Legislative Council

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WHISTLEBLOWERS PROTECTION (MISCELLANEOUS) AMENDMENT BILL

The Hon. A. BRESSINGTON (19:47): I rise to support this bill, and I commend the Hon. David Winderlich on his initiative and the research he has put into the needs of the people who would be affected by this bill. In doing so, I feel it is important to again make the observation that those who most claim to want to protect whistleblowers rarely actually consult with whistleblowers unless they are academics, professionals, ex-judges or senior public servants.

The Hon. David Winderlich made reference to the works of the Democrat Senators Andrew Murray and Andrew Bartlett, but I am advised that many members of Whistleblowers Australia could not even get their ideas heard or considered through their respective offices. We have not learned, and we seem to refuse to learn, the lesson about the whole field of whistleblower protection and anticorruption authorities.

The reason we are not successful, in my opinion, in what we are collectively trying to achieve and claim as our objective is that we as members in this place, for the greater part, neither truly identify with whistleblowers nor readily render our services to them. Not until they have reached the media on their own skin to gain vindication or win a Supreme Court victory to clear their name will we get involved. That is all well and good, but often that is cold comfort for those who have paid the ultimate price and have little to lose.

Where are the members who purport to support the protection of whistleblowers right here in this very state when they are about to be made bankrupt or lose their job or home? Where were these members when we voted in the government's workers rehabilitation and compensation bill last year decimating income support, the last of the meaningful protections whistleblowers might have had? We often talk about whistleblowers as if they exist in some other part of the world but not amongst ourselves in our very own community.

That may as well be the case as, if the media do not acknowledge someone as a whistleblower, rarely do we do so of our own volition. We do not call the John Ternezises or the Mark Moore-McQuillans of this world a whistleblower to advocate for their protection. We might if they were lawyers, ex-judges, or senior public officials. We might if the media were to relentlessly go in to bat for them, but they live in this state and for the greater part we do not think their vindication is important enough as it has not reached the right media.

Who in this place wants to be seen to advocate for the rights of someone labelled with the stigma of being held in contempt of court for calling a judge corrupt? How many of us have examined why a comment like that has been made and what led to the remark before reporting on the conviction and imprisonment of that person?

Mr Ternezis does not mix in Adelaide's establishment circles. He speaks with a heavy accent and he is passionate about child protection and holding authorities accountable. In other words, he might as well be an alien from outer space. Although some members are now sitting up and taking notice of Mr Ternezis' situation, which delights me no end, it is sad that this was not the case when he was first experiencing his problems with the department now known as Families SA.

In the current environment, I am sorry to say that the amendments to this bill will be meaningless and futile. Although I will support them in principle, it saddens me to know that we continue, by and large, to lack the political will to strengthen protections and, more importantly, impose penalties and sanctions on offenders. That is most likely the case because the offenders often hold positions of high authority and political or judicial power; thus, we enable corruption and maladministration to flourish.

Collectively, as a society and as elected representatives of the people of this state, we expect very little of the Crown Solicitor, the Police Complaints Authority, the Ombudsman, commissioners and ministers. We never question their competence, honesty or truthfulness, unless there is a media story to be gained or an election campaign to be waged. How many public interest disclosures have we individually or collectively put on the public record and how many have we vigorously pursued?

In probably the last nine months, my office has lodged almost a dozen public interest disclosure statements relating to matters affecting constituents. One has been responded to, and it was the most ineffectual response you could imagine; it did not deal with one of the issues raised in the public interest disclosure statement. With respect to the others, we have not had word.

Under the Whistleblowers Protection Act, authorities have a period of time to respond to these documents. It is part of the legal process, yet it is not upheld or enforced and, even when it is brought to the attention of certain ministers, their departments are failing to acknowledge these public interest disclosure statements, and still nothing is done.

Some of these whistleblowers have lost not only their job, home or car but also their children, particularly when the authorities have taken reprisals for their insistence, with those authorities following due process and fair treatment. These reprisals are often cleverly concealed from the public gaze as mere family disputes. Often, privacy provisions keep the reprisals highly secret from public scrutiny in the knowledge that the media do not report on personal, family or child protection issues.

