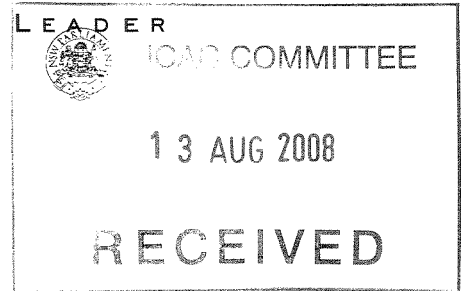


INQUIRY INTO PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES

Organisation: NSW Liberal & National Parties
Name: Mr Barry O'Farrell
Position: NSW Opposition Leader
Telephone:
Date received: 13/08/2008



BARRY O'FARRELL MP
NEW SOUTH WALES LIBERAL



7 August 2008

Committee on the Independent Commission Against Corruption
Parliament House
Macquarie St
Sydney NSW 2000

Attn: Helen Minnican, Committee Manager

Dear Ms Minnican

Attached, on behalf of the Liberal and National Parties, is a submission to the Committee's current inquiry into protection of public sector whistleblower employees, together with an annexure.

Yours sincerely

Barry O'Farrell MP
NSW Opposition Leader

ICAC COMMITTEE'S INQUIRY INTO THE PROTECTION OF PUBLIC SECTOR WHISTLEBLOWER EMPLOYEES

NSW LIBERAL/NATIONALS' SUBMISSION

*"It is important that staff in the public sector are encouraged to come forward with information about the management or operations of their agency, as they are often in the best position to expose serious problems in their workplace."*¹ NSW Ombudsman 2006

Introduction

In 1994 the NSW Liberal/Nationals Coalition introduced the *Protected Disclosures Act* (the Act) to protect whistleblowers. The primary intention of the Act is to protect public officials who make disclosures concerning corrupt conduct, maladministration or waste of money in the public sector.

Despite a requirement of the Act that a joint Parliamentary Committee review the Act every two years², there have only been three legislative reviews – in 1996, 2000 and 2006.³ These reviews have made numerous recommendations, many of them repeatedly, including the establishment of a standalone Protected Disclosures Unit within the Ombudsman's office.⁴

The most recent legislative review included extensive public consultation and reported back to the NSW Parliament in November 2006 making 17 recommendations designed to strengthen the *Protected Disclosures Act*. Many of these recommendations had been made in previous reviews, but the Labor Government failed to implement them.

Frustration at the current Labor Government's unwillingness to employ the recommendations from the numerous legislative reviews into the Act has led the NSW Liberal/Nationals Coalition to introduce to the NSW Parliament the *Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008* (see Annexure A).

The NSW Liberal/Nationals Coalition strongly advocates strengthening the State's whistleblower laws by enacting the Independent Commission Against Corruption Committee's recommendations from their 2006 report.

Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008

After extensive consultation about drafting with the NSW Parliamentary Counsel's Office, NSW Opposition Leader, Barry O'Farrell MP, introduced a Private Member's Bill to amend the *Protected Disclosures Act 1994* to reflect the recommendations of

¹ Barbour, Bruce (Ombudsman), "NSW Ombudsman Annual Report 2005-06", *NSW Ombudsman*, October 2006 p. 109.

² Protected Disclosures Act 1994 No. 92, *New South Wales*, Part 4, Section 32.

³ Committee of the Office of the Ombudsman's report on the Review of the Protected Disclosures Act 1994, tabled 31 October 1996; Committee of the Office of the Ombudsman and the Police Integrity Commission's report on the Second Review of the Protected Disclosures Act 1994, tabled 29 August 2000; and Independent Commission Against Corruption Committee's report of the Review of the Protected Disclosures Act 1994, incorporating selected submissions and edited transcripts, tabled 23 November 2006.

⁴ The Hon. Kim Yeadon (Chair), "Review of the Protected Disclosures Act 1994", *Committee on the Independent Commission Against Corruption*, November 2006, p. 5.

the Parliamentary Joint Committee on the Independent Commission Against Corruption's review of the Act completed in November 2006.

