DRAFT SECOND READING SPEECH

Dr Rosalie Woodruff MP

Public Interest Disclosures (Members of Parliament) Bill 2021

check Hansard for delivery

Mr Speaker, I move that the Bill now be read for a second time.

The *Public Interest Disclosures Act 2002* provides a framework for the disclosure of information related to improper conduct by a public officer or public body, to provide a process for the investigation and determination of disclosures, and to ensure the person making the disclosure is protected from reprisal.

Although the Act makes no explicit reference to “whistleblowing”, public interest disclosures legislation was put forward with the purpose of providing a framework for whistleblower protection.

History of public interest disclosures legislation

The first public interest disclosures bill was introduced to the Tasmanian Parliament in 1995 by Michael Field MP as a Labor Private Members Bill. This bill lapsed due to prorogation in January 1996.

A similar bill was introduced in 1997 by Judy Jackson MP. In April that year the bill was debated and amended, however the debate did not conclude. During the debate Attorney-General Ray Groom noted cabinet’s support for whistleblower legislation, and advised the Government was in the process of drafting a bill.

An amended version of the bill was tabled later that year, lapsed in 1998 due to proroguing, was subsequently restored and passed the Assembly – although it was not debated in the Legislative Council.

Finally, a 2001 bill introduced by then Labor Attorney-General Peter Patmore passed both Houses of Parliament.

Disclosures relating to Members of Parliament

The *Public Interest Disclosures Act 2002* only allows disclosures regarding Members of Parliament to be made to the Speaker in relation to a member of the Assembly, and the President in relation to a member of the Legislative Council.

There are two obvious issues with this framework.

The first issue is that if a disclosure relates to alleged improper conduct by either the Speaker or President, the Act only allows for the conduct to be disclosed to the same person the disclosure relates to.

The second issue is the party affiliation of the Speaker, and the potential party affiliation of the President.

When the Speaker, or the President, are members of a political party it is unreasonable to require disclosures about a member of the same party to be made to these people.

Conversely, it is also an issue if a disclosure relates to a Member of Parliament who is a political opponent of a party to which a Presiding Officer is a member.

Presiding Officers and the Westminster tradition

It needs to be noted that while the roles of Presiding Officers are nominally impartial in a Westminster system, Australian Speakership traditions are incomparable to those in the United Kingdom House of Commons.

When a Speaker is elected to the House of Commons they resign from their political party – as well as any clubs with political affiliation, and refrain from making any comment on political issues. So serious is this in the United Kingdom, that these traditions persist even after a Speaker retires.

This is manifestly not the case in Australian Parliaments.

Another matter is that of casting votes. In the House of Commons, it is held the Speaker should use their casting vote to support continued discussion, and should avoid making a majority where there was none before, on final decisions.

Practically speaking this means a Speaker is expected to use their casting vote to always enable debate by supporting second reading votes, and avoid making a majority where there was none before by voting against a third reading.

This is not what happens in Australian Parliaments. If the deciding vote was exercised impartially under this tradition, then the Speaker would not vote in support of any third reading, would vote in favour of every second reading, and would not support any cloture or urgency motion.

Instead, in all but exceptional cases, Australian Speakers vote in favour of whichever political party they retain membership to.

In short, in Australia, however much a Speaker may attempt to remain impartial in their ruling while in the chair, Speakers retain partisan ties, as well as partisan motivations separate to this function.

Amendments introduced by this Bill

This amendment bill makes sensible and non-controversial amendments to the Public Interest Disclosures Act 2002 to allow disclosures in relation to a Member of Parliament to be made to either the Ombudsman or the Integrity Commission. This is the same arrangement that exists currently for a disclosure in relation to the majority

of people to whom this Act applies, including a person employed under the provisions of the *Parliamentary Privilege Act 1898*.

The Bill also extends the Act to allow for a disclosure in relation to an employee of a member of Parliament to be referred to either the Ombudsman or the Integrity Commission. As it currently stands, the only body a person can refer an employee of a member of Parliament to is the Ombudsman.

The reason for creating a separate reporting structure for members of Parliament was not covered by the Attorney-General in his second reading contribution to the *Public Interest Disclosures Bill 2001*.

However, a brief explanation was provided by the Deputy Leader of Government Business in the Legislative Council, who commented –

> *"As foreshadowed earlier, the bill contains special procedures for disclosures about members of parliament which recognise the doctrine of the separation of powers and the fact that MPs are ultimately accountable to the Parliament and the electorate."*

However, it was noted a disclosure could be referred to the Ombudsman by either the Speaker or the President – a tacit acknowledgement this doctrine is not supreme.

Mr Speaker, the Greens submit that while it is true MPs are ultimately accountable to the Parliament and the electorate, MPs *cannot* be held to account by the Parliament or the electorate if there is not a transparent, arms-length process for handling complaints of this nature.

Of note the 2001 bill, and its debate, predate the establishment of the Integrity Commission in 2009. The Commission has a clear purview over the conduct of MPs.

The bottom line is the reason made to refer a disclosure of misconduct to the Speaker or President was tenuous at the time, and manifestly inadequate now.

Motion for Respect report

Mr Speaker, this bill was tabled in 2021 well before the *Motion for Respect – Report into Workplace Culture in the Tasmanian Ministerial and Parliamentary Services* by the Anti-Discrimination Commissioner, Sarah Bolt.

While that report was not the impetus for us to put this bill forward in the first instance, this bill has now become very relevant to this report.

A repeated theme noted in the Motion for Respect report, was that a fear of repercussion or reprisal, as well as expectations of party loyalty, can prevent people speaking up about discrimination, bullying or harassment. In this context, the notion a staff member would be required to whistleblow against a person, to that person's party colleague, in untenable.

Concerns about the fear of reprisal largely relate to the employees of Liberal Members in this House, or employees of Labor Members in the Legislative Council. However, there are also concerns with respect to employees of the Greens or independent members.

Loyalty to a party, or more direct loyalty to an employer, could operate as a significant disincentive for a person to whistleblow to a political opponent of their employer.

It is also preposterous that should an employee of either a Speaker, or a President, choose to make a public interest disclosure in relation to their employer, they would currently be required to make the disclosure *to their very employer*. Their employer would then have ultimate say over what happened to the complaint.

Broader whistleblower reforms

As a final matter I would like to note that reforms to whistleblower legislation are long overdue. CPSU General Secretary Thirza White noted in respect of this bill that *"We need proper protections for workers who blow the whistle, integral to integrity. This is not a bad first move."*

We agree. This Act is clearly not doing a good enough job. Whether we need a new Act, further amendments to this Act, or broader legislative reform, are matters that the Greens believe deserve further consideration and action.

We are pleased, though, to present this as a first step for the consideration of the House today.

I commend the Bill to the House.