Few members would know of the case of Stephen Perkins. His treatment was very much like that of Mr Bruce Yates, who received an ex gratia settlement from the Liberal government after his story made it to air on the ABC's *Four Corners* program. However, the same department responsible for Mr Yates' horrific situation had not learnt from the mistakes and misdeeds of the past.

Mr Perkins submitted a formal public interest disclosure in 1999, which resulted in not one but two commissioned reports condemning the conduct of the department now known as Families SA. In fact, Mr Perkins submitted two public interest disclosures. It appears most likely that the first public interest disclosure hastened the removal of Mr Perkins' children. The department's principal social worker at the time, whose job it was to investigate the first disclosure, found nothing wrong, even though the Hon. Sandra Kanck and many other professionals went in to bat for Mr Perkins, filing affidavits and appearing as witnesses at the Youth Court.

Following the original whitewash, the second public interest disclosure by Mr Perkins triggered the commissioning of the first independent report by former chief magistrate Cramond. After handing down his findings, much to the displeasure of the department, the executive ignored the Cramond report, stating that he had 'approached the report from too legalistic a point of view'. A second report was later commissioned through the University of Western Australia's School of Social Work Department, and that report was even less kind.

However, there was still no attempt to remedy the damage caused to Mr Perkins and his children.

To add insult to injury, since 1999, not one person has lost their job or has been demoted over this particular case, and there has been no vindication of or apology to Mr Perkins. Instead, the department moved swiftly to remove his two children soon after the disclosures were lodged, and his children were ultimately placed in foster care until the age of 18. Meanwhile at the Youth Court, magistrate Clark passed opinion from the bench that those suppressed reports were 'marginally relevant at best', despite their significantly corroborating other expert testimony and the substance of Mr Perkins' public interest disclosures.

What many believe will be attested by the full disclosure of the documents concealed by the department is that several of the practitioners were not only incompetent or dishonest but also deliberately vindictive and in breach of all public sector codes of conduct. This was all but confessed to when Mr Perkins' solicitor informed him that, at a pre-trial conference in 2000 (which Mr Perkins was not permitted to attend), the solicitor acting for crown law commented, when asked by the bench the reason the department wished to return one of the children to the care of the mother (even though she had an extensively documented record of neglect and abuse) that, 'It is that the father has been such an irritant to the department.' An obvious question here is: why did the person representing the Crown never require her client and executors to behave with greater integrity; why did she fail to advise them that they were in breach of the Whistleblowers Protection Act at that very point in time; and why did she not distance herself from the persecution of Mr Perkins?

I cannot help believing that Dr Bob Moles and the countless cases he has advocated due to the corruption and cover-up of flawed forensic pathology practices are similarly regarded as an irritant by the Attorney-General's Department. It would, at the very least, explain why they will also never see resolution during the life of this government.

If Mr Perkins was an isolated case, his experience would be less relevant to this debate, but another recent whistleblower, Dianne Brown, had the same experience. Miss Brown lodged not two but four public interest disclosures, only to have her grandchildren removed with not one of her PIDs ever being acknowledged or investigated. Mr Perkins and Miss Brown live in the most socioeconomically impoverished areas of Adelaide. No *60 Minutes* reporter will be flying out from Sydney knocking on their door for a story. You can be sure of that. Their impoverished circumstances only serve to typecast them not as whistleblowers but as the very abusive and neglectful carers that the department would portray.

It is similar for whistleblowers who find themselves unwitting players in the WorkCover scheme. Labor and Liberal governments have campaigned heavily to ensure that public opinion regards all WorkCover claimants first as rorters of the system. They are regarded as little more than parasites, freeloaders, malingerers, liars and bludgers. Television campaigns for decades have called on the public to dob in the cheats when, in fact, the rate of fraud amongst injured workers has been proven to be far less than 1 per cent. However, both the government and opposition validated that perception by voting for last year's bill, stripping people of basic income, rights to health care and common law protections, while still richly collecting on the levies.

For years, I have spoken about the scheme critical list. Before that, the issue was featured in June 2000 on the SBS *Insight* program, and I am informed by injured workers that there could not possibly be a member of this place or the other place, and no member of the legal fraternity or judiciary, who could not have known about the practices that were going on within our courtrooms. However, the story would get no coverage from any media in this

state and had to be compiled in Victoria to get any media air time. It took two journalists to vigorously pursue this story to even get it screened after the producers became fearful of retribution and almost pulled the story.

