



LEGISLATIVE COUNCIL

PORTFOLIO COMMITTEE NO. 1

# Public Interest Disclosures Bill 2021

Report 56

November 2021

1





Portfolio Committee No. 1 - Premier and Finance

# **Public Interest Disclosures Bill 2021**

Ordered to be printed 23 November 2021

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Portfolio Committee No. 1 – Premier and Finance.**

Public Interest Disclosures Bill 2021 / Portfolio Committee No. 1 – Premier and Finance [Sydney, N.S.W.]: the Committee, 2021. [x, 32] pages ; 30 cm. (Report no. 56 / Portfolio Committee No. 1 – Premier and Finance)

“November 2021”

Chair: Hon. Tara Moriarty MLC.

ISBN: 9781922543417

1. New South Wales. Parliament. Legislative Council—Public Interest Disclosures Bill 2021.
2. New South Wales. Public Interest Disclosures Act 1994.
3. Public interest law—New South Wales.
4. Whistleblowing—Law and legislation—New South Wales.
5. Corruption investigation—New South Wales.
- I. Moriarty, Tara.
- II. Title.
- III. Series: New South Wales. Parliament. Legislative Council. Portfolio Committee No. 1 – Premier and Finance. Report ; no. 56

342.9440684 (DDC22)

## Table of contents

	<b>Terms of reference</b>	<b>v</b>
	<b>Committee details</b>	<b>vi</b>
	<b>Chair's foreword</b>	<b>vii</b>
	<b>Recommendations</b>	<b>viii</b>
	<b>Conduct of inquiry</b>	<b>ix</b>
<b>Chapter 1</b>	<b>Overview</b>	<b>1</b>
	<b>Background to the bill</b>	<b>1</b>
	<b>Referral of the bill</b>	<b>2</b>
	<b>The bill's purpose and provisions</b>	<b>2</b>
<b>Chapter 2</b>	<b>Key issues</b>	<b>5</b>
	<b>A new public interest disclosures scheme</b>	<b>5</b>
	Parliamentary committee recommendations to amend the existing Act	5
	Replacing the existing Act	6
	<b>Rationale for the bill – guiding principles</b>	<b>7</b>
	<b>Types of disclosures covered by the scheme</b>	<b>8</b>
	Definition of 'serious wrongdoing'	8
	Threshold for making a disclosure	9
	Exclusion of disclosures based on disagreement with policy	10
	Exclusion of disclosures based on 'personal grievance'	11
	<b>Who is covered by the scheme</b>	<b>11</b>
	Definition of 'public official'	11
	<b>Voluntary public interest disclosures to members of Parliament or journalists</b>	<b>12</b>
	Requirement for a disclosure to be 'substantially true'	13
	Requirement to have made the disclosure to an executive agency	14
	Time frame to reach the threshold to make an external disclosure	15
	Ombudsman's suggested redrafting of section 28	16
	<b>Protection from detrimental action</b>	<b>16</b>
	Agency responsibilities	17
	Remedies for detrimental action	17
	<b>Preparation for commencement</b>	<b>19</b>
	Preparation required to implement the new legislation	19

	Resourcing requirements	19
	<b>Future areas for improvement</b>	<b>20</b>
	<b>Committee comment</b>	<b>20</b>
<b>Appendix 1</b>	<b>Submissions</b>	<b>23</b>
<b>Appendix 2</b>	<b>Witnesses at hearing</b>	<b>24</b>
<b>Appendix 3</b>	<b>Minutes</b>	<b>25</b>

---

## Terms of reference

That:

- (a) the Public Interest Disclosures Bill 2021 be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report,
- (b) the bill be referred to the committee at the conclusion of the mover's second reading speech,
- (c) the resumption of the second reading debate on the bill not proceed until the tabling of the committee report,
- (d) the committee report by Tuesday 23 November 2021.

