

## **INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2008**

**Bill introduced, by leave, on motion by Mr John Aquilina, on behalf of Mr Nathan Rees.**

### **Agreement in Principle**

**Mr JOHN AQUILINA** (Riverstone—Parliamentary Secretary) [10.21 a.m.]: I move:

That this bill be now agreed to in principle.

It is my privilege to introduce the Independent Commission Against Corruption Amendment Bill 2008. This bill will enhance certain powers of the Independent Commission Against Corruption. It will also make a minor amendment to clarify the coverage of the Protected Disclosures Act. This year marks the twentieth anniversary of the passage of legislation to establish the Independent Commission Against Corruption. It is the oldest body of its kind in Australia. The Independent Commission Against Corruption, along with the Ombudsman and the Audit Office of New South Wales, is one of the central pillars of what Chief Justice Spigelman has described as the "integrity branch" of government. These agencies perform essential functions in helping to maintain and promote integrity and accountability across the public sector. The Rees Government is committed to ensuring that the legislation that governs these integrity agencies is effective. The bill that I am introducing today is part of the Premier's commitment to open and accountable government. Most of the amendments contained in this bill have been recommended by the Independent Commission Against Corruption, as well as by the parliamentary committee that oversights it.

Schedule 1 to the bill contains a number of amendments to the Independent Commission Against Corruption Act 1988. The bill will extend the period within which proceedings must be commenced for the offences of knowingly providing false or misleading information to the commission in response to a notice, and impersonating an officer of the commission, from six months to three years of the alleged commission of the offence. There are cogent reasons for this extension. First, it is not always possible to identify that such offences have occurred within the current six-month period. Second, it is sometimes not possible to commence proceedings within the current period without compromising the commission's investigations. This amendment was requested by the commission and recommended by the Committee on the Independent Commission Against Corruption.

The bill will also increase the maximum penalty for the offence of knowingly providing false or misleading information to the commission in response to a notice to imprisonment for 12 months and a \$5,500 fine. This will ensure consistency with penalties for other similar offences in the Act. The bill will also clarify that the commission has the power to make a non-publication order in respect of any written submissions received by the commission, whether from counsel assisting the commission or by any other person. Again, this amendment was requested by the commission and recommended by the parliamentary committee. Currently, the Act directs the commission's attention to "serious and systemic corrupt conduct". The bill will amend the Act to clarify that the commission is to direct its attention to two types of corrupt conduct: serious corrupt conduct and systemic corrupt conduct. This amendment was recommended by the Committee on the Independent Commission Against Corruption to avoid any doubt in relation to the issue.

The commission also requested that consideration be given to requiring all proceedings under section 87 of the Act, which makes it an indictable offence to give false or misleading information to the commission, to be heard by the District Court rather than the Local Court. The commission's concern is that the Local Court has been imposing comparatively light sentences for such offences in comparison with the maximum available penalty of five years imprisonment and \$22,000. The commission is concerned that a perception exists among witnesses at the commission that people who lie to the commission will not receive a substantial punishment.

This is of significant concern to the Government. In order for the commission to effectively fulfil its functions it is important that the substantial penalties available for misleading the commission are applied in such a way as to act as an effective deterrent. Therefore the Government is currently working with the commission to examine whether it is appropriate to seek a guideline judgement from the Court of Criminal Appeal in relation to offences under section 87. I note that the parliamentary committee has indicated it will examine this issue as well.

The commission also requested that consideration be given to amending the Act to remove the restriction in section 37 that prohibits the use of compulsorily obtained evidence provided under objection to the commission in later disciplinary proceedings and civil proceedings. This raises important issues in relation to the scope of the privilege against self-incrimination. In its October 2008 report the parliamentary committee expressed the view that any such amendment would require detailed examination and consultation. The Premier has written to the parliamentary committee requesting that it inquire into and report on whether section 37 should be amended as requested by the commission as such an amendment has the potential to result in the commission obtaining more evidence under compulsion, which is not admissible in criminal proceedings. The Premier has also requested the parliamentary committee to inquire into and report on whether the Act should also be amended to make the commission's current function of assembling evidence for criminal proceedings a primary function.

The Government notes the other recommendations in the October 2008 report of the Committee on the Independent Commission Against Corruption, including its recommendation that the practice of agencies and departments in giving implementation plans and progress reports to the commission be made a statutory requirement. The Government has noted, however, that differing views have been expressed to the committee on the best way to ensure that agencies respond to the commission's recommendations. Implementation of the commission's recommendations is a significant issue of concern to the Commissioner of the Independent Commission Against Corruption. The Government understands that the commission's corruption prevention recommendations arising from its recent investigation into RailCorp will also deal with this issue. The Government will therefore consider the parliamentary committee's recommendations in light of the commission's forthcoming corruption prevention recommendations.

I now turn to schedule 2 to the bill. As members will be aware, the Protected Disclosures Act provides whistleblower protection for public officials who disclose corrupt conduct, maladministration and waste of public money. This schedule will make an amendment to the Protected Disclosures Act to clarify the coverage of that Act to all public officials. This amendment follows a 2006 recommendation of the Committee on the Independent Commission Against Corruption, which raised doubts as to whether the Protected Disclosures Act automatically applied to all employees of an area health service. Although the New South Wales Department of Health has been operating on the basis that the Act does apply, the amendment will remove any doubt. Therefore, the bill will amend the definition of "public official" to clarify, for the avoidance of doubt, that any individual in the service of the Crown or of a public authority is a public official.

As members will be aware, the Protected Disclosures Act is currently the subject of a review by the Committee on the Independent Commission Against Corruption. The Government is awaiting the outcome of that review. We stand ready to consider any recommendations and to make any necessary reforms that are identified from the review. The amendment proposed in this bill is not intended to pre-empt that review or its recommendations. This amendment is purely for the avoidance of doubt to ensure that all public officials have the certainty that if they do blow the whistle they will be entitled to the full protections afforded by the Act. The Government remains open to consider further and more comprehensive reform of the Protected Disclosures Act following consideration of the outcomes of the current parliamentary inquiry. The amendments contained in this bill underscore the importance that the Government places on ensuring the most robust and effective integrity system possible. I commend the bill to the House.