Not one member in this place has picked up on the issue to offer their support to that particular cause affecting countless injured workers. It scandalises our courts, but we remain silent. It demonstrates that there is a strong hold by the executive over the judiciary in violation of the doctrine of the separation of powers. Does any member in this place actually care? I can only ask and wonder.

We should all care. The judgments and outcomes in each of the scheme critical cases will prove the corruption but, when the time comes to examine them more closely, corrupt decisions will no doubt be explained away as resulting from little more than judicial discretion or put down to some other legal or technical anomalies. Commonly, when we speak with whistleblowers, it is often only to offer excuses, justifications and platitudes. The most common one used for ignoring the scheme critical cases, I am told, has been, 'WorkCover is not an election issue.' This was a standard line given by countless members from Labor, Liberal and the Democrats when the scheme critical list was first exposed in the mid 1990s, but that has been the case, whether in government or opposition, since that time.

When public authorities refer to whistleblowers they invariably refer to them in derogatory terms, using terms such as 'self styled'—the term used by the senior legal officer of the Attorney-General's Department who was himself the architect of the Whistleblowers Protection Act.

Like the verballing of witnesses among WorkCover and its various agents, I have become aware of another common and accepted practice among government agencies to remove letterheads, signatures, names of primary decision makers and other relevant markings when releasing FOI documents. Thus, not only are members of the public, seeking truth and answers to pertinent questions affecting their everyday lives, left to continue their quest for answers but, should they complain to the media, no media would be likely to report on their stories without credible documentation as to the sources of their information.

This is a corruption of the spirit and intent of the FOI act through and through. Once upon a time we would have expected the right to know and be able to access information about ourselves held by government departments through the FOI act but, under the previous government and, more so, under the current one, this has been eroded to the point of rendering the FOI act benign and little more than a white elephant.

In order to get our head around the difficulties of the South Australian Whistleblowers Protection Act, there is no better critique than an article entitled 'Whistleblowing', by Dr De Maria, author of *Deadly Disclosures*, but one then needs to follow the debate between Dr De Maria and Matthew Goode (senior legal officer to the Attorney-General and architect of the Whistleblowers Protection Act), the then state Ombudsman (Eugene Biganovsky) and the national secretary of Whistleblowers Australia at the time. The articles and letters were published in December 1995 and April and June 1996 and, as predicted, many of the warnings given by Dr De Maria have since come to pass, proving Mr Goode's faith in the act to be misplaced and his mocking dismissal of Dr De Maria's article entirely without foundation.

Yet, when internal whistleblowers are forced to go to the media because formal channels do not work to protect the whistleblower or uncover the corruption, they are invariably threatened with at least one of three things: first, an alleged breach of the Public Sector

Management Act; secondly, an alleged breach of section 10 of the Whistleblowers Protection Act 1993 (which covers false disclosures); or, thirdly, defamation proceedings.

Even this place has been guilty of denying whistleblowers full parliamentary protections that go with absolute privilege, which, in turn, has enabled corrupt individuals and authorities to persecute whistleblowers; but I will go further into this on another occasion.

However, most whistleblowers would say that the worst authority on which to blow the whistle or to make a disclosure in the hope of getting remedy or protections under the Whistleblowers Protection Act has to be the Attorney-General's Department and crown law itself. Time and again, we see that even when whistleblowers follow the Whistleblowers Protection Act to a tee, write to the authorities and provide irrefutable documentation, they can still find themselves on a path to their own demise rather than sanctuary.

On 13 February 2008, I presented one such whistleblower's case as the basis for a motion for an inquiry into the Public Trustee. At that time I quoted the story of Mr John Oliver, a redeployee from the Office of the Public Trustee who had provided my office with at least 120 cases requiring further scrutiny, many of which would raise alarm bells. I made passing reference to some of those cases during my speech on the motion and outlined the reprisals, including ostracism from the workplace, to which Mr Oliver had been subjected.