The Private Member's Bill reflects the NSW Liberal/Nationals Coalition's belief that an open and transparent government is in the best interests of the people it serves. Strong whistleblower laws are essential in creating this environment. The *Protected Disclosures Act 1994* goes to the very heart of open, honest and accountable government in this State.

Mr O'Farrell's Private Member's Bill seeks to implement the 17 recommendations from the ICAC Committee's 2006 report, including:

- Establishing a Protected Disclosures Unit within the Office of the Ombudsman to provide advice to whistleblowers, to monitor the response of public authorities to protected disclosures and to report annually on disclosures made across the NSW public sector.⁵
- Establishing standard guidelines to provide for "the lodgement, investigation, handling and reporting of protected disclosures."⁶
- Establishing uniform standards for statistical reporting of protected disclosures, to provide a reliable foundation for any future assessment of the functioning of the Act.⁷
- Altering the name of the Act to 'Public Interest Disclosures Act 1994'.⁸
- Amending the Act to protect the whistleblower where that person had an 'honest belief on reasonable grounds' that their disclosure met the grounds for protection under the Act.⁹
- Amending the Act so as to "impose an explicit requirement on an authority to investigate a disclosure subject to such exceptions as may be prescribed by regulation".¹⁰
- Introducing the right to seek damages when whistleblowers have suffered detrimental action in reprisal for making protected disclosures.¹¹

Not all of the recommendations from the ICAC Committee were legislative in nature and although it is not the intention of this submission to set out the arguments behind each recommendation – arguments with which the Committee will be familiar – the process of transferring these recommendations into legislation has provided valuable information.

⁵ The Hon. Kim Yeadon (Chair), "Review of the Protected Disclosures Act 1994", *Committee on the Independent Commission Against Corruption*, November 2006, p. 5.

⁶ *Ibid.*

⁷ *Ibid.*, p. 5 & 11.

⁸ *Ibid.*, p. 6.

⁹ *Ibid.*, p. 6.

¹⁰ *Ibid.*, p. 6.

¹¹ *Ibid.*, p. 11.

Drafting Notes

Recommendation 7: The Parliamentary Committee recommends that consideration be given to including the Health Care Complaints Commission as an investigating authority under the Protected Disclosures Act 1994.¹²

In drafting this recommendation into the Private Member's Bill, Parliamentary Counsel assumed that this provision is to be restricted to the public health system – despite the HCCC dealing with complaints about health care in both the public and private systems.

The NSW Liberal/Nationals Coalition agreed that this provision (as directed in Recommendation 7) is intended to represent the public health system as defined in Section 6 of the *Health Services Act 1997*. It should include any private health practitioner employed by the public health system and working in a public facility.

Recommendation 8: The Parliamentary Committee recommends that the Protected Disclosures Act 1994 be amended to require each public authority and investigating authority to adequately assess and properly deal with a protected disclosure. This requirement will bring New South Wales into line with other Australian States who, with the exception of South Australia, already have a similar provision.¹³

Parliamentary Counsel was uncertain whether the intention of the Committee in Recommendation 8 was for specific procedures to be added or for the provision to be left as a general admonition to adequately assess and properly deal with a protected disclosure.

The NSW Liberal/Nationals Coalition believes that an explicit requirement to assess and properly deal with a protected disclosure needs to be stated in the Act if it is to be strengthened. Dr A J Brown's issues paper *Towards the Next Generation* explores the options for assessment requirements. Brown argues:

"Only when existing powers or procedures are lacking, or issues arise which are uniquely important for the handling of whistleblower disclosures, need the legislation then supplement these existing processes.

