

Agreement in Principle

Mr JOHN AQUILINA (Riverstone—Parliamentary Secretary) [10.45 a.m.]: I move:

That this bill be now agreed to in principle.

The Government is pleased to introduce this bill to give greater protection to public sector whistleblowers. New South Wales already has comprehensive legislation in place to protect whistleblowers, and these laws have been in place for almost 20 years. It is important that genuine whistleblowers are encouraged to report wrongdoing to the appropriate authorities and that they are protected when they do so. The Protected Disclosures Act 1994 protects public officials who disclose wrongdoing in the public sector in accordance with the procedures set out in the Act. The Act makes it a criminal offence to take detrimental action against a public official substantially in reprisal for making a protected disclosure.

In addition to protecting disclosures made to certain investigating authorities, public authorities and public officials, New South Wales was ahead of all other jurisdictions when laws were introduced protecting disclosures to the media in certain circumstances. The Protected Disclosures Act plays a critical role in maintaining the integrity of public administration in this State. That is why the Government has carefully considered the recommendations made by the parliamentary Committee on the Independent Commission Against Corruption in its report entitled "Protection of Public Sector Whistleblower Employees". Following a referral by both Houses of Parliament in 2008 to review the protected disclosures scheme, the Independent Commission Against Corruption committee released its report last November.

I am pleased to introduce this bill, which implements all of the major recommendations in the report. The report's main focus was a rigorous oversight mechanism for protected disclosures in the public sector. The purpose of the new oversight mechanism recommended by the committee is to enable more evidence to be collected on the operation of the Act before consideration of whether more extensive reforms might be desirable. The Government supports this approach and the bill establishes such an oversight system. It will comprise the Ombudsman and the Protected Disclosures Steering Committee, as recommended by the report. In particular, the bill confers new oversight and other expanded functions on the Ombudsman's office.

These include promoting public awareness of the Protected Disclosures Act and assisting agencies, and monitoring and auditing compliance by agencies with the Act. To improve the effectiveness of the protected disclosures scheme, the bill also requires all public authorities to adopt internal protected disclosures policies. Public authorities will also be required to prepare annual reports on their obligations under the Act. The bill implements the Independent Commission Against Corruption committee's recommendation that the Act and the new oversight arrangements be reviewed by a parliamentary committee after five years when more information regarding the operation of the Act should be available. The Government is also implementing other recommendations in the report to clarify and extend protections to certain whistleblowers.

In particular, the bill implements the report's recommendation that a public official be entitled to protection so long as a disclosure is made with an honest belief on reasonable grounds that information shows or tends to show wrongdoing. The current test requires the information disclosed to actually show or tend to show wrongdoing. The new test is more practical. It gives protection to public officials who have reasonable grounds for believing that wrongdoing has occurred, even if they turn out to be incorrect. This is a more realistic test that will encourage genuine disclosures in the public interest. It is also important, however, to recognise that there is the potential for any protected disclosure regime to be abused by those with a personal grievance or who are seeking to avoid legitimate disciplinary or other performance management action.

People who are the subject of a protected disclosure must also be given due process and the benefit of a proper investigation of any allegations. This is necessary to protect against the risk of unsubstantiated allegations being allowed to unfairly damage reputations. The committee's report recognised the complexities of public policy in this area. While the bill extends protections for genuine whistleblowers, the Protected Disclosures Act will continue to strike the right balance in this regard. As recommended by the report, the bill extends protection to individuals who are independent contractors of public authorities who disclose public sector wrongdoing. The Government considers it important to recognise that people other than public officials may become aware of wrongdoing within a public sector agency through their work with the agency. In order to encourage disclosures by independent contractors, the Government considers that they should be protected under the Act.

The bill also provides for new remedies for whistleblowers by enabling them to seek compensation should reprisal action be taken against them. The Government supports the Independent Commission Against Corruption committee's view that whistleblowers should have an avenue available to them other than criminal proceedings if reprisal action is taken against them. The bill also enables an investigating authority, or a public authority with the approval of the Attorney General, to apply for an injunction to prevent reprisal action being taken against a whistleblower. The criminal penalty for taking unlawful reprisal action will be increased by the bill

from 50 penalty units or 12 months imprisonment or both, to 100 penalty units or two years imprisonment or both.

These are some of the main reforms made by the bill to the protected disclosures regime in New South Wales. The Government is implementing all of the major recommendations for legislative change in the Independent Commission Against Corruption committee's report by this bill. It is important to note that these recommendations were unanimously made by the Independent Commission Against Corruption committee after carefully reviewing the situation in New South Wales. It is also important to note that these recommendations were made by the committee after expressly considering further reforms, including reforms suggested by the Commonwealth House of Representatives Standing Committee on Legal and Constitutional Affairs. These include suggestions that protection should be extended generally to cover volunteers who disclose wrongdoing in the public sector.

However, the Independent Commission Against Corruption committee chose not to recommend these further reforms be implemented in New South Wales at this time. Instead, the Independent Commission Against Corruption committee recognised the complexities involved in regulating this area of public policy and noted that there was not enough evidence available to fully consider some of these suggestions with sufficient rigour at this time. In light of this, the Independent Commission Against Corruption committee suggested that the Protected Disclosures Steering Committee consider some of these issues. The Ombudsman will be the Chair of the Protected Disclosures Steering Committee and the Director General of the Department of Premier and Cabinet will also be a member of the committee. This is consistent with the Independent Commission Against Corruption committee's view that the legislative changes it recommends, and which this bill implements, should not be seen as a once and for all legislative reform.

Instead, the Independent Commission Against Corruption committee's key recommendation was that new institutional arrangements be established to gather evidence on the operation of the Act before considering whether any further reforms should be made. The bill achieves this. Further, in order to monitor developments in other jurisdictions, the Government has included in the bill a provision that expressly requires the steering committee to review any future Commonwealth legislation enacted in this area. The Government looks forward to carefully considering any suggestions for future enhancements to the Act that the steering committee may make. This bill demonstrates the Government's commitment to continually improving the integrity of public sector administration. It ensures the protected disclosures regime in New South Wales remains effective now and it paves the way for further considered reforms in the future. I commend the bill to the House.