 27 of the Public Sector Ethics Act 1994 prescribes 'designated persons', which currently include all government members or a member of parliament appointed to a parliamentary committee on the nomination of a member of the party recognised as being in government

and Independent members of parliament appointed to a parliamentary committee on the nomination of the government. When originally drafted, opposition and Independent members were not included with the Integrity Commissioner's jurisdiction on the basis that they were not privy to government decision-making processes to the same extent as government members. It is recognised by the government that all members of parliament can be confronted with potential conflicts of interest and should therefore be able to seek the Integrity Commissioner's advice. Changes to section 27 are therefore proposed to enable all members to seek advice. The clear intention of the bill has been to ensure that this applies equally to all members of the House.

The member for Moggill raised the issue of why the legislation uses the term 'dishonestly obtain'. This is a term that is not unfamiliar to the criminal courts for offences of this nature. For example, the Commonwealth Criminal Code at section 142.2 for the offence of public office includes such a term. This term is also used elsewhere in the Queensland Criminal Code without any discernible diminution of the effectiveness of the offence provisions concerned—for example, in section 408C relating to the offence of fraud. It has been accepted in the courts that this element requires proof that the accused acted dishonestly by the standard of an ordinary honest person and the accused must have realised that what he or she was doing was, by those standards, dishonest. The flexibility of the dishonesty concept is that it allows an assessment of a public officer's conduct against the standards of ordinary honest members of the community. This is one of a number of concepts at law that are specifically intended to allow for the prevailing social concepts of justice and appropriate behaviour to be reflected directly in the application of the law.

This bill is yet again further evidence of the ongoing commitment to reform that the Bligh government brings to this parliament and to the people of Queensland—a reform process that began with the Fitzgerald inquiry and that continues to build with the announcements by the Premier over the last week to reform, overhaul and make more transparent the processes of government. This is a commitment that all of us on this side of the parliament have made, and we continue to take clear and decisive action to implement those commitments. It stands, sadly, to the great pity of the people of Queensland, in stark contrast to the lack of action, the paucity of moral fibre and the dithering by the opposition. Either the lessons of the past are lost on those opposite or they simply do not care.

I want to thank all members of the House once again for their consideration of this bill and for their support. I would also like to specifically thank the officers of the Public Service across a number of departments who worked to prepare this bill, in particular Leanne Robertson, Louise Shepherd, Rita Jackel, Rebecca Lowndes, Robert Utz and Donna Andrews, and to Mark Biddulph from my office.