The terms of reference were referred to the committee by the Legislative Council on 19 October 2021.<sup>1</sup>

---

<sup>1</sup> *Minutes*, NSW Legislative Council, 19 October 2021, p 2510.

## Committee details

---

### Committee members

<b>Hon Tara Moriarty MLC</b>	Australian Labor Party	<i>Chair</i>
<b>Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>Hon Trevor Khan MLC**</b>	The Nationals	
<b>Hon Taylor Martin MLC</b>	Liberal Party	
<b>Hon Peter Poulos MLC</b>	Liberal Party	
<b>Hon Adam Searle MLC*</b>	Australian Labor Party	

### Contact details

<b>Website</b>	<a href="http://www.parliament.nsw.gov.au">www.parliament.nsw.gov.au</a>
<b>Email</b>	<a href="mailto:PortfolioCommittee1@parliament.nsw.gov.au">PortfolioCommittee1@parliament.nsw.gov.au</a>
<b>Telephone</b>	02 9230 2354

\*The Hon Adam Searle MLC substituted for the Hon Penny Sharpe MLC for the duration of the inquiry from 20 October 2021.

\*\*The Hon Trevor Khan MLC substituted for the Hon Ben Franklin MLC for the duration of the inquiry from 21 October 2021.



## Chair's foreword

It is my pleasure to present this report into the Public Interest Disclosures Bill 2021. This has been a short inquiry, but builds on the work of other parliamentary committees before it.

Protections for public officials who make a disclosure exposing serious wrongdoing in a public sector organisation are fundamental to transparent, accountable government. Such protections enable issues of corruption, maladministration or waste to come to light, and be examined, that may otherwise never be addressed. New South Wales was a leader in this field in Australia, having brought in the *Protected Interest Disclosures Act* in 1994. This Act, amended and renamed the *Public Interest Disclosures Act*, has served for over 25 years. Many agree it would now benefit from an overhaul.

The need for reform of New South Wales' public interest disclosures legislation was established in previous parliamentary inquiries, which made recommendations to address gaps that emerged over the years in whistleblower protections. Rather than amend the previous Act, the government has decided to bring forward a new piece of legislation that will repeal and replace it.

The committee appreciates the work that has been done by the Public Interest Disclosures Steering Committee to develop and bring forward this new bill. We are pleased to see almost all of the recommendations of previous inquiries taken on board. This committee is satisfied that the new Act is simpler and clearer, making it more straightforward for public officials to receive protection if they disclose wrongdoing to their own agency or to an integrity agency.

There remain some outstanding concerns, as outlined in this report, that may need to be addressed in future. In particular, the committee is concerned about the high threshold that must be met before a disclosure to a Member of Parliament or journalist would be protected under this legislation, and disappointed that in this respect the bill does not reflect the wishes of a previous parliamentary inquiry.

The process of establishing effective public interest disclosure protections does not end with the passing of this bill: the new legislation will require investment in awareness raising and training across the NSW public service, given new responsibilities for many public servants. There is also a need to continue reviewing and refining the legislation to address issues that have already been identified, but need more time to address.

As Chair, I thank all who made representations to this inquiry, through submissions and giving evidence at the public hearing. I would also like to thank committee members who have worked cooperatively in a short space of time to examine and report on the bill. I also thank the secretariat for their capable assistance.



Hon Tara Moriarty MLC  
**Committee Chair**

## Recommendations

### Recommendation 1

22

That the Legislative Council proceed to debate the Public Interest Disclosures Bill 2021, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

## **Conduct of inquiry**

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 19 October 2021.

The committee received eight submissions and two supplementary submissions.

The committee held one public hearing at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, tabled documents and correspondence related to the inquiry.



## Chapter 1 Overview

This chapter outlines the background of the Public Interest Disclosures Bill 2021 and its referral to this committee, and gives an overview of the bill's provisions.