This hybrid approach is taken in Western Australia, where the Act provides little detail on investigation powers, but does detail select issues important to the handling of public interest disclosures, such as the general obligation to investigate, and progress and final reporting."¹⁴

Inadequacies of the current legislation in this area of the Act were highlighted last year when an employee of the Department of Premier and Cabinet was suspected of being the victim of detrimental action as a result of making a protected disclosure. Despite the abundant media attention to the matter, a police investigation only occurred because of a formal approach the NSW Opposition Leader made to the Police Commissioner. Under current legislation there was no requirement for the Department to act.

¹² Ibid, p. 10.

¹³ Ibid, p. 10.

¹⁴ Brown, Dr A J, "Public Interest Disclosure Legislation in Australia: Towards the Next Generation", November 2006, p. 32.

Recommendation 16: The Parliamentary Committee notes that the Protected Disclosures Act Implementation Steering Committee is an ad hoc body established by the various New South Wales investigating authorities as a means of co-ordinating and sharing concerns and experiences with the practical implementation of the Protected Disclosures Act 1994. The Parliamentary Committee recommends that consideration be given to establishing this function under the Act, as a statutory advisory committee.¹⁵

In preparing the amendment Bill, the NSW Liberal/Nationals Coalition has set out the following provisions for the recommended statutory advisory committee:

Part 3A Public Interest Disclosures Advisory Committee

24A Constitution of Advisory Committee

- (1) There is established by this Act a Public Interest Disclosures Advisory Committee.
- (2) The Advisory Committee is to consist of not less than 10 members, being:
 - (a) the persons holding the offices referred to in subsection (3), and
 - (b) at least 1 person appointed by the Minister.
- (3) The persons holding the following offices are members of the Advisory Committee:
 - (a) the Auditor-General,
 - (b) the Commissioner for the Commission,
 - (c) the Ombudsman,
 - (d) the Commissioner for the PIC,
 - (e) the PIC Inspector,
 - (f) the Director-General of the Department of Local Government,
 - (g) the ICAC Inspector,
 - (h) the Commissioner of the Health Care Complaints Commission,
 - (i) the Director-General of the Department of Premier and Cabinet, who is to be the Chairperson of the Advisory Committee.
- (4) The Minister is, as far as practicable, to seek the views of relevant community and professional organisations on the appointment of members of the Advisory Committee under subsection (2) (b).
- (5) Schedule 1 has effect with respect to the members and procedure of the Advisory Committee.

Conclusion

The *Protected Disclosures Act* and the protection it affords to public servants go to the very heart of open, honest and accountable government in this State.

But improvement in opening up government and making it more accountable will only occur if those in office are committed to the concept and to upholding the public interest it seeks to protect.

This Labor Government has repeatedly failed to respond to the whistleblower reforms proposed by a bipartisan parliamentary committee - recommendations aimed at strengthening honesty and preventing corruption across the State's public sector.

The NSW Liberal/Nationals Coalition is committed to restoring integrity to government in NSW, and effective protective disclosure legislation is a key part of achieving this goal.

¹⁵ The Hon. Kim Yeadon (Chair), "Review of the Protected Disclosures Act 1994", *Committee on the Independent Commission Against Corruption*, November 2006, p. 12.

Introduced by Mr B R O'Farrell, MP

First print



New South Wales

Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Protected Disclosures Act 1994* (the **Principal Act**) to:

- (a) rename the Principal Act as the *Public Interest Disclosures Act 1994* and amend the long title to the Principal Act to emphasise the Act's purpose in encouraging and facilitating disclosures in the public interest, and
- (b) provide that a disclosure made by a public official with reasonable grounds for believing that the disclosure is substantially true is, if the other applicable requirements are met, a protected disclosure, and
- (c) provide that a disclosure to the Health Care Complaints Commission that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money in connection with the public health system is a disclosure protected under the Principal Act, and
- (d) provide for the Supreme Court to issue injunctions to prevent reprisals against a person who has made a protected disclosure, and
- (e) provide for an authority responsible for a disclosure made under the Principal Act to investigate matters raised by the disclosure and keep the person who

made the disclosure informed of the investigations, unless it is already the function of the responsible authority to do so under any other Act, and

- (f) establish a Public Interest Disclosures Advisory Committee, and
- (g) establish a Public Interest Disclosures Unit within the Ombudsman's Office.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides that the proposed Act commences 3 months after the date of assent to the proposed Act, unless commenced sooner by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Protected Disclosures Act 1994* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to other Acts set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Protected Disclosures Act 1994

Schedule 1 [1] amends the long title of the Principal Act to emphasise the Act's purpose in encouraging and facilitating disclosures in the public interest.