Since the Statutory Authorities Review Committee's inquiry into the Public Trustee commenced, Mr Oliver had sent a formal PID in March 2008 and even gave caution to his authorities that he would reserve the right under the WPA to go to the media if there was no appropriate response. None came for months. In the meantime Mr Oliver went to the media and *Today Tonight* and reported on the disclosures that had received no response or rebuttal. In short course, his employer—the Attorney-General's Department—wrote:

Channel 7 television station and/or the producers of the *Today Tonight* program are not persons to whom it is reasonable and appropriate to make disclosure, nor is the gen eral television viewing public.

Mr Oliver was threatened with an investigation into an alleged breach of the Public Sector Management Act and required to attend the government's Special Investigation Unit, which he declined to attend, claiming protection under the Whistleblowers Protection Act.

In the *Alternative Law Journal* article, Dr De Maria accuses the South Australian act of failing in almost every key area of protection, but, as you will see, Mr Goode asserts vigorously that South Australian whistleblowers are protected if they go to the media. He says:

In table 2, Dr De Maria says that a person is not protected if they disclose to the media. Wrong. A disclosure to the media will be protected if it is, in the circumstances of the case, reasonable and appropriate to disclose to the media.

Mr Goode assured the public in 1996 that the Whistleblower Protection Act does intend to protect whistleblowers who go to the media (in fact, the Public Management Act does, too), yet this did not stop Mr Jerome Maguire of the Public Trustee's office from sending Mr Oliver a letter of reprimand which was placed on his personal history file.

One must ask how it is that no-one has been charged with an offence under the Whistleblowers Protection Act for instigating this act of reprisal against Mr Oliver. So, who was lying to or misleading whistleblowers and legislators in this state if not authorities representing the Crown itself? Among other things, Dr De Maria's main criticism is that it is the state that determines what is considered appropriate and not the whistleblower or the media. Mr Goode, however, contradicts this assertion over and over, suggesting that the acts

and powers of protection are intended to be broader than that articulated by the act, not limited in the manner interpreted by Dr De Maria.

However, despite Mr Goode's assurances that the act can be applied broadly and not restrictively we see only the narrowest application of it, if at all. The fact remains that if the corruption does not get you under the Whistleblowers Protection Act it will get you via some other means. Mr Oliver is not accused of breaching the Whistleblowers Protection Act but the Public Sector Management Act. My office is bombarded by complaints day in and day out by constituents who have been treated appallingly by government authorities and public servants, but when complaints are lodged highlighting breaches in policy and procedure or due process they are typically confronted with the oft-adopted catchcry used by public servants as a shield, 'But we didn't break the law.'

Failure to comply with policy or procedure may not be a breach of a specific law, but it is often absolute and irrefutable evidence of corruption, especially when it is repeated and blatant. No law was required to tell British American Tobacco in the Rolah McCabe case that it was illegal to shred her particular documents. No law was required to tell James Hardie industries that it was illegal for it to deny the truth about the danger of asbestos on the health of the public or to block their claims for compensation.

This is much of the reason why crown law has been putting an argument to our courts that the state does not owe the citizens of South Australia a duty of care whether in health, education or child protection. Certainly our state courts have yet to rule convincingly and unequivocably that in any portfolio area the state does in fact owe a duty of care. Why the courts refuse to affirm the basic fundamental premise that the state does owe a duty of care is impossible to fathom, except if it is possible or likely that the judiciary is under the influence and/or control of the executive.

Should that day come when the courts find that the state does owe citizens a duty of care, it will be interesting to see how the state will defend itself from any negligence claims when policy and procedures have been violated. We do not visit a dentist who believes he is not required to sterilise equipment because it is not written into statute that he must do so, nor a mechanic who believes that he is not required to ensure that the lock nuts are tightened on your wheels or hoses and clamps properly fitted before your car leaves their workshop after a safety inspection.

We would condemn the professional body or association which would advocate anything less than the highest standards of care. Who would use such services if the professionals providing that service thought it unimportant to provide a high standard of care, yet mechanics and dentists do not require the law to articulate these basic occupational tasks to be carried out according to a best practice manual which one would expect the professional to have read and complied with in their day-to-day work.

The other week media reported that a massage therapy business was placed under investigation after the death of a child when a massage table collapsed because it had allegedly not been secured properly.

If it was a case of negligence, would the prosecution move to argue that, since there was no law specifically requiring the table to be secured, there was therefore no breach of duty of care? I will follow this matter closely but I doubt very much that that will be the crown's case. I will bet that, if the dentist, mechanic or massage therapist argued that they owed no duty of care because no laws specifically prevented them from acting negligently, the case would be dismissed.