### Background to the bill

- 1.1** New South Wales has had protections for public sector whistleblowers in place since 1994, under the *Protected Disclosures Act 1994*, later renamed the *Public Interest Disclosures Act* in 2010. This bill repeals and replaces the existing Act with a new piece of legislation to facilitate and protect public interest disclosures.<sup>2</sup>
- 1.2** A number of parliamentary inquiries have made recommendations leading to this reform. In October 2017 the Joint Parliamentary Committee on the Ombudsman, Law Enforcement Conduct Commission and Crime Commission (hereafter the Ombudsman-LECC Committee) tabled a report reviewing the *Public Interest Disclosures Act*, making 38 recommendations for reform. In November 2017 the Joint Committee on the Independent Commission Against Corruption (hereafter the ICAC Committee) tabled a report reviewing protection for people who make voluntary disclosures to ICAC, making ten recommendations for reform.<sup>3</sup>
- 1.3** The bill was drafted after an expert consultation process involving the Public Interest Disclosures Steering Committee established under the current Act, which is chaired by the NSW Ombudsman. The Steering Committee has representation from key New South Wales integrity agencies, including the ICAC and the LECC, as well as the Department of Premier and Cabinet, Audit Office, Information Commissioner, Public Service Commission, NSW Police Force, and Department of Planning, Industry and Environment.<sup>4</sup> Further information about the Public Interest Disclosures Steering Committee's work on this bill is available in the Steering Committee's Annual Report 2020-21, tabled in Parliament on 4 November 2021.<sup>5</sup>
- 1.4** According to the NSW Ombudsman, the bill is designed to retain the broad substance of the current *Public Interest Disclosures Act 1994*, but is a 'complete re-write' of that Act, designed to have a clearer, more logical structure and to address many weaknesses of the Act, while also implementing substantive amendments and clarifications requested by the parliamentary committee reports.<sup>6</sup>

<sup>2</sup> *Hansard*, NSW Legislative Council, 14 October 2021, pp 15-18, 31-33 (Don Harwin); Submission 1, NSW Ombudsman, *Special Report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021* ('Special Report').

<sup>3</sup> *Hansard*, NSW Legislative Council, 14 October 2021, pp 15-18, 31-33 (Don Harwin), and Submission 1, NSW Ombudsman, Special Report.

<sup>4</sup> *Hansard*, NSW Legislative Council, 14 October 2021, pp 15-18, 31-33 (Don Harwin), and Submission 1, NSW Ombudsman, Special Report.

<sup>5</sup> Public Interest Disclosures Steering Committee Annual Report 2020-2021, tabled document (Legislative Council), 4 November 2021.

<sup>6</sup> Submission 1, NSW Ombudsman, Special Report, p 3.

## Referral of the bill

- 1.5 The Public Interest Disclosures Bill 2021 was introduced into the Legislative Council on 14 October 2021 by the Hon Don Harwin MLC, Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts.<sup>7</sup> Minister Harwin gave his second reading speech in the House on 14 October 2021 before debate was adjourned.<sup>8</sup>
- 1.6 On 19 October 2021, the Legislative Council Selection of Bills Committee recommended that the provisions of the bill be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry, and that the committee report by 15 November 2021.<sup>9</sup>
- 1.7 On 19 October 2021, the Legislative Council referred the bill to Portfolio Committee No. 1 – Premier and Finance on the motion of the Hon Shayne Mallard MLC, Chair of the Selection of Bills Committee.<sup>10</sup>
- 1.8 On 21 October 2021, the Legislative Council resolved to extend the reporting date for the inquiry to 23 November 2021.<sup>11</sup>