Schedule 1 [2] substitutes section 1 of the Principal Act, renaming the Principal Act the *Public Interest Disclosures Act 1994*.

Schedule 1 [7] inserts proposed section 9A, making provision for those circumstances where a public official may have reasonable grounds for believing that a disclosure is substantially true but is unable to determine conclusively whether the disclosure is substantially true.

Schedule 1 [8] inserts proposed section 12D, which provides that a disclosure by a public official to the Health Care Complaints Commission is protected by the Principal Act if the disclosure is made in accordance with the *Health Care Complaints Act 1993* and is a disclosure that shows corrupt conduct, maladministration or serious and substantial waste of public money in connection with the public health system.

Schedule 1 [11] inserts proposed section 20A, which provides for the Supreme Court to issue an injunction to prevent a person from engaging in conduct that constitutes taking detrimental action against another person substantially in reprisal for the other person making a protected disclosure or being in any way concerned in such conduct.

Schedule 1 [12] inserts proposed Part 3A (proposed sections 24A–24C), which establishes a Public Interest Disclosures Advisory Committee.

Schedule 1 [13] and [14] make amendments to provide for the authority responsible for a disclosure made under the Principal Act to investigate the matters raised by the disclosure and keep the person who made the disclosure informed of the investigations, unless it is the function of the responsible authority to do so under any other Act. **Schedule 1 [13]** inserts proposed section 24D. **Schedule 1 [14]** omits current section 27 and inserts instead proposed sections 27–27B.

Schedule 1 [19] amends clause 1 (1) of Schedule 2 to the Principal Act so as to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [3]–[6], [9], [10] and [15]–[18] make amendments of a minor or consequential nature.

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Health Care Complaints Act 1993* to make an amendment consequential on the amendment made by **Schedule 1 [8]**.

Schedule 2.2 amends the *Ombudsman Act 1974* to provide for the establishment within the Ombudsman's Office of a Public Interest Disclosures Unit.

1 2 3 4



Introduced by Mr B R O'Farrell, MP

First print



New South Wales

Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Protected Disclosures Act 1994 No 92	2
4 Amendment of other Acts	2
5 Repeal of Act	2
Schedule 1 Amendment of Protected Disclosures Act 1994	3
Schedule 2 Amendment of other Acts	16





New South Wales

Protected Disclosures Amendment (Supporting Whistleblowers) Bill 2008

No. , 2008

A Bill for

An Act to amend the *Protected Disclosures Act 1994* to make further provision for disclosures in the public interest and the investigation of matters raised by such disclosures; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Protected Disclosures Amendment (Supporting Whistleblowers) Act 2008*.

2 Commencement

This Act commences 3 months after the date of assent to this Act, unless commenced sooner by proclamation.

3 Amendment of Protected Disclosures Act 1994 No 92

The *Protected Disclosures Act 1994* is amended as set out in Schedule 1.

4 Amendment of other Acts

Each Act specified in Schedule 2 is amended as set out in that Schedule.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Protected Disclosures Act 1994

(Section 3)

[1] Long title

Omit the long title. Insert instead:

An Act to encourage and facilitate the disclosure, in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector; and for other purposes.

[2] Section 1

Omit the section. Insert instead:

1 Name of Act

This Act is the *Public Interest Disclosures Act 1994*.

