

**INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL
2011
PUBLIC INTEREST DISCLOSURES AMENDMENT BILL 2011**

21 June 2011 Page: 2970

Bills introduced on motion by Mr Barry O'Farrell.

Agreement in Principle

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney)

[12.01 p.m.]: I move:

That these bills be now agreed to in principle.

The New South Wales Liberal-Nationals Government is committed to improving accountability and ethical standards in public administration. As part of that commitment, our 100 Day Action Plan promises to introduce legislation to strengthen the protection of whistleblowers and the operation of the Independent Commission Against Corruption. The Government is pleased to introduce these two bills and so to further deliver on that commitment. These bills form part of a range of measures that the Government is taking to restore confidence in public administration in New South Wales.

I will deal firstly with the Public Interest Disclosures Amendment Bill 2011. The Public Interest Disclosures Act 1994 plays a critical role in maintaining the integrity of public administration in this State. It does this by protecting public officials who disclose wrongdoing in the public sector in accordance with the Act. Known as "whistleblowers", they bring to the attention of Government and the community wrongdoing and corruption. They deserve to be protected. The Act makes it a criminal offence to take detrimental action against a public official substantially in reprisal for making a public interest disclosure. We recently were reminded how serious reprisals against whistleblowers can be in the matter of Gillian Sneddon. Members will recall that Ms Sneddon claimed to have suffered victimisation, bullying and harassment at the hands of Milton Orkopoulos and other members of his staff. It is, of course, one of the sorriest episodes involving any member of this Parliament and it is something the Labor Party should always be ashamed of.

Earlier this month the Supreme Court dismissed Gillian Sneddon's action against the State, but it awarded damages of more than \$400,000 in her favour against the former Speaker of the Parliament and the former Labor Minister for Aboriginal Affairs, the jailed paedophile Milton Orkopoulos. Her case is symptomatic of Labor's treatment of whistleblowers, whether it be the nurses who exposed problems at Camden and Campbelltown hospitals or the brave Bimla Chand, who exposed systematic bullying at RailCorp. Labor's treatment of people who stood up for the public good, who stood up for their beliefs, was nothing short of shameful and every single member of the Labor Party in this place ought to hang their heads in shame.

This bill improves the protections afforded to persons such as Gillian Sneddon and Bimla Chand who make public interest disclosures and it strengthens the capacity of the

Ombudsman to oversight public authorities and resolve disputes. First, the bill expands the type of disclosures that can be made to the Chief Executive, Local Government, in the Department of Premier and Cabinet regarding wrongdoing by local councils. Currently the Act only permits public interest disclosures to be made directly to the chief executive in relation to serious and substantial waste of local government money. As the Division of Local Government can investigate a range of other conduct by local councils, the Government considers that public officials should be able to disclose a wider range of wrongdoing directly to the head of that division and receive the protections under the Act.

To implement this, the bill will also allow the chief executive to receive disclosures about corrupt conduct, maladministration, breaches of pecuniary interest obligations under the Local Government Act and a failure to exercise functions properly in accordance with the Government Information (Public Access) Act 2009 by councils. The bill will also impose express statutory obligations on the heads of public authorities. These include responsibility for ensuring that the public authority has a public interest disclosure policy, that staff are aware of the policy and the protections of the Act, and that the public authority complies with the policy and its obligations under the Act. Placing these obligations in legislation will assist in emphasising the importance of top-down support for public officials who make public interest disclosures. It is also proposed to empower the Ombudsman to assist in resolving certain disputes that might arise as a result of a public official making a public interest disclosure. New regulation-making powers have been included in the bill for this purpose.

To assist with prosecutions of offences of taking reprisal action against whistleblowers, the bill will also clarify that responsibility for investigating and preparing a brief of evidence lies with the appropriate investigating agency. This will assist in providing proper briefs of evidence to the Director of Public Prosecutions for the prosecution of offences of taking reprisal action. The Director of Public Prosecutions will be responsible for prosecuting offences. The bill will also improve the feedback from agencies to whistleblowers about their concerns. Public authorities will be required to send a copy of the agency's policy to a person who has made a public interest disclosure and to acknowledge receipt of a disclosure within 45 days. This requirement will need to be included in the public authority's public interest disclosures policy.