## The bill's purpose and provisions

- 1.9 The objects of the bill, as set out in the explanatory note, are to provide for the protection of persons who make public interest disclosures and to provide for making and dealing with the disclosures.<sup>12</sup>
- 1.10 The bill repeals and replaces the *Public Interest Disclosures Act 1994*. In so doing, it:
- defines categories of public interest disclosure
  - specifies conditions under which a disclosure is a voluntary public interest disclosure
  - enables a public official to make a voluntary public interest disclosure to an agency whether or not the agency has jurisdiction to investigate it
  - makes it an offence to take detrimental action against a person based on the suspicion, belief or awareness that a person has made a public interest disclosure
  - protects people who make public interest disclosures from detriment and liability in relation to making the disclosures
  - requires agencies to carry out training in relation to the public interest disclosure scheme
  - specifies how agencies should deal with voluntary public interest disclosures and respond to findings of serious wrongdoing or other misconduct, and

---

<sup>7</sup> *Minutes*, NSW Legislative Council, 14 October 2021, p 2490.

<sup>8</sup> *Hansard*, NSW Legislative Council, 14 October 2021, p 15-18, 31-33 (Don Harwin).

<sup>9</sup> Selection of Bills Committee, NSW Legislative Council, *Report no. 51* (2021), p 2.

<sup>10</sup> *Minutes*, NSW Legislative Council, 19 October 2021, p 2510. *Hansard*, NSW Legislative Council, 19 October 2021, p 7 (Shayne Mallard).

<sup>11</sup> *Minutes*, NSW Legislative Council, 21 October 2021, p 2.

<sup>12</sup> Public Interest Disclosures Bill 2021, Explanatory note, p 1.

- requires agencies to provide the NSW Ombudsman with an annual return about the public interest disclosures they receive.<sup>13</sup>

**1.11** The bill also amends the following other acts to align whistleblower protections under this bill with protections under those acts for voluntary disclosures to integrity agencies:

- *Independent Commission Against Corruption Act 1988* (Schedule 4)
- *Ombudsman Act 1974* (Schedule 5)
- *Law Enforcement Conduct Commission Act 2016* (Schedule 6).<sup>14</sup>

**1.12** In addition, it makes consequential amendments to a number of other pieces of legislation and regulation, including the *Police Act 1990* (Schedules 7 and 8).

---

<sup>13</sup> Public Interest Disclosures Bill 2021, Explanatory note, p 1. See also Submission 1, NSW Ombudsman, Special Report, p 15.

<sup>14</sup> Public Interest Disclosures Bill 2021, Explanatory note, p 2. See also Submission 1, NSW Ombudsman, Special Report, p 15.





## Chapter 2 Key issues

The Public Interest Disclosures Bill 2021 will replace the existing *Public Interest Disclosures Act*, which has been in place since 1994. The new legislation is responding to findings and recommendations of previous parliamentary inquiries. Noting that stakeholders overwhelmingly support the bill as a major improvement on the existing Act, this chapter outlines areas where inquiry participants pointed to possible refinements to this legislation, including the framing of what types of disclosure are covered or excluded by the bill. It considers views on the treatment of disclosures to journalists or members of Parliament, which is the major area where this bill does not reflect the findings of a previous parliamentary committee. Finally, it notes areas for ongoing work and refinement highlighted by members of the Public Interest Disclosures Steering Committee and external stakeholders.

### A new public interest disclosures scheme

- 2.1 This section notes how earlier parliamentary committee recommendations regarding the existing Act are embodied in the bill, and documents the broad and strong support that inquiry participants expressed for the bill in providing a renewed public interest disclosures scheme for New South Wales.