[3] Section 4 Definitions

Insert in alphabetical order:

Advisory Committee means the Public Interest Disclosures Advisory Committee established under section 24A.

Disclosures Unit means the Public Interest Disclosures Unit established in the Ombudsman's Office.

responsible authority means, in relation to a disclosure made under this Act, the investigating authority, public authority or officer to whom the disclosure is made or, if the disclosure is referred under this Act, the investigating authority, public authority or officer to whom the disclosure is referred.

[4] Section 4, definition of "investigating authority"Insert at the end of paragraph (g) of the definition of *investigating authority*:

, or

(h) the Health Care Complaints Commission.

[5] Section 4, definition of "investigation Act"Insert at the end of paragraph (e) of the definition of *investigation Act*:

, or

(f) the *Health Care Complaints Act 1993*.

[6] Section 5 Application of Act	1
Omit section 5 (2). Insert instead:	2
(2) However, nothing in this Act or the regulations otherwise limits or affects the operation of any provision of, or made under, any other Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under any provision of, or made under, any other Act.	3 4 5 6 7
[7] Section 9A	8
Insert after section 9:	9
9A Public official must have reasonable grounds for believing disclosure true	10 11
To be protected by this Act, a disclosure must be made by a public official who has reasonable grounds for believing that the disclosure is substantially true.	12 13 14
[8] Section 12D	15
Insert after section 12C:	16
12D Disclosure to Health Care Complaints Commission concerning public health system	17 18
To be protected by this Act, a disclosure by a public official to the Health Care Complaints Commission must:	19 20
(a) be made in accordance with the <i>Health Care Complaints Act 1993</i> , and	21 22
(b) be a disclosure that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money in connection with the public health system within the meaning of section 6 of the <i>Health Services Act 1997</i> .	23 24 25 26 27
[9] Section 16	28
Omit the section. Insert instead:	29
16 Disclosures made frivolously or vexatiously not protected	30
If the responsible authority for a disclosure made under this Act gives a notice under section 24D (4), the disclosure in respect of which the notice was given ceases to be (despite any other provision of this Part) protected by this Act on and from the giving of the notice.	31 32 33 34 35

[10] Section 19 Disclosure to a member of Parliament or journalist	1
Omit section 19 (4) and (5).	2
[11] Section 20A	3
Insert after section 20:	4
20A Injunctions to prevent reprisals	5
(1) An application under this section may be made to the Supreme Court by:	6
(a) a person who has made a protected disclosure, or	7
(b) the responsible authority for a protected disclosure.	8
(2) If the Court is satisfied, on an application under this section, that a person has engaged or is proposing to engage in conduct in respect of the disclosure that constitutes or would constitute:	9
(a) a contravention of section 20, or	10
(b) attempting to contravene section 20, or	11
(c) aiding, abetting, counselling or procuring a person to contravene section 20, or	12
(d) inducing, or attempting to induce, whether by threats or promises or otherwise, a person to contravene section 20, or	13
(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of section 20, or	14
(f) conspiring with others to contravene section 20,	15
the Court may grant an injunction in such terms as the Court determines to be appropriate.	16
(3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of the application.	17
(4) The Court may rescind or vary an injunction granted under this section.	18
(5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:	19
(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind, and	20
(b) whether or not the person has previously engaged in conduct of that kind, and	21
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| (c) | whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind. | 1
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| (6) | The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised: | 4
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| (a) | whether or not it appears to the Court that the person intends to fail again, or to continue to fail, to do that act or thing, and | 6
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| (b) | whether or not the person has previously failed to do that act or thing, and | 9
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| (c) | whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person fails to do that act or thing. | 11
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| (7) | If an investigating authority makes an application to the Court for the grant of an injunction under this section, the Court is not to require the investigating authority or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages. | 14
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| (8) | The Supreme Court may direct in an application under this section that: | 19
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| (a) | a report of the whole or part of the proceeding for the application must not be published, or | 21
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| (b) | evidence given, or anything filed, tendered or exhibited in the application must be withheld from release or search, or released or searched only on a specified condition. | 23
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| (9) | A direction under subsection (8) may be given if the Supreme Court considers that: | 26
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| (a) | disclosure of the report, evidence or thing would not be in the public interest, or | 28
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| (b) | persons other than parties to the application do not have a sufficient legitimate interest in being informed of the report, evidence or thing. | 30
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| (10) | An application for an injunction may be heard ex parte if the Supreme Court considers an ex parte hearing is necessary in the circumstances. | 33
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| (11) | This section does not limit the power of the Supreme Court. | 36 |

