

**Supplementary
Submission
No 1b**

INQUIRY INTO PUBLIC INTEREST DISCLOSURES BILL 2021

Organisation: NSW Ombudsman

Date Received: 18 November 2021

18 November 2021

The Hon Tara Moriarty, MLC
Chair
Portfolio Committee No. 1 – Premier and Finance
NSW Parliament
Parliament House
SYDNEY NSW 2000

By email: PortfolioCommittee1@Parliament.nsw.gov.au

Dear Committee

Inquiry into the Public Interest Disclosures Bill 2021

Thank you for inviting the NSW Ombudsman to appear at the Committee's hearing on Monday 15 November 2021.

I am writing in relation to clause 26(2) of the Bill.

The purpose of that clause is to make clear, for the avoidance of doubt, that a disagreement with government policy will not of itself constitute a public interest disclosure.

A public official may believe that a government policy is 'wrong' in the sense of disagreeing with it. Their disagreement may be honest and they may have reasonable grounds for it. However, believing a policy to be wrong in that sense does not mean that the official has disclosed any 'wrongdoing' in the sense of corrupt conduct, serious maladministration or any of the other categories of illegal or impermissible conduct.

At the hearing, it was put to me by the Hon. Adam Searle MLC that the current drafting of clause 26(2) of the Bill may be unclear, and may benefit from being amended to more clearly express its intention.

I am writing to confirm that I agree with that proposition.

The provision of the current *Public Interest Disclosures Act 1994* that corresponds to clause 26(2) is section 17.

I understand that the intention of the Government and the Parliamentary Counsel was not to change the effect of section 17 of the Act, and certainly not to expand the 'carve-out' for disclosures concerning policy disagreements.

Rather, the changes made by clause 26(2) of the Bill (from the current section 17) were intended only to:

- implement the Ombo-LECC Committee's recommendation (Recommendation 32) to articulate what constitutes 'government policy', and
- otherwise make only incidental drafting changes necessary because of the different structure of, and terminology used in, the new Bill.

To more clearly give effect to this legislative intention, we would respectfully suggest that consideration be given to amending clause 26(2) as follows:

A disclosure does not comply with this section to the extent that the information disclosed relates only to a disagreement about the amounts, purposes or priorities of public expenditure in government policy, including policy of the governing body of a local government authority.

If appropriate, I would be happy for this letter to be treated as a supplementary submission to the Committee.

Yours sincerely

Paul Miller
NSW Ombudsman