#### Parliamentary committee recommendations to amend the existing Act

- 2.2 As noted in chapter 1, this bill has been brought forward in response to recommendations of two parliamentary inquiries. The Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission (hereafter the 'the Ombudsman-LECC Committee') conducted a review of the *Public Interest Disclosures Act 1994* (hereafter the Act), which reported in October 2017.<sup>15</sup> This review found that overall the public interest disclosures scheme, as amended in 2010, was working well but identified gaps in the legislation that could cause people who made disclosures under the scheme to miss out on protections. The 38 recommendations of that review focused on simplifying the disclosure process, improving remedies for detrimental action, refining reporting requirements and providing clarification to the Act.<sup>16</sup> The committee also recommended that the Act be redrafted to simplify its provisions and structure, while retaining its substance, and that provision be made for a review of any amendments to the Act five years after the amendments commence.<sup>17</sup>
- 2.3 The Joint Committee on the Independent Commission Against Corruption (hereafter 'the ICAC Committee') reported on *Protections for People Who Make Voluntary Disclosure to the Independent*

<sup>15</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, NSW Parliament Report 3/56 – October 2017, *Review of the Public Interest Disclosures Act 1994*.

<sup>16</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, p iv.

<sup>17</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, Recommendations 37 and 38, p x.

*Commission Against Corruption* in November 2017.<sup>18</sup> That report found that current protections for people making disclosures to ICAC are too narrow and unclear in their operation, and that legislated protections should be enhanced, as there is significant public interest in increasing protections for people who make voluntary disclosures to the ICAC. The report made 10 recommendations, including amendments to the ICAC Act and actions to increase protections for people who make voluntary disclosures to ICAC.<sup>19</sup>

- 2.4 Government responses to both committee reports indicated that the government supported making the *Public Interest Disclosures Act* simpler and enhancing protection to people who make public interest disclosures, while protecting the reputation of individuals against defamation. The government responses also indicated the Public Interest Disclosures Steering Committee established under the Act was considering the issues raised in the committees' reports with a view to preparing a new bill reforming the public interest disclosures scheme.

### **Replacing the existing Act**

- 2.5 This bill is a significant re-draft of the existing *Public Interest Disclosures Act*. The NSW Ombudsman informed this committee that the bill addresses many weaknesses of the Act, by being simpler and easier to navigate, expanding permissible recipients of public interest disclosures, providing more comprehensive protections for witnesses and investigators, placing a clearer duty on agencies to deal with disclosures, encouraging a 'speak up culture' and enabling more meaningful data reporting.<sup>20</sup> The Ombudsman's report on the bill detailed that the bill has addressed, in some form, all except one of the recommendations made by the Ombudsman-LECC committee following its review of the Act.<sup>21</sup>
- 2.6 Participants in this inquiry were overall supportive of the bill as an improvement to the previous *Public Interest Disclosures Act 1994*. Representatives of integrity and other public agencies invited to make submissions to this inquiry all indicated support for the bill as it stands, noting that the Public Interest Disclosures Steering Committee oversaw the drafting of the new bill, in a consultative process.<sup>22</sup> In its annual report, the Public Interest Disclosures Steering Committee noted its unanimous welcome for the bill, believing it to be 'a significant enhancement' to whistleblower protections in New South Wales.<sup>23</sup> The NSW Auditor-General, Margaret Crawford, submitted that, 'As a member of the Public Interest Disclosures Steering Committee, I am supportive of the bill passing in its current form. I believe the Bill will help ensure reports

---

<sup>18</sup> Joint Committee on the Independent Commission Against Corruption, NSW Parliament, Report 4/56 – November 2017, *Protections for People Who Make Voluntary Disclosures to the Independent Commission Against Corruption*.

<sup>19</sup> Joint Committee on the Independent Commission Against Corruption, *Protections for People Who Make Voluntary Disclosures to the Independent Commission Against Corruption*, pp v-vi.

<sup>20</sup> Submission 1, NSW Ombudsman, *Special Report by the NSW Ombudsman on the Public Interest Disclosures Bill 2021* ('Special Report'), p 3.

<sup>21</sup> Submission 1, NSW Ombudsman, Special Report, pp 1, 7, 26-27.

<sup>22</sup> For example, Submission 2, Auditor-General of NSW; Submission 3, Information and Privacy Commission NSW.

