

ICC 238  
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Provided by Mr Wheeler at the  
hearing held 18 August 2008.  
To form part of his formal evidence

# PROTECTED DISCLOSURES STEERING COMMITTEE

18/11/08  
for  
Committee  
Manager

Our Ref: ADM/442P06

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The Hon Morris Iemma  
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Dear Premier

## **Review of the *Protected Disclosures Act 1994***

As you would be aware the Joint Parliamentary Committee on the Independent Commission Against Corruption (ICAC) reviewed the *Protected Disclosures Act 1994* (PD Act) in 2005/2006. In November 2006 the Committee reported on its review and made 17 recommendations to amend the Act and identified areas for priority reform of the protected disclosures scheme in New South Wales. I enclose a copy of the 17 recommendations.

The Protected Disclosures Act Implementation Steering Committee (Committee) met in November 2007 to consider the recommendations made by the ICAC Parliamentary Committee after its review of the Act. The Committee agreed that the following recommendations should be implemented as a matter of priority:

- Recommendations 1, 2, 3, 7, 8, 10, 15, 16 and 17.

In relation to the remaining recommendations the Committee expressed the views summarised below:

- Recommendation 4 (the amendment of the regulation making power to expressly provide for the making of enforceable regulations or guidelines as to the lodgement, investigation, handling and reporting of protected disclosures)

The Committee supports this recommendation provided due regard is had to avoiding added complexity in the making of protected disclosures and protected allegations under Part 8A of the *Police Act 1990*.

- Recommendation 5 (the amendment of the Act so as to protect a disclosure where the public official has an honest belief on reasonable grounds that it is true)

The Committee intends to continue discussions on this recommendation.

- Recommendation 6 (the inclusion of Area Health staff in the definition of "Public Official")

The Committee is currently awaiting advice from the Department of Health on whether Area Health staff are included in the definition of public official. Should the legal advice conclude they are not included, the Committee will recommend that the Act be amended to include Area Health staff in the definition of Public Official.

- Recommendation 9 (the establishment of a Protected Disclosures Unit within the Office of the Ombudsman funded by an appropriate additional budgetary allocation to perform monitoring and advisory functions)

The Committee supports this recommendation subject to a concern expressed by the ICAC that agencies conducting investigations pursuant to section 53 and 54 of the ICAC Act are only subject to oversight by the ICAC and that ICAC is formally involved in the education function of the unit.

You would be aware that the Parliamentary Committee on the Office of the Ombudsman and the Police Integrity Commission reviewed the Protected Disclosures Act in 1996 and 2000. Both of these reviews also recommended the establishment of a Protected Disclosures Unit in the Office of the Ombudsman.

- Recommendation 11 (the development of uniform standards and formats for statistical reporting)

The Committee supports this recommendation and considers relevant statistics would be very valuable in giving the government a better understanding of the workings of the protected disclosures scheme. However, in implementing this recommendation, the Committee believes it will be important to consider the potential impact on agencies' resources and how these competing priorities can be appropriately balanced.

- Recommendation 12 (the amendment to the Act to provide a right to seek damages where a person who has made a protected disclosure suffers detrimental action in reprisal)

The Committee intends to have further discussions on developing a detailed proposal on this recommendation. While some members are of the view that such a provision in the Act would send a stronger message about consequences for taking detrimental action, there are some concerns about the potential for vexatious action. The Committee generally agrees that it may be more useful to amend the Act to specify that taking detrimental action is a disciplinary offence.

- Recommendation 13 (the amendment to authorise the person who has made a protected disclosure (or a public authority or investigating authority on behalf of such a person) to apply for an injunction against the making of a reprisal)

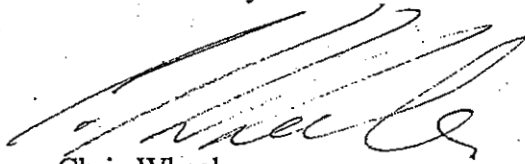
While the Committee supports the concept in principle, it believes consideration should be given to whether such power should be limited to agencies and investigation agencies.

- Recommendation 14 (the amendment to include a statement specifying the Director of Public Prosecutions (DPP) as the prosecuting authority to remove the current uncertainty)

The Committee believes that a prosecuting authority should be nominated in the Act, but this could be the DPP or some other organisation.

I look forward to your reply on the implementations of the recommendations by the ICAC Parliamentary Committee's review of the Act.

Yours sincerely



Chris Wheeler  
Chair

28/3/08