Imagine a mechanic handing you a wrench and saying, 'Here, do it yourself', and, accordingly, placing the onus on you to do the job to your own level of satisfaction. Yet, this is what crown law advises us to do when we deal with health care professionals. One such example is that of Mr David Smith. Mr Smith had demonstrated a clear and indisputable breach of policy and procedure by the Child, Adolescent Mental Health Services and Child, Youth and Women's Health Services departments which led his wife to successfully sever his contact with his daughter by employing the adversarial medical assessment processes against him, ahead of a Family Court trial.

In short, the Child, Youth and Women's Health Services assessment processes were commenced with no regard to the Family Court orders which were in place, and the mother was never required to produce such orders before assessment and intervention were commenced, in clear breach of the then minimum professional standards as they were detailed at Appendix 9 of the Referral Intake and Allocation Procedures. Without going into the minute details of this case, when the breach of their own policy and procedures in respect of consent was highlighted by Mr Smith, the department's response was not a tightening up of professional compliance with existing policy but a rewriting of policy to weaken their protections and effectiveness.

Instead of the departmental chief executive demanding that staff take all necessary and reasonable precautions to ensure that they do not breach court orders if for no other reason than for their own protection, she wrote to Mr Smith suggesting that the onus was on him and his ex-wife to voluntarily provide such court orders to the department. One has to ask how Mr Smith could have done so when his wife approached the department without his knowledge or consent. The ultimate insult was that the person who breached the policy and procedure was then given the privilege of rewriting the new set of standards which have subsequently been watered down, of course.

This was also the template used in the Angela Morgan case, after she had alleged fraud by the wife of a senior WorkCover auditor. I have previously referred to Ms Morgan's story during my speech on ICAC on 26 September 2007, and in my motion on WorkCover corruption on 14 November 2007. Ms Morgan's disclosures alleged corruption by senior executive officers of the WorkCover Corporation who she alleges had set out to silence her public interest disclosures by actively but unlawfully assisting a private defamation suit against her with the full use of public resources and access to protected information.

In summary, Ms Morgan was successfully sued for defamation by a senior WorkCover auditor after she had revealed a WorkCover fraud by the senior auditor's wife. However, her appeal against the finding was then blocked by the denial of relevant documents, which are known to exist, to prove the truth of her disclosures. She was unable to secure access to those documents under either freedom of information or discovery.

In May 1993 Ms Morgan befriended the proprietor of a local seafood and chicken shop, and another shop employee, Sandra Mallard. At the time, Sandra was fully aware that the Pelican Plaza seafood and chicken shop was not WorkCover insured and she was working for undeclared wages. Sandra had a history of working for undeclared wages and had specifically requested of her employer that this be a condition of her employment for the takeaway shop on both occasions of employment with this proprietor.

The WorkCover fraud department would later commence investigations regarding the same proprietor through a separate WorkCover claimant—an investigation involving another restaurant. The worker involved in this claim was the subject of a covert surveillance

operation which revealed that he was employed with the restaurant after allegedly sustaining an injury through working with a different employer.

Consequently, the corporation approached the proprietor of the restaurant to establish the wages this claimant was earning whilst on WorkCover benefits, and established from this contact that the restaurant was not WorkCover insured and that the same proprietor owned the Pelican Plaza pizza, seafood and chicken shop, which also was not insured.

By this time in the investigation process it was well known to the fraud department that Sandra Mallard, wife of a WorkCover senior auditor, was also an employee at the seafood and chicken shop and working for undeclared wages. As events unfolded, Ms Morgan came to believe that the senior auditor was himself aware of his wife's fraudulent activities and not merely a bystander, despite initially giving him the benefit of the doubt.

Amid these allegations, it did not take long for the corporation's executive rapidly to become aware of the implications of her allegations for the reputation of the WorkCover Corporation; that is, Ms Morgan claims the corporation closed ranks to protect its own and to persecute and destroy her and her son, Sean, in the process. Sean later committed suicide for reasons which suggest they were closely linked to her own persecution.