<sup>23</sup> Submission 1a, NSW Ombudsman, *Public Interest Disclosures Steering Committee's Annual Report*, tabled in the Legislative Council 4 November 2021, p 3.

of wrongdoing are acted on appropriately and that reporters will be supported when they make reports of wrongdoing.<sup>24</sup>

- 2.7** External stakeholders were also broadly supportive of the new bill, while making some suggestions for refinement.<sup>25</sup> The NSW Council for Civil Liberties, NSW Bar Association and Law Society of New South Wales all expressed support for the bill as a vast improvement on the current Act. Professor A J Brown, Professor of Public Policy and Law at Griffith University described the bill as a 'major step change' that creates some historic developments in whistleblower protection laws, taking account of lessons from research.<sup>26</sup>
- 2.8** Notwithstanding their very strong support for the bill as a whole, stakeholders to this inquiry did give evidence of some areas for refining this bill, or considering in future as the law develops. These issues are considered below.

### **Rationale for the bill – guiding principles**

- 2.9** The objectives of the bill are set out in clause 3. Broadly, they are to facilitate disclosure by public officials of serious wrongdoing in the public sector by establishing procedures for such disclosures and providing protection to persons who make them.
- 2.10** The NSW Bar Association suggested the objectives of the bill are much more than mechanical provisions, and, as a matter of legislative drafting practice, should be underpinned by guiding principles stated in the bill.<sup>27</sup> Noting that whistleblowing often carries significant cost for those who make public interest disclosures, the Bar Association suggested that an assurance that honest, good faith disclosures are valued as a way to enhance transparency in government institutions, would provide an important signal to officials aware of wrongdoing. The Bar Association suggested that the guiding principles should be:
- a. The legitimacy of a liberal democracy depends, among other things, on support by the institutions of government and agencies for transparency, appropriate disclosure and accountability in respect of their operations.
  - b. The rule of law is maintained and enhanced in an environment in which institutions of government support transparency, public interest disclosure of serious wrongdoing and accountability of public sector institutions and their agents.
  - c. A culture of honest, good faith public disclosure of suspected serious wrongdoing is to be encouraged and valued.<sup>28</sup>
- 2.11** The NSW Bar association further suggested that, if guiding principles are not inserted in the bill, that clauses 3(a) and (b) be amended to read:

<sup>24</sup> Submission 2, Auditor-General of New South Wales, p 1.

<sup>25</sup> For example, Submission 7, Law Society of NSW; Submission 6, NSW Bar Association; Submission 4, NSW Council for Civil Liberties.

<sup>26</sup> Evidence, Professor A J Brown, Professor of Public Policy and Law, Griffith University and Board Member, Transparency International, 15 November 2021. Note: as the Hansard transcript was not available at time of writing, Hansard page references are not included for evidence cited in this report.

<sup>27</sup> Evidence, Mr Hugh Dillon, Representative, NSW Bar Association, 15 November 2021.

<sup>28</sup> Submission 6, NSW Bar Association, p 2.

- (a) To maintain and protect the integrity of institutions and agencies of government in New South Wales by enhancing transparency, public interest disclosure of serious wrongdoing and accountability of those bodies and their staff.
- (b) To promote a culture in which honest and reasonable public interest disclosures are encouraged and valued.<sup>29</sup>

## Types of disclosures covered by the scheme

**2.12** A concern among several witnesses was that certain types of disclosures would not attract protection as public interest disclosures because they appear to fall outside the definition of 'serious wrongdoing' in clause 13 and/or the 'content of voluntary public interest disclosures' provision in clause 26. This section considers the evidence received by the committee on these provisions.

