

### Agreement in Principle

**Mr JOHN AQUILINA** (Riverstone—Parliamentary Secretary) [10.34 p.m.]: I move:

That this bill be now agreed to in principle.

This bill contains three amendments to the Independent Commission Against Corruption Act and the Community Services (Complaints, Reviews and Monitoring) Act 1993. The Ombudsman and the Commissioner of the Independent Commission Against Corruption have requested the amendments, which are intended to clarify and strengthen their powers. First, the bill clarifies the ability of the Independent Commission Against Corruption to use audio recordings involving the late Michael McGurk in the context of its corruption investigation even if those recordings may have been made unlawfully. Honourable members will be aware of reports about certain audio recordings involving the late Mr Michael McGurk and corruption allegations.

The Commissioner for the Independent Commission Against Corruption has asked the Government for amendments in the context of a preliminary investigation he is undertaking in relation to those matters. The Government agrees that there is a very strong public interest in the case and in the Independent Commission Against Corruption not being unnecessarily restricted in the conduct of this investigation. In developing the amendments, however, the Government also has been conscious of the national model surveillance laws, which are designed to enable improved cross-border law enforcement cooperation. Arising out of that process, the New South Wales Government is working hard to put in place positive, reciprocal relationships with other jurisdictions. The Government wants to emphasise that the amendments contained in this bill will not impact on that process.

The Government is also conscious of the need to ensure that there is no encouragement whatsoever to any person to make unlawful recordings in the future, which would undermine the policy of the Surveillance Devices Act. Accordingly, the bill has been drafted to ensure that there is no endorsement for, or excusing of, past unlawful recordings. The amendments will not protect any person or organisation including any law enforcement agency that has made an unlawful recording contrary to the Surveillance Devices Act. The makers of unlawful recordings remain open to prosecution. Furthermore, the bill's application is expressly limited to recordings that appear to the Independent Commission Against Corruption to be a recording of a private conversation in which the late Mr Michael McGurk was a participant.

Since Mr McGurk's death, recordings of conversations in which he participated may now be the best evidence available about the matters raised in those conversations. Clearly, the amendments would not be needed if Mr McGurk could provide the Independent Commission Against Corruption with direct evidence about any alleged corrupt conduct of which he was aware. There are also additional safeguards put in place by the amendments to protect individual privacy and the integrity of investigative processes.

The provisions of the bill only apply where the Independent Commission Against Corruption has obtained recordings through the use of its coercive powers during the course of a corruption investigation. It will not be possible for the Independent Commission Against Corruption to use recordings provided to it on an unsolicited basis or for any other non-investigative purposes, such as corruption education. As a further safeguard, the amendments will sunset on 31 December 2010. The Independent Commission Against Corruption has informed the Government that it is confident that its investigations in relation to Mr McGurk will have concluded by that time.

While it is entirely a matter for the Independent Commission Against Corruption how it wishes to pursue its investigations, the Government believes it is appropriate that there be an end date to these exceptional arrangements. A "sunset" provision sends a very clear message that this departure from the normal rules applying to covert surveillance is a one-off response to a set of unique circumstances. Of course, the bill will not prevent copies of a report made by the Independent Commission Against Corruption before 31 December 2010 being available after that date. The Government is confident that the bill before the House strikes an appropriate balance between protecting the public interest in individual privacy and protecting the public interest in uncovering corruption.

The second important reform in the bill is a new power for the Ombudsman to conduct an audit of the Government's implementation of the New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal communities. The Ombudsman's new audit function arises out of the Government's response to the Wood special commission of inquiry. In its response, the Government announced that it would take steps to ensure the Ombudsman could review implementation of the interagency plan. The interagency plan was released by the New South Wales Government in January 2007 in response to the report of the Aboriginal Child Sexual Assault Taskforce. To ensure that the Ombudsman can undertake his audit, the bill will impose a duty on public authorities to provide information to and assist the Ombudsman in his work. The bill will also allow the Ombudsman to provide relevant information or comments to public authorities. The bill also will require the Ombudsman to report to the Minister for Aboriginal Affairs on the results of his audit by 31 December 2012. The Minister must then table the Ombudsman's report in Parliament within one month of receiving it. The

Government is looking forward to co-operating with the Ombudsman in this important task.

The third amendment to be made by the bill is to expand the categories of senior public officials who are under an obligation to report corrupt conduct to the ICAC. This amendment also has been requested by the Commissioner of the Independent Commission Against Corruption. Section 11 of the Independent Commission Against Corruption Act provides that the principal officer of a public authority is under a duty to report to the commission any matter that the person suspects, on reasonable grounds, concerns or may concern corrupt conduct. The wide-ranging reforms of the New South Wales public sector instituted by the Government this year means that chief executive officers of new amalgamated departments are under this obligation to report corruption to the Independent Commission Against Corruption. The bill ensures that the management and reporting of corruption allegations in key areas of the public sector continues to operate in the most effective way under new public sector arrangements.

The bill amends section 11 of the Independent Commission Against Corruption Act to allow additional reporting officers to be prescribed by regulation in respect of separate offices within a public authority. The amendment ensures that former departmental heads who continue to hold leadership positions in operationally discrete areas—for example, the Commissioner of Corrective Services within the new Department of Justice and Attorney General—continue to be subject to reporting obligations. The Government wants to ensure that those officers who are in the best position to form a view as to whether a matter is reportable under section 11 remain under a duty to report corruption. The particular officers to be prescribed under this new provision also will be determined following further consultation with the Independent Commission Against Corruption.

This bill is about ensuring that the Ombudsman and the Independent Commission Against Corruption continue to have the powers necessary to undertake their important functions. I commend the bill to the House.