Although Ms Morgan initially declined to provide any testimony to WorkCover against the shop proprietors, she was issued with threats by the corporation under section 110 compelling her to give evidence, at which time she sought assurances of confidentiality to which she was entitled under the Whistleblowers Protection Act. Indeed, it would be many years later that the state ombudsman would make such a finding and table this in parliament to no effect—not enough to enable Ms Morgan's swift or timely justice. Neither did the then state ombudsman demand the corporation to produce documentation or hold it to account in any way.

After being promised such confidentiality, Ms Morgan met with the fraud officers, only to find herself, she says, being pressured into changing the nature of her evidence against the senior auditor's wife due to the scandal this would have uncovered for the corporation. When she refused to do so, the corporation began its persecution by delivering details of a confidential and legally protected disclosure to the fraud section against the Mallards directly into their hands for their private defamation suit.

It is significant to Ms Morgan's vindication that only Rod won his suit; Sandra subsequently lost, and Angela even had to pay her own costs. In breaching their obligations and Ms Morgan's legal rights to confidentiality and protection (amongst other laws), the corporation breached section 26 of the Freedom of Information Act, sections 110 and 112 of the Workers Rehabilitation and Compensation Act and the entire Whistleblowers Protection Act 1993.

However, these breaches by the corporation are the tip of the iceberg; yet, even once the executives became acutely aware of their unlawful conduct, rather than set about making it right, they redoubled their effort to conceal their illegal activity. What makes this case so scandalous is proven through written correspondence by WorkCover executives showing their acute awareness of their own grossly unlawful conduct.

However, this did not deter them from knowingly continuing to conceal their wrongdoing from Ms Morgan, the state ombudsman and the courts with the clear intention of obstructing justice for Ms Morgan; concealing evidence of corporate negligence, malfeasance and corruption; and actively misleading the courts, often with judicial complicity in this conduct by the corporation.

I shall speak in more detail about this a little later, but suffice to say that Ms Morgan, to date, has paid in excess of $55,000 plus interest to the senior auditor for the privilege of helping South Australians detect fraudulent WorkCover claims and spent her life savings defending herself from defamatory and malicious allegations by the corporation and its officers ever since.

That the WorkCover Corporation and its board are actively and knowingly behaving in this manner is chronicled in the following memorandum, which I would like to read to the chamber in order for it to be put on the record so that the WorkCover Board members cannot claim plausible deniability at some future time when an ICAC is eventually established. Make no mistake: these pieces of correspondence are the smoking gun that vindicates Ms Morgan's allegations.

In a memo, dated 19 November 1996, it is suggested that Mike Terlet (Chairman of WorkCover Corporation) was handed a four page memo by Fred Morris (Chief Adviser, Legislation). In her disclosures, Ms Morgan claims that a copy of the four page memo, eventually obtained through FOI, is a forgery possibly carried out by the then acting CEO, Garry MacDonald. Evidence suggests that pages 2 and 4 were fabricated and that only page 1 may be the original content, but this would not be the only document suspected of being manufactured by WorkCover executives.

The purpose of this forged document is to suggest retrospectively, and with the intention of misleading the ombudsman's office, that an investigation into Ms Morgan's allegations were well underway. Suspected forgery aside, the memo dated 19 November 1996 states:

As can be seen despite a guarantee which was sought and given Ms Morgan's statement was placed in the hands of Mrs Mallard. The Problem: the current activity of *The Advertiser* and Mrs Robyn Geraghty will most probably mean that Ms Morgan will also go down that path. She has already started making extensive FOI requests seeking all her files other than her claim file. If *The Advertiser* gets hold of this story—

and, remember, this is an internal memo—

and they are true to their current approach then we will have a perception that we will have to manage. Fortunately the defamation decision is a public document and we could point them to the decision without any breach of confidentiality.

True to this intended management strategy, the corporation's defence against Ms Morgan's allegations of corruption throughout all these years has relied wholly and solely upon magistrate Hiskey's decision in the private defamation suit, which the corporation actively backed, to discredit Ms Morgan and mislead his court. Consequently, magistrate Hiskey's judgment ignored:

(a)that the WorkCover Corporation had lost its actions against Pelican Plaza Seafood and Chicken on appeal;

(b)that the court previously refused to grant Sandra's restraining order; and

(c)that Sandra was found to be lacking in credibility in her own defamation suit against Ms Morgan and therefore lost her suit.