Legislation passed last year established a Public Interest Disclosures Steering Committee in March. Currently its members are the Ombudsman, as chairperson, the Director General 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, and the Commissioner of Police. The role of the steering committee is to provide the Premier with advice on the operation of the Act and recommendations for reform. The bill will include the Information Commissioner on the steering committee as public interest disclosures can be made to the Information Commissioner regarding a failure to exercise functions properly in accordance with the Government Information (Public Access) Act 2009. The Government looks forward to working closely with the steering committee. It will give careful consideration to any

suggestions for further enhancements to the Act which the steering committee may make.

New annual reporting obligations on public authorities will commence on 1 January 2012. These reports will provide useful data to the Public Interest Disclosures Steering Committee, and the Ombudsman for his new oversight role, to analyse whether the Act is operating effectively to protect whistleblowers. In addition to these annual reports, the bill will also require each public authority to provide on a quarterly basis to the Ombudsman statistics regarding its compliance with the Act. This will facilitate increased oversight by the Ombudsman of public authorities' compliance with the Act.

I turn now to the Independent Commission Against Corruption Amendment Bill 2011. The New South Wales Coalition was responsible not only for introducing whistleblower legislation to this Parliament but also for establishing the Independent Commission Against Corruption through legislation in 1988, but we recognise that two decades later the Act needs to be strengthened. After 16 years of Labor numerous examples of corrupt conduct have shown the continuing need for a strong anti-corruption body in this State. Investigations over the period of the former Labor Government have found a number of Labor members of Parliament guilty of breaching entitlement codes. Several local councils, such as the Labor-controlled Wollongong council, have also been exposed engaging in corrupt practices. The public deserves a government committed to stamping out corruption and that is why my Government committed to strengthening the Independent Commission Against Corruption as part of its 100 Day Action Plan.

The bill I introduce today will strengthen both the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption. A strong Independent Commission Against Corruption will proactively work to prevent corruption and fearlessly investigate allegations when they are made. The bill implements the recommendations from two reports released in 2010 by the Parliamentary Joint Standing Committee on the Independent Commission Against Corruption, which are supported by the Independent Commission Against Corruption commissioner, as well as two more recent requests for amendments by the commissioner.

The bill amends section 14 of the Independent Commission Against Corruption Act to clarify the commission's powers to gather and assemble admissible evidence for the prosecution of a person for criminal offences in connection with corrupt conduct. This will facilitate the assembly of comprehensive briefs of evidence for the Director of Public Prosecutions to support prosecutions arising from corruption investigations. Amendments to sections 35 and 37 of the Act will streamline the process for the production of privileged documents to the commission, so that it is not always necessary for the person producing the documents to appear in person at the commission.

The bill will insert a new subsection into section 57B of the Act to permit the reports and findings of the Inspector of the Independent Commission Against Corruption to be published more broadly. These amendments will clarify that the inspector may communicate his

findings and recommendations to the Independent Commission Against Corruption commissioner, Independent Commission Against Corruption officers, complainants and any other affected parties for the purpose of resolving a complaint or dealing with a matter. The inspector will also have broader powers to report on his activities to Parliament under amendments the bill makes to section 77A. The bill also provides that section 40 of the Surveillance Devices Act 2007 does not prevent the Independent Commission Against Corruption from providing information about its use of covert surveillance to the Inspector of the Independent Commission Against Corruption.

The bill's amendment to section 104 of the Independent Commission Against Corruption Act will ensure that the original intent of subsection 104 (11) is preserved. Originally the section provided that decisions of the Independent Commission Against Corruption commissioner relating to the appointment, discipline and removal of staff of the Independent Commission Against Corruption may not be appealed to the Industrial Relations Commission. It is important that the Independent Commission Against Corruption commissioner have control over the appointment, discipline and removal of staff. Given the nature of the work of the Independent Commission Against Corruption, the commission should not be placed in the position of having to maintain the employment of a person in whom the Independent Commission Against Corruption commissioner has lost confidence.

As part of our strategy to improve honesty and integrity in New South Wales, this bill will strengthen the operation of the Independent Commission Against Corruption. I foreshadow that there will be further legislation about the level of court in which matters relating to jurisdiction will in future be heard. This flows from suggestions from the Independent Commission Against Corruption commissioner that the Attorney General is currently taking up with the commissioner and the Acting Director of Public Prosecutions. These two bills form a part of a series of measures that we are taking not just in relation to whistle blowing and anti-corruption but also in other areas to restore public confidence in the administration of government and deliver openness and transparency, and I commend the bills to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a later hour.