[12] Part 3A	1
Insert after section 24:	2
Part 3A Public Interest Disclosures Advisory Committee	3
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24A Constitution of Advisory Committee	5
(1) There is established by this Act a Public Interest Disclosures Advisory Committee.	6
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(2) The Advisory Committee is to consist of not less than 10 members, being:	8
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(a) the persons holding the offices referred to in subsection (3), and	10
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(b) at least 1 person appointed by the Minister.	12
(3) The persons holding the following offices are members of the Advisory Committee:	13
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(a) the Auditor-General,	15
(b) the Commissioner for the Commission,	16
(c) the Ombudsman,	17
(d) the Commissioner for the PIC,	18
(e) the PIC Inspector,	19
(f) the Director-General of the Department of Local Government,	20
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(g) the ICAC Inspector,	22
(h) the Commissioner of the Health Care Complaints Commission,	23
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(i) the Director-General of the Department of Premier and Cabinet, who is to be the Chairperson of the Advisory Committee.	25
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(4) The Minister is, as far as practicable, to seek the views of relevant community and professional organisations on the appointment of members of the Advisory Committee under subsection (2) (b).	28
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(5) Schedule 1 has effect with respect to the members and procedure of the Advisory Committee.	31
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24B Function of Advisory Committee

The principal function of the Advisory Committee is to provide advice to the Minister on the following matters:

- (a) the effective operation of this Act,
- (b) proposed regulations,
- (c) any other matters in respect of protected disclosures that may be referred to the Advisory Committee by the Minister.

24C Sub-committees of Advisory Committee

- (1) The Advisory Committee may establish sub-committees to assist it in connection with the exercise of any of its functions.
- (2) It does not matter that any or all of the members of a sub-committee are not members of the Advisory Committee.
- (3) The procedure for the calling of meetings of a sub-committee and for the conduct of business at those meetings is to be as determined by the Advisory Committee or (subject to any determination of the Advisory Committee) by the sub-committee.

[13] Section 24D

Insert after the heading to Part 4:

24D Investigation of matters raised by disclosures

- (1) The responsible authority for a disclosure made under this Act must investigate a matter raised by the disclosure if the responsible authority is empowered by any provision of this Act or any provision of, or made under, any other Act to investigate the matter.
- (2) For the removal of doubt, subsection (1) does not in itself confer any power to investigate any matter.
- (3) The responsible authority for a disclosure made under this Act may decline to investigate, or discontinue the investigation of, a matter referred to in subsection (1) if the responsible authority is empowered by subsection (4) or by any provision of, or made under, any other Act to decline to investigate, or discontinue the investigation of, the matter.

Note. Sections 25 and 26 also permit or require a responsible authority for a disclosure to refer the disclosure to another investigating authority, public authority or officer in certain circumstances.

