

INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT (DISCLOSURE OF INFORMATION) BILL 2016

First Reading

Bill introduced on motion by Mr Jamie Parker, read a first time and printed.

Second Reading

Mr JAMIE PARKER (Balmain) (10:14): I move:

That this bill be now read a second time.

I appreciate the opportunity to address the Independent Commission Against Corruption Amendment (Disclosure of Information) Bill 2016. This amendment to the Independent Commission Against Corruption Act 1988 is a commonsense and simple amendment that will protect individuals who voluntarily disclose information to the commission from criminal or civil liability in connection with that disclosure. The bill will make it easier for the Independent Commission Against Corruption [ICAC] to obtain evidence. It will give confidence to persons who provide information to the ICAC and it will bring the arrangements of the Independent Commission Against Corruption in line with other jurisdictions.

People make appointments with members of Parliament to discuss issues of concern. Public servants have come to my office to discuss their concerns around corruption issues and I, as do all members, recommend that they provide that information to the Independent Commission Against Corruption. I was surprised, as I am sure many others would be, that there is not full disclosure protection for people who provide information to the Independent Commission Against Corruption. Only partial protection is given to people providing information to the ICAC. I take this opportunity to speak to those issues and why this bill is important.

Over the past few days, there has been considerable discussion in this place about the structure of the Independent Commission Against Corruption, its current commissioner and the appointment of additional commissioners. The bill before the House in no way seeks to amend those proposals, even though we may want to. The intention of the bill is to strengthen the ICAC. I take the Government at its word when it says that it is interested in improving the work of the Independent Commission Against Corruption in order to expose and deal with corruption.

The provision of information to the ICAC has been discussed by the Committee on the Independent Commission Against Corruption in its discussion paper, "Prosecutions arising from ICAC investigations: Discussion Paper: November 2014". Members will remember that the inquiry produced a discussion paper, not a report. Included in the 21 submissions made to the discussion paper, the Independent Commission Against Corruption made submission No. 8, dated August 2014, in which it recommended that the Independent Commission Against Corruption Act be amended to include a provision that protects persons from criminal, civil or disciplinary liability for the voluntary disclosure of information to the commission where the disclosure was made for the purpose of the commission's functions. Many members would find it quite remarkable that those provisions to protect disclosures were not already in place. The ICAC submission states:

A large number of complaints and information accepted by the commission each year are received directly from public officials who are not required or authorised by law to report or provide that information and in circumstances where the voluntary disclosure of that information is prohibited by a secrecy or confidentiality law. Similarly, private individuals who voluntarily provide information to the commission may be at risk of incurring civil liability because of contractual or employment undertakings into which they have entered.

Section 109 of the Independent Commission Against Corruption Act gives limited protection to persons providing information to the commission and then only in circumstances where the commission has exercised its power to require or obtain that information. This protection is not useful where persons have voluntarily disclosed information to the commission about corrupt conduct of which the commission is unaware and not at the time investigating.

Currently, those who provide information to the ICAC on a existing inquiry are protected by provisions in the Act. If an inquiry is not taking place, the Act does not apply and those who provide information are not protected. This amendment bill will include protection for those people. The ICAC further states in its submission:

Other Australian corruption commissions, to varying degrees, have legislative protection for voluntary provision of information for the purpose of a complaint, report or investigation. Under the Queensland Crime and Corruption Act 2001 no obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to a person by any act or rule of law applies to the disclosure of information to Queensland's Corruption and Crime Commission for the performance of its function.

A person who discloses information under the provision does not, only because of the disclosure, contravene a provision of an Act requiring a person to maintain confidentiality in relation to the disclosure of information; or incur any civil liability, including for defamation; or become liable to disciplinary action.

The submission from the Independent Commission Against Corruption makes it clear that there are limited protections in this State and that other jurisdictions, for example Queensland, have broader protections. This amendment bill clarifies this issue and gives full protection to people who provide information to the ICAC. It is a commonsense amendment. No-one should be concerned about the provisions in this bill. In fact, those who support the disclosure of information to the Independent Commission Against Corruption would encourage the passing of the bill. The bill will give confidence to those who wish to disclose information and will bring the legislation into line with that in other jurisdictions. The committee posed questions to those making submissions. At question (7) it asked:

Should a protection be inserted in the Independent Commission Against Corruption Act 1988 to provide that an individual voluntarily supplying information to the ICAC for the performance of its function is not subject to any penalty for having breached an Act or rule of law?

