

## Disagreements with Government policy

### NSW PID Act (s 17)

- (1) A disclosure made by a public official that principally involves questioning the merits of government policy is not (despite any other provision of this Part) protected by this Act.
  - (2) In this section, **government policy** includes the policy of the governing body of a local government authority.
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### Ombo-LECC Committee Report

#### Clarifying what is meant by questioning the merits of government policy

#### Recommendation 32

***That section 17 of the Public Interest Disclosures Act 1994 be amended to clarify that a disclosure that principally involves 'a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure' is not protected under the Act.***

4.6 Disclosures that principally involve questioning the merits of government policy are not protected under the PID Act.<sup>133</sup> The Committee supports an amendment to clearly articulate what is meant by 'government policy'.

4.7 The NSW Council for Civil Liberties argued that the provision should be removed or narrowed. The Council cited the definition of 'government policy' contained in the ACT Public Interest Disclosure Act 2012, commenting that 'where disagreement with government policy is precluded from whistleblower protection, it is important that any exclusion from protection be stated as precisely and thereby, as transparently, as possible'.<sup>134</sup>

4.8 The Ombudsman noted that disclosures that relate to government policy may be protected if they raise allegations of wrongdoing (such as maladministration or corruption) by a public authority. The Ombudsman advised that there did not appear to be a problem with this provision in practice: 'it is rare that a report is not treated as a PID because it is considered to primarily question the merits of government policy'.<sup>135</sup> Nonetheless the Ombudsman stated that it may be preferable to clarify this provision, consistent with the ACT's Public Interest Disclosure Act, which excludes disclosures that relate 'to a disagreement in relation to a policy about amounts, purposes or priorities of public expenditure'.<sup>136</sup>

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Document tendered by <i>Mr</i> <i>Paul Miller</i>
Received by <i>Kate Bogalova</i>
Date: <i>15 / 4 / 2021</i>
Resolved to publish <b>Yes / No</b>

### **NSW PID Bill 2021 (s 26(2))**

A disclosure does not comply with this section to the extent that the information disclosed relates to a disagreement with a government policy, including –

- (a) a government decision concerning amounts, purposes or priorities of public expenditure, or
  - (b) a policy of the governing body of a local government authority.
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### **Cth PID Act 2013 (s 31)**

To avoid doubt, conduct is not **disclosable conduct** if it relates only to:

- (a) a policy or proposed policy of the Commonwealth Government; or
- (b) action that has been, is being, or is proposed to be, taken by:
  - (i) a Minister; or
  - (ii) the Speaker of the House of Representatives; or
  - (iii) the President of the Senate; or
- (c) amounts, purposes or priorities of expenditure or proposed expenditure relating to such a policy or proposed policy, or such action or proposed action;

with which a person disagrees.

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### **ACT PID Act 2012 (s 8(2))**

However, **disclosable conduct** does not include an action or a policy practice or procedure of a public sector entity, or a public official for a public sector entity, that—

...

- (b) is to give effect to a policy of the Territory about amounts, purposes or priorities of public expenditure.