

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, Vice President of the Executive Council) [6.41 p.m.]: I move:

That this bill be now read a second time.

This bill contains three amendments to the Independent Commission Against Corruption Act and the Community Services (Complaints, Reviews and Monitoring) Act 1993. The amendments have been requested by the Ombudsman and the Commissioner of the Independent Commission Against Corruption and they are intended to clarify and strengthen their powers. First, the bill clarifies the ICAC's ability to use audio recordings involving the late Michael McGurk in circumstances where those recordings may have been made unlawfully. Honourable members will of course be aware of media reports about certain audio recordings involving the late Mr Michael McGurk. The Commissioner for the ICAC asked the Government for amendments in the context of an investigation he is undertaking in relation to those matters. The Government agrees there is a strong public interest case in the ICAC not being unnecessarily restricted in the conduct of its investigations.

In developing the amendments, however, the Government has also 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, therefore, that the amendments contained in this bill will not impact on that process. In order to provide some assurance to other jurisdictions with which New South Wales is developing cooperative relationships in regard to surveillance device legislation, the additional powers given to the ICAC are limited through the inclusion of a sunset clause and by only allowing them to be used for recordings in relation to Mr McGurk.

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 ICAC to be recordings of a private conversation in which the late Mr Michael McGurk was a participant. Clearly, the amendments would not be needed if Mr McGurk could provide the ICAC 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 ICAC has obtained the recordings through the use of its coercive powers during the course of a corruption investigation. It will not be possible for the ICAC 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 ICAC 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 ICAC how it wishes to pursue its investigations, the Government believes it is appropriate that there be an end date to these exceptional arrangements. The 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 unique set of circumstances. Of course, the bill will not prevent copies of a report made by the ICAC before 31 December 2010 being available after that date. The Government is confident that the bill before the House strikes the 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 NSW 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 the 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 will also 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

cooperating with the Ombudsman in this important task.

The third amendment to be made by the bill is to expand the category of senior public officials who are under an obligation to report corrupt conduct to the ICAC. This amendment has also been requested by the Commissioner of the ICAC. Section 11 of the ICAC 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 mean that chief executive officers of the new amalgamated departments are under this obligation to report corruption to the ICAC.

The bill ensures that the management and reporting of corruption allegations in key areas of the public sector continue to operate in the most effective way under the new public sector arrangements. The bill amends section 11 of the ICAC Act to allow additional reporting officers to be prescribed by regulation in respect of separate offices within a public authority. The amendment ensures that the former department 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 the 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 will also be determined following further consultation with the Independent Commission Against Corruption. This bill is about ensuring that the Ombudsman and the ICAC continue to have the powers necessary to undertake their important functions. I commend the bill to the House.