Most people would answer yes, there should be a protection for people providing information voluntarily to ICAC for the performance of its functions. The committee referred to this issue in its discussion paper at paragraph 2.80, stating:

The ICAC supported an amendment to the Independent Commission Against Corruption Act to protect people from criminal, civil or disciplinary liability if they voluntarily disclose information to the ICAC for the purpose of the commission's functions.

The committee made no recommendations in the discussion paper. It raised the issue that was posed by question (7) and discussed the responses briefly at paragraph 2.91, stating:

The committee notes that the ICAC referred to provisions in other Australian jurisdictions which give protection against self-incrimination to witnesses.

...

Protecting witnesses against self-incrimination would make it easier to obtain evidence regarding an offence. The committee notes that section 128 of the Evidence Act 1995 can be used to protect witnesses in criminal cases from self-incriminatory answers. In certain circumstances a court may grant a certificate to protect a witness from self-incrimination.

Section 128 does provide that protection in a court context but this bill deals with the Independent Commission Against Corruption. The 2014 discussion paper of the committee was silent on recommendations. From my experience, people in my electorate who have approached me to disclose information have expressed concern about providing the information to the ICAC. Those people will be protected by this bill. This is a relatively small bill containing commonsense amendments. It omits section 26, Self-incrimination, and in regards to section 109, Protection from liability, it omits section 109 (5) and (6) and inserts instead:

(5)A person is not subject to any criminal or civil liability for compliance, or purported compliance, with a requirement of this Act and no action, claim, demand or disciplinary action may be taken against or made of the person in relation to that compliance or purported compliance.

(6)A person who voluntarily gives any statement of information or produces any document or thing to the Commission in good faith in connection with a complaint made to, or an investigation conducted by, the Commission about a matter that concerns or may concern corrupt conduct is not subject to any criminal or civil liability for giving the statement of information or producing the document or thing and no action, claim, demand or disciplinary action may be taken against or made of the person in relation to the statement or production.

(7)This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the relevant person.

Section 109 as amended by this bill will provide full protection from liability to people making disclosures to the ICAC. Section 109A, Self-incrimination, which is inserted after section 109, states:

(1)This section applies where a natural person gives any statement of information or produces any document or thing to the Commission in good faith:

(a)in connection with a complaint made to, or an investigation conducted by, the Commission about a matter that concerns or may concern corrupt conduct, or

(b)pursuant to a requirement of the Commission under section 21 or 22.

(2)If the statement, document or thing tends to incriminate the person and the person objects to the giving or production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act or except as provided by section 114A (5)).

(3)The statement, document or thing may however be used for the purposes of the complaint or investigation concerned, despite any such objection.

The bill goes on to omit the now irrelevant circumstances. This is a relatively simple amendment to the Independent Commission Against Corruption Act. The Greens believe it strengthens the opportunity for people to provide information to the ICAC without risk or concern. The parliamentary inquiry into the ICAC examined this issue but made no recommendations. I trust the committee would agree with this common sense amendment. I thank all those who have attended my office, public servants in particular and private individuals who stand up for what they believe in. Those people are fighting and opposing corruption by saying that it is not acceptable and by not turning a blind eye. They know the conduct is wrong and they are prepared to take a stand.

The Government must provide the maximum protection for people to be able to provide such information without civil or criminal risk or risk to their employment. The amendment to this Act is important to ensure full protection for the voluntary disclosure of information to the ICAC for the purpose of the commission's function. I thank Parliamentary Counsel for its assistance in drafting the bill. I encourage the Government and Opposition to support the bill. The Premier has said that the Government will consider any sensible proposal in good faith. This bill will not make the front page of

the newspaper because it relates to an obscure issue. Every member in this House would have had a constituent visit their office to provide information. It is a stressful time for those people and they fear repercussions, such as the loss of their job or harm to their reputation. The Parliament must ensure that they have no need for concern. The bill before the House provides full protection to those who supply such information.

It was brought to my attention that even the ICAC has said that we need to provide greater protection to whistleblowers or people providing information. This bill seeks to do that. I look forward to discussing this matter with the Opposition. I have discussed it briefly with the shadow Attorney General. I look forward to discussing it with the Government. I trust that they will look at this in good faith. I hope that they will support this important amendment, which provides more protection and ensures that the disclosure of information will result in no risk to those people who take a strong stand by providing information to the ICAC to oppose and uncover corrupt activity.

Debate adjourned.

The SPEAKER: I fix the resumption of the debate as an order of the day for a future day.