



Full Day Hansard Transcript (Legislative Council, 25 March 2013, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Monday, 25 March 2013 (Proof).

PUBLIC INTEREST DISCLOSURES AMENDMENT BILL 2013

Second Reading

The Hon. MARIE FICARRA (Parliamentary Secretary) [9.52 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Government is pleased to introduce this bill which will strengthen the protections for public officials who make public interest disclosures and enhance the public interest disclosures regime.

The Public Interest Disclosures Act 1994 (PID Act) plays a critical role in maintaining the integrity of public administration in this State.

The object of the Public Interest Disclosures Act is to encourage and facilitate the disclosure of wrongdoing in the public sector in the public interest.

It does this by protecting public officials who disclose wrongdoing in the public sector in accordance with the Public Interest Disclosures Act.

The Public Interest Disclosures Act makes it a criminal offence to take detrimental action against a public official substantially in reprisal for making a public interest disclosure.

There have been a number of amendments to the Public Interest Disclosures Act since 2010, including the establishment of the Public Interest Disclosures Steering Committee in 2011.

The members of the Steering Committee are the Ombudsman, the General Counsel of the Department of Premier and Cabinet, the Auditor-General, the Commissioner of the Independent Commission Against Corruption, the Commissioner for the Police Integrity Commission, the Chief Executive, Local Government in the Department of Premier and Cabinet, the Commissioner of Police and the Information Commissioner.

The Steering Committee's functions include providing advice to the Premier on the operation of the Public Interest Disclosures Act and recommendations for reform.

The bill seeks to make the first changes to the Public Interest Disclosures Act recommended by the Steering Committee since its establishment.

The bill will remove the requirement that a disclosure must be made 'voluntarily' in order for the public official who made it to be protected under the Public Interest Disclosures Act.

Currently, the Public Interest Disclosures Act requires disclosures to be made 'voluntarily' in order for the public official to be protected under the Act. While there are some exceptions, section 9 expressly provides that a disclosure is not made voluntarily if it is made by a public official in the exercise of a duty imposed on that official by legislation.

This means that a public official who makes a disclosure of wrongdoing in the public sector under a statutory obligation is not protected against reprisals for that disclosure by the Public Interest Disclosures Act.

For example, a public official who has a duty to report certain corrupt conduct to the Independent Commission Against Corruption under the Independent Commission Against Corruption Act 1988, and does so, would currently not be protected under the Public Interest Disclosures Act.

The Government supports the Steering Committee's recommendation to remove this requirement in order to broaden the protection provided by the Public Interest Disclosures Act.

As public officials who report wrongdoing under a statutory obligation also may face the risk of reprisals, they should also be protected by the Public Interest Disclosures Act.

As recommended by the Steering Committee, the bill will also extend the period of time within which proceedings may

commence for reprisal action against a person who made a public interest disclosure.

Currently, prosecutions for reprisal action must be commenced within two years of the alleged offence.

The bill will extend this period to three years after the offence is alleged to have been committed.

This is because the Steering Committee advises that allegations of reprisal action can be made some time after the action is alleged to have occurred.

The bill will also include the Public Service Commissioner as a member of the Steering Committee.

The Public Service Commissioner's principal objectives include promoting and maintaining the highest levels of integrity, impartiality, accountability and leadership across the public sector.

The Public Service Commissioner supports this proposal.

The bill will also clarify that certain individuals are "public officials".

To be protected by the Public Interest Disclosures Act, a disclosure must be made by a "public official," as defined by the Act.

To remove some ambiguity about the scope of the definition of "public official", the Public Interest Disclosures Act is being amended to clarify that certain individuals are public officials. This includes certain employees or officers of a corporation that is engaged by a public authority under a contract to provide services to or on behalf of the public authority, volunteer rural fire fighters and RSPCA inspectors.

In relation to these particular individuals, the amendment is not intended to broaden the scope of the definition of "public official". It should assist, however, a person considering making a public interest disclosure in the future to understand whether he or she is a "public official" who can be protected under the Public Interest Disclosures Act.

The Steering Committee has been consulted on and supports the bill.

I commend the bill to the House.