In summation the memo confesses that:

- the corporation had a problem on its hands if Ms Morgan complained to the Ombudsman;
- the corporation's handling of her matters was clumsy and compounded at each step;

· Lew Owens did release Ms Morgan's letter to Rod Mallard;

· the fraud department had never investigated or reported on Ms Morgan's allegations as stated to the Ombudsman's Office;

· assurances to Ms Morgan of her confidentiality had been breached;

· Ms Morgan's personal and confidential details were leaked on multiple occasions to and by various parties; and

· the corporation's failure to discover all documents relevant to the defamation matter were crucial to the corporation's victory in court and Ms Morgan's subsequent finding of guilt.

Also, on 13 December 1996 Fred Morris, Chief Adviser Legislation, wrote to Mike Terlet, Chairman of WorkCover Corporation, in summation confessing that:

· the corporation was deeply concerned that Ms Morgan would seek to contact her local member, Ms Robyn Geraghty MP, who would raise these issues;

· the corporation was concerned that injured worker advocate groups were asking questions about why the suspected fraud by a spouse of a senior WorkCover auditor was not being investigated;

· there was a reluctance on behalf of the fraud department to allow for a proper investigation of Mrs Mallard's WorkCover claim;

· the corporation believed that the Ombudsman's investigation of the release by Lew Owens of Ms Morgan's letter would vindicate Mr Owen's actions; and

· Mr Mallard's response to the allegations by Ms Morgan required further investigation by the corporation, but not until after the Ombudsman's investigation was concluded.

This correspondence raises many questions, not the least of which are:

· Why was the corporation so sure that Lew Owens would be vindicated by the Ombudsman before any findings were handed down?

· Why would the corporation investigate Mr Mallard only after the Ombudsman had cleared Lew Owens?

· If Lew Owens had acted illegally, why would the Ombudsman not make such findings known, but choose to turn a blind eye, given that he has royal commission powers?

· If, as Ms Morgan suspects, documents have been forged, why did the Ombudsman not address this concern when it was before him, and why did the Ombudsman fail to pursue Ms Morgan's FOI request vigorously at the time, knowing how pertinent those documents would be to her appeal against the defamation case?

On 27 March 1997 Fred Morris, Chief Adviser Legislation, wrote to Keith Brown, Chief Executive Officer, a damning four-page memo stating, amongst other things, that:

· Lew Owens confronted Rod Mallard with Ms Morgan's letter and gave it to him;

· Lew accepted Rod's response and no further action was taken;

· fraud prevention also provided Rod Mallard with Ms Morgan's confidential letter;

· Rod Mallard's statements were questionable, and probably even false;

· the fraud report was 'lost' and never read by Lew Owens;

- it seriously questioned the conduct of Lew Owens, who readily accepted Rod Mallard's flawed explanations and was all too keen to assist Rod Mallard in any way to discredit Ms Morgan's allegations;
- Lew Owens' actions were 'less than professional';
- Ms Morgan's account of events was more chronologically correct than that given by the Mallards; and
- Ms Mallard was a liability to WorkCover.

Significantly, the memo also reads:

The Problems: the corporation appears to have protected Rod. Ms Mallard has been proven to be a bigger liar than Ms Morgan .

Again, an internal memo. Documents exist that appear to indicate that fraud prevention has protected Ms Mallard's claim from appropriate investigation and that officers of that department have been implicated in various ways against the proper conduct of the corporation's business. I quote this, 'Shit sticks to a blanket.' It is not the management of the facts but the management of the perception—the positives. Most of the corporation's questionable actions are questionable with the value of hindsight. Many of the allegations could have been pursued through the various litigations, but lawyers for Ms Morgan—and employers—declined to do so.

By 1997, the corporation breathed a sigh of relief knowing that Ms Morgan's ability to expose and sue the pants off the corporation was not realised much sooner, but this would not stop it from incapacitating her attempts to expose it over the next decade. If it was to be the corporation's defence in 1997 that it did not have the benefit of hindsight, since then its malfeasance has been self-evident, even to the corporation itself. If this conduct does not constitute corruption, I would like to know what does.