### Definition of 'serious wrongdoing'

**2.13** Clause 13 of the bill defines 'serious wrongdoing' for the purposes of the Act as: corrupt conduct, a government information contravention, a local government pecuniary interest contravention, serious maladministration, a privacy contravention and/or a serious and substantial waste of money. Schedule 2 provides a definition of 'serious maladministration', which covers conduct 'other than conduct of a trivial nature', that is unlawful, unreasonable, unjust, oppressive or improperly discriminatory, or based on improper motives.<sup>30</sup>

**2.14** In a Special Report to Parliament on the bill that subsequently became the Ombudsman's submission to the committee, the Ombudsman noted that the definition of serious wrongdoing in this bill is narrower than in other jurisdictions. For example, unlike most other Australian jurisdictions, it does not cover conduct that endangers health, safety or the environment. The bill does not cover disclosures about serious clinical issues in health care, nor types of wrongdoing that might be reported to the Environment Protection Agency or SafeWork NSW.<sup>31</sup> In evidence, the Ombudsman said that there were clarifications that could be made in future, but that the need to replace the existing Public Interest Disclosures Act is so pressing that this bill should not be held up for that reason. The Ombudsman indicated the Public Interest Disclosures Steering Committee will provide advice to government on this issue during the twelve months prior to commencement of the bill.<sup>32</sup>

**2.15** The NSW Council for Civil Liberties expressed concern that some types of serious wrongdoing are not included in the bill. It noted that the definition does not explicitly include:

- an alleged crime or breach of the law
- official misconduct
- defective administration, including negligence or incompetence, or

---

<sup>29</sup> Submission 6, NSW Bar Association, p 2.

<sup>30</sup> Public Interest Disclosures Bill 2021, Schedule 2, Dictionary.

<sup>31</sup> Submission 1, NSW Ombudsman, Special Report, pp 66-67.

<sup>32</sup> Evidence, Mr Paul Miller, NSW Ombudsman, 15 November 2021.

- any failure to perform a duty that could result in injury to the public, such as an unacceptable risk to public health, public safety or the environment.<sup>33</sup>

**2.16** Professor Brown noted the Ombudsman's assessment that there is scope for further amendments to explain the meaning and scope of 'serious wrongdoing', particularly with respect to matters covered by the general term of 'serious maladministration'.<sup>34</sup> He suggested it would be desirable to have the definition in one place, to make the bill more intuitive for lay people to interpret, but proposed that this was not a significant problem with the bill. Professor Brown suggested that the term 'serious' used before 'wrongdoing' may be more problematic – potentially raising doubt in the mind of a public official that if something is not 'serious' they may not be protected – but he also said that the bill remains a significant improvement on the existing Act. Professor Brown said he thinks the definition of maladministration in the bill is broad, and would probably include conduct and policy failure that pose a public health and safety or environmental risk, although the wording of the bill itself does not make that explicit. He suggested from a communicative point of view that explicitly including these risks would remove doubt.<sup>35</sup>

### **Threshold for making a disclosure**

**2.17** Clause 26(1) sets a threshold for making a public interest disclosure, stating that a disclosure complies with the bill if the discloser 'honestly, and on reasonable grounds, believes the disclosure shows or tends to show serious wrongdoing.'

**2.18** The NSW Bar Association described clause 26(1) as 'perhaps the most important aspect of the bill', and proposed that it may set too high a threshold for a voluntary public interest disclosure. The Bar Association suggested that while honesty is a basic requirement, a more appropriate test would be 'honesty and good faith' or 'honesty and reasonable grounds to *suspect* serious wrongdoing'.<sup>36</sup> In evidence, Mr Hugh Dillon, representing the Bar Association, noted that *believes* sets a higher threshold than *suspects*: in criminal cases, a person may be searched by the police if they suspect an offence has occurred; the belief an offence has occurred comes later, after seeing evidence.<sup>37</sup>

**2.19** The Bar Association's reasoning for changing the threshold in clause 26(1) was:

- A public official may learn of incomplete information which gives rise to reasonable suspicion, but not have access to the evidence that provides the 'reasonable grounds' basis for the belief that serious wrongdoing has occurred.
- It is in the public interest that reasonable suspicions of serious wrongdoing be disclosed to appropriate public officials and investigated, without the disclosure necessarily becoming public.

