Agreement in Principle

Mr BARRY O'FARRELL (Ku-ring-gai—Leader of the Opposition) [10.13 a.m.]: I move:

That this bill be now agreed to in principle.

The appalling treatment of Milton Orkopoulos's former electorate secretary, Gillian Sneddon, and RailCorp's three-year legal battle against former employer Bimla Chand is evidence of this State Labor Government's contempt for the New South Wales whistleblower legislation. The last Liberal-National Government introduced whistleblower legislation in 1994 through the Protected Disclosures Act 1994. Since that time the State Government has perverted the intent of those laws. That was clear this time four years ago with the revelations out of Camden and Campbelltown hospitals and the sacking of nurses from those hospitals simply because they sought to blow the whistle on political decisions, wrongdoings and other problems. Instead of actually saying to the people "Where things are going wrong in the public sector, come forward, report them and we will fix them because it is the right thing to do" this State Government, during 13 years in office, has increasingly developed a culture that sends a message to people who see wrongdoing within the public sector, "if you put your head up, you will be punished and your head will be kicked off". That is simply and utterly inappropriate and unacceptable when honesty, transparency and accountability should be the bywords for government, but that, of course, assumes the Government is committed to that process and is determined to deliver better outcomes.

The parliamentary term started with the events surrounding the treatment of Mark Aarons within the Premier's Office in relation to the proposed Cabinet. He brought information provided to him by a member of the upper House to the attention of the then chief-of-staff to the Premier and to the Premier. Suddenly the Premier's Office was restructured and, guess who was the only person who suffered as a result? Yes, it was Mr Mark Aarons. This Government has had every opportunity to do the right thing and send a message to the public sector that when there are wrongdoings, things that should not happen and issues that are thwarting the public interest, one has a right, duty and obligation to stand up and shine a light and the Government will support them 100 per cent. But this Government's message is if they stand up and shine a light, they will be shutdown and most likely sacked. That is completely and utterly unacceptable and that is why I introduced this legislation today.

The State's whistleblower legislation, the Protected Disclosures Act, has been reviewed on three occasions—in 1996, 2000 and 2006. The reforms that this bill seeks to put into effect are reforms that came out of that 2006 review by the joint parliamentary committee on the Independent Commission Against Corruption. They are recommendations that had bipartisan support from a committee chaired by a former member of this place, the Hon. Kim Yeadon. The Coalition believes government works best for the people it serves when it is open to public scrutiny, not when it is hiding under a rock, or when it is operating in the shadows. That is why strengthening whistleblower laws is paramount. The Protected Disclosures Act 1994 goes to the heart of open, honest and accountable government in this State. But as the 2006 review reveals, it is time that the laws were strengthened. The New South Wales Liberal Party and The Nationals are committed to restoring integrity to government in New South Wales, and effective, protected disclosure legislation is a key part of achieving that goal.

This legislation strengthens the Protected Disclosures Act through the following provisions: the establishment of a Protected Disclosures Unit within the Office of the Ombudsman to provide advice to whistleblowers, the monitoring of the response of public authorities to protected disclosures, and the annually reporting on disclosure matters made across the New South Wales public sector. This will be the third occasion upon which a parliamentary review, comprising members across the political spectrum, has unanimously recommended that that be put into practice. Three reviews—1996, 2000 and 2006—but absolutely no action from this Government. This legislation will also seek to establish standard guidelines to provide for the lodgement, investigation, handling and reporting of protected disclosures.

The reality is that different public agencies across New South Wales treat protected disclosures in a different manner. That is not acceptable. There is one New South Wales public sector, there should be one set of standards and one guarantee to those who come forward with evidence of wrongdoing within the New South Wales public sector that those complaints or allegations will be taken seriously and investigated in a timely fashion and that there will be no repercussions against those who make them. Thirdly, the bill seeks to put in place a statistical program to provide a reliable foundation to any future performance assessment.

Monitoring the way in which the numbers of protected disclosures are made, the way in which they are resolved and the outcomes of those protected disclosures is every bit as important as providing other guarantees if we are really committed to honest and accountable government. The Coalition believes that because protected disclosures legislation is so important—14 years after it was pioneered in this State—we want to send a signal that protected disclosures are in the public interest; that it is about doing what is right for the broader public, not necessarily what is right for the government of the day or for the people in a particular department or section of a department. Protected disclosures legislation is about putting the interests of the public—the State's residents,

taxpayers and consumers—at the forefront.

Therefore, the Coalition wants to change the name of the Protected Disclosures Act to the Public Interest Disclosures Act. We believe that change better characterises what the Act is about. We want to amend the Act to protect whistleblowers who have an honest belief on reasonable grounds that their disclosure meets the grounds for protection under the Act. As there is a question mark over whether whistleblowers could be subject to action, a clause should be inserted to provide for no action to be taken against whistleblowers who make a disclosure on the basis of an honest belief. That is in line with other States. In the past instances of malicious disclosures have been made—and I recall one episode in the Monaro electorate—and, rightly, the person who made that malicious disclosure was dealt with severely by the law.

We are not in the business of opening up the use of the Public Interest Disclosures Act for reasons other than what is in the best interests of the public. From time to time disclosures may be made that prove not to have substance, but as long as the person who made that disclosure has an honest belief that at the time it was brought to his attention or at the time he observed what he claims that it was a problem, there should be no repercussions. The Coalition wants to ensure also that the Act imposes an explicit requirement on an authority to investigate a disclosure, subject to exceptions, that might be prescribed by regulation. Currently different agencies take different levels of approach to this issue, and their needs to be consistency. We understand that there may need to be changes in some areas that are better dealt with by regulation. However, we want to ensure that there is an explicit requirement upon each State public agency that when a public disclosure is made the person involved cannot sit on his hands, he cannot sit on his Pat Malone and do nothing about it. In this instance, the person who makes the disclosure must take demonstrable action to satisfy the Ombudsman that follow-up has occurred and if any wrongdoing has occurred that appropriate action has been taken.

The Coalition wants to introduce also the right to seek damages when whistleblowers who have suffered detrimental action, reprisal, when making a protected disclosure. The government of the day should do more than pay lip service to the benefit that whistleblowers make to our society for the proper functioning of our public sector and for the ability of that public sector to deliver services to the wider community. That provision, above all, to allow whistleblowers who have been victimised or sacked to seek a right to damages, would send a very strong message that government in New South Wales is determined to ensure that corrupt practice will be stamped out, that the public interest is at the fore.

I would hope that those opposite who are interested in honest and accountable government would support those recommendations, and will support the bill. The recommendations flowed from three parliamentary committees held over the past 13 years, each chaired by a Labor Party member, and each controlled by the Labor Party majority. Yet, those committees recommended sensible proposals to improve the State's whistleblower legislation. The Liberal Party and The Nationals strongly believe that in restoring faith to government in New South Wales we need to do more than simply pay lip service to the public interest. We need to put in place practical measures to remedy malpractice and wronging, and to ensure that those who bring that to light will have a guarantee that they will not suffer as a consequence.

I repeat: I do not believe that the treatment of a former electorate officer to the former member for Swansea, or that the treatment seen from time to time metered out in newspapers to people in RailCorp or other entities, does this Government any great service. It certainly does not contribute to better government in New South Wales and it does not contribute to delivering to the public of New South Wales what they expect. That is why I have introduced the bill.