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| (4) | The responsible authority for a disclosure made under this Act may, by notice in writing to the person who made the disclosure, decline to investigate or may discontinue the investigation of any matter raised by the disclosure if the responsible authority is of the opinion that the disclosure was made frivolously or vexatiously. | 1
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| (5) | A copy of any notice under subsection (4) must be provided to the principal officer of the Disclosures Unit. | 7
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| (6) | Nothing in this section limits any other discretion the responsible authority for a disclosure has to decline to investigate or to discontinue the investigation of a matter (whether under this Act, an investigation Act or any other Act). | 9
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[14] Sections 27–27B

Omit section 27. Insert instead:

27 Notifications to person making protected disclosure

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|-----|--|--|
| (1) | The responsible authority for a disclosure made under this Act must, by notice in writing given not later than 7 days after the disclosure was made or referred to the responsible authority, acknowledge receipt of the disclosure to the person who made the disclosure. | 15
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| (2) | If the responsible authority for a disclosure made under this Act determines that the disclosure was never, or has ceased to be, a disclosure protected under this Act, the responsible authority must, by notice in writing given not later than 7 days after making the determination, inform the person who made the disclosure of the determination. | 21
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| (3) | The responsible authority for a disclosure made under this Act must, by notice in writing given not later than 6 months after the disclosure was made or referred to the responsible authority, inform the person who made the disclosure as to the action taken or proposed to be taken in respect of the disclosure. | 27
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| (4) | If the responsible authority for a disclosure made under this Act declines to investigate or discontinues the investigation of any matter raised by the disclosure other than in the circumstances referred to in section 24D (4), the responsible authority must, by notice in writing given not later than 7 days after the making of the decision, inform the person who made the disclosure of the decision. | 32
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(5)	The responsible authority for a disclosure made under this Act may, by notice in writing, provide a progress report to the person who made the disclosure on an investigation of a matter raised by the disclosure that is not complete.	1 2 3 4
(6)	If the responsible authority for a disclosure made under this Act completes an investigation into a matter arising from the disclosure, the responsible authority must, by notice in writing given not later than 28 days after completing the investigation, inform the person who made the disclosure of the outcome of the investigation and any action that has been taken or is proposed to be taken as a result of the investigation.	5 6 7 8 9 10 11
(7)	A responsible authority for a disclosure made under this Act must provide a copy of any notice the responsible authority has given under this section to the principal officer of the Disclosures Unit.	12 13 14
27A	Limitation on notification	15
	A person must not, in a notice given under section 27, give information that, in that person's opinion, would be likely to:	16 17
	(a) affect adversely any person's safety, or	18
	(b) affect adversely the investigation of an offence or possible offence, or	19 20
	(c) disclose the identity of a person who has made a protected disclosure other than the person to whom the notice has been given.	21 22 23
27B	Giving notices not required if function to do so under other Act	24
	Nothing in section 27 requires the responsible authority for a disclosure to give a notice in relation to a disclosure if it is the function of the responsible authority to do so under any other Act.	25 26 27
[15]	Section 29 Proceedings for offences	28
	Insert at the end of the section:	29
	Note. Since this Act does not expressly confer the right to institute proceedings for an offence against this Act on a specified person or class of persons, such proceedings may, pursuant to section 14 of the <i>Criminal Procedure Act 1986</i> , be instituted by the Director of Public Prosecutions or another public officer (but are not required to be).	30 31 32 33 34

	<i>appointed member</i> means a member of the Advisory Committee other than an ex-officio member.	1 2
	<i>ex-officio member</i> means a member of the Advisory Committee referred to in section 24A (2) (a).	3 4
2	Terms of office	5
	Subject to this Schedule, an appointed member holds office for such period (not exceeding 5 years) as is specified in the member's instrument of appointment, but is eligible for re-appointment.	6 7 8 9
3	Remuneration	10
	An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	11 12 13
4	Deputies of members	14
(1)	The Minister may, from time to time, appoint a person to be the deputy of an appointed member, and the Minister may revoke any such appointment.	15 16 17
(2)	An ex-officio member may, from time to time, appoint a person to be the deputy of the member, and the ex-officio member or the Minister may revoke any such appointment.	18 19 20
(3)	In the absence of a member, the member's deputy:	21
	(a) may, if available, act in the place of the member, and	22
	(b) while so acting, has all the functions conferred by Part 3A and this Schedule on the member and is to be taken to be a member.	23 24 25
(4)	Subject to clause 10, the deputy of the member who is the Chairperson of the Advisory Committee does not have the member's functions as Chairperson.	26 27 28
(5)	A person while acting in the place of an appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.	29 30 31 32
5	Vacancy in office of appointed member	33
(1)	The office of an appointed member becomes vacant if the member:	34 35
	(a) dies, or	36
	(b) completes a term of office and is not re-appointed, or	37