It is abundantly clear that, over and over again, the corporation did not see the Morgan matter as one needing resolution but 'management', presumably until they could wear her down for her scandalous allegations. Indeed, these comments were also made by Justice Olsson in the Supreme Court before striking out her matter. According to one eyewitness, Justice Olsson is said to have stated something along the lines of, 'Ms Morgan, do you understand what you are saying? What you are suggesting is that a senior WorkCover officer of such high rank is corrupt and dishonest. That's preposterous and outrageous, therefore it couldn't have happened', and ruled accordingly.

Years later, she would uncover documents to prove that the senior auditor and the CEO had actively colluded to secure her fraudulent defamation suit. These documents were concealed under FOI by the ombudsman's office for many years and by other judges who would not order their discovery.

What is scandalous is that corruption of this kind cannot be exposed. In 2000, when Ms Morgan set out to sue the WorkCover Corporation for disclosing her confidential statement, it was aided and abetted by two of the most senior executives of the corporation: the chief legal adviser, Mr Fred Morrison, and the chief executive officer, Mr Lew Owens. Once becoming aware of the gravity of their indiscretions and appalling malhandling of the entire case, the corporation did not sit down to negotiate a quiet way out of its humiliating mess. It did not set out to apologise or settle the dispute with Ms Morgan as amicably as possible but, instead, became ever more determined to use the courts to crush her financially and morally at taxpayers' expense.

In total, at last count, Ms Morgan has spent over 140 days (over almost 11 years) in court on just one action alone—Morgan v WorkCover Corporation—in the District Court of South Australia (action number DCCIV00960, entered on 17 July 2000), with more than another seven actions, only to have her affidavit struck out by Master Norman on the grounds that the allegations contained in her affidavit would scandalise the corporation, as she was seeking, among other things, that the CEO be imprisoned for tampering with documents and concealing evidence after having waited for five years for discovery of documents.

Judge Kevin Nicholson dismissed Ms Morgan's appeal but, nine years on, she is still seeking that Master Norman rule and demand once and for all that WorkCover fully complies with the court rules and orders. Why after nine years is Master Norman still having such difficulty when the court rules require discovery within 21 days of pleading?

As in Mr Smith's case, when Ms Morgan was advised of the Whistleblowers Protection Act and how she might seek its protections, she was informed of the need to make a public interest disclosure to a responsible officer under the act. It was a requirement at that time that all government departments had such a person nominated and trained. WorkCover, not having such a person, sure enough promptly appointed the very senior auditor against whom Ms Morgan sought to testify.

As shown in the Morgan case, the template used in countless scheme critical cases has been the protraction of litigation and misleading of the courts through the suppression of information until an adverse judgment against a whistleblower is secured. Then the authorities regurgitate the adverse judgment ad infinitum to their own advantage. Invariably, these same judgments are relied upon by ministers and the Attorney-General as reason to do nothing to remedy wrongful or corruptly acquired court convictions or decisions. It is also—

The Hon. P. HOLLOWAY: On a point of order, the honourable member is alleging that courts have made corrupt decisions, if I heard correctly. It is completely out of order for such allegations to be made within this parliament.

The PRESIDENT: I remind the honourable member that under standing orders she should not be reflecting on the judiciary or its decisions. You might reflect upon an event that recently happened in the chamber, with an honourable member reflecting on judges' decisions. I remind the honourable member to stick to the standing orders and be very careful.

The Hon. A. BRESSINGTON: Thank you, Mr President, but I will make the point that I am only quoting from court documents. It is also important to observe time and again when the public authorities mislead or deceive courts that judges often become actively complicit if not squeamish, never requiring the authorities then to be brought back before their court to answer the charges of contempt or perjury but instead shielding those authorities from closer scrutiny.

Although I support these amendments, they are entirely insufficient to make any difference one way or another. In conclusion, the reason people are calling for an ICAC so vigorously and why so many people believe that action needs to be taken is that, if the Whistleblowers Protection Act and its policies and procedures were enforced, we would not need even to consider having an Independent Commission Against Crime and Corruption. Whistleblowers would be able to disclose, they would be able to get the protection (so-called) that they are guaranteed under this act, and they would also then be assured and guaranteed that proper investigations would follow and that decent outcomes for justice would actually be achieved.

Debate adjourned on motion of Hon. I.K. Hunter.