<sup>33</sup> Submission 4, NSW Council for Civil Liberties, pp 3-4; Evidence, Ms Michelle Falstein, Secretary, NSW Council for Civil Liberties, 15 November.

<sup>34</sup> Submission 8, Professor Brown, p 2.

<sup>35</sup> Evidence, Professor Brown, 15 November 2021.

<sup>36</sup> Submission 6, NSW Bar Association, p 3.

<sup>37</sup> Evidence, Mr Dillon, NSW Bar Association, 15 November 2021.

- The higher test in this bill for disclosures to MPs and journalists (see below from paragraph 2.35) should protect public officials from honest but inaccurate allegations being made public.<sup>38</sup>

### **Exclusion of disclosures based on disagreement with policy**

**2.20** Clause 26(2) of the bill provides that a disclosure is not a protected disclosure 'to the extent that' the information disclosed relates to a disagreement with a government policy, including decisions on amounts, purposes or priorities of public expenditure, or the policy of the governing body of a local government authority.

**2.21** The NSW Bar Association asserted that clause 26(2) of the bill could have unintended effects. While acknowledging that government policy set by elected persons should be respected by public officials, it suggested that a government policy may constitute 'serious maladministration' or result in 'a serious and substantial waste of public money', especially if implemented solely for party political advantage. The Bar Association suggested that clause 26(2) as currently drafted could in effect protect governments from disclosure of serious and substantial waste of public money if that waste of money could be characterised as conforming with 'a government policy'. The Bar Association further proposed that the drafting of clause 26(2) is not sufficiently clear.<sup>39</sup>

**2.22** The Ombudsman provided the committee with examples of how the exclusion of matters relating to disagreement with government policy is dealt with in other Australian jurisdictions' public interest disclosures legislation.<sup>40</sup> In response to a question about the drafting of clause 26(2), he agreed that the drafting of this section could be clarified to express its intention. On reflection, he proposed the following redrafted wording of clause 26(2):

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.<sup>41</sup>

**2.23** Professor Brown said that the language used in clause 26(2), which states a disclosure is excluded 'to the extent that' it relates to a disagreement with government policy, conveyed to him the intention to only exclude disclosures or parts of disclosures that are purely about a disagreement with policy. However, he also said he was not sure its interpretation legally or by lay people would be as clear, and that if the current wording led to the misinterpretation that if a disagreement with policy is involved then nothing about the disclosure is covered, then that would be a retrograde step.<sup>42</sup> Professor Brown suggested clause 26(2) would be better worded to make it clear that the exclusion of disclosures relating to government policy is intended to relate 'purely' or 'only' to such a disagreement.<sup>43</sup>

---

<sup>38</sup> Submission 6, NSW Bar Association, p 3.

<sup>39</sup> Submission 6, NSW Bar Association, pp 3-4.

<sup>40</sup> Tabled paper, Disagreements with Government Policy, NSW Ombudsman, 15 November 2021.

<sup>41</sup> Submission 1b, NSW Ombudsman, pp 1-2.

<sup>42</sup> Evidence, Professor Brown, 15 November 2021.

<sup>43</sup> Evidence, Professor Brown, 15 November 2015; Submission 8, Professor A J Brown, 15 November 2021.

### Exclusion of disclosures based on 'personal grievance'

- 2.24** With similar wording to that in clause 26(2), clause 26(3) excludes disclosures 'to the extent that' the disclosure arises from grievances relating to an individual's employment or former employment, which do not have significant implications beyond the individual affected, or which relate to a disagreement over reasonable management action.
- 2.25** The NSW Ombudsman was questioned whether this provision could be a problem for whistleblowers, who may find their disclosures termed as a personal 'grievance' by their agency, and face reprisals. In response, Mr Miller said he was less concerned with this possibility because of the wording 'to the extent