(c)	resigns the office by instrument in writing addressed to the Minister, or	1 2
(d)	is removed from office by the Minister under this clause or under Chapter 5 of the <i>Public Sector Employment and Management Act 2002</i> , or	3 4 5
(e)	is absent from 4 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or	6 7 8 9 10 11 12
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	13 14 15 16
(g)	becomes a mentally incapacitated person, or	17
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	18 19 20 21 22
(2)	The Minister may remove an appointed member from office at any time.	23 24
6	Filling of vacancy in office of member	25
	If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	26 27
7	Effect of certain other Acts	28
(1)	The <i>Public Sector Employment and Management Act 2002</i> does not apply to the appointment of an appointed member and an appointed member is not, as such a member, subject to that Act (except Chapter 5).	29 30 31 32
(2)	If by or under any Act provision is made:	33
(a)	requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	34 35 36

- (b) prohibiting the person from engaging in employment outside the duties of that office, 1
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the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member. 3
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(3) The office of a member is not, for the purposes of any Act, an office or place of profit under the Crown. 7
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Part 2 Procedure 9

8 General procedure 10

The procedure for the calling of meetings of the Advisory Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Advisory Committee. 11
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9 Quorum 15

The quorum for a meeting of the Advisory Committee is a majority of its members. 16
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10 Presiding member 18

- (1) The Chairperson of the Advisory Committee or, in the absence of the Chairperson, the deputy of the member who is the Chairperson is to preside at a meeting of the Advisory Committee. 19
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(2) The person presiding at any meeting of the Advisory Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote. 23
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11 Voting 26

A decision supported by a majority of the votes cast at a meeting of the Advisory Committee at which a quorum is present is the decision of the Advisory Committee. 27
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12 Attendance by non-members 30

A person authorised by the Advisory Committee or the Chairperson of the Advisory Committee may attend a meeting of the Advisory Committee for the purpose of assisting the Advisory Committee to exercise its functions. 31
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13	Transaction of business outside meetings or by telephone etc	1
(1)	The Advisory Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is to be taken to be a decision of the Advisory Committee.	2 3 4 5 6
(2)	The Advisory Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	7 8 9 10 11
(3)	For the purposes of:	12
(a)	the approval of a resolution under subclause (1), or	13
(b)	a meeting held in accordance with subclause (2),	14
	the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Advisory Committee.	15 16
(4)	A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Committee.	17 18 19
(5)	Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	20 21 22
14	Minutes	23
	The Advisory Committee must cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.	24 25
15	First meeting	26
	The Minister may call the first meeting of the Advisory Committee in such manner as the Minister thinks fit.	27 28
[19]	Schedule 2 Savings, transitional and other provisions	29
	Insert at the end of clause 1 (1):	30
	<i>Protected Disclosures Amendment (Supporting Whistleblowers) Act 2008</i>	31 32

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Health Care Complaints Act 1993 No 105

Section 94D

Insert after section 94C:

94D Complaints by public officials

- (1) A public official within the meaning of the *Public Interest Disclosures Act 1994* may complain to the Commission (orally or in writing) about corrupt conduct, maladministration or serious and substantial waste of public money in connection with the public health system within the meaning of section 6 of the *Health Services Act 1997*.
- (2) In this section:
conduct includes conduct by way of action or inaction or alleged action or inaction.

2.2 Ombudsman Act 1974 No 68

Section 32A

Insert after section 32:

32A Public Interest Disclosures Unit

There is to be established within the Ombudsman's Office the Public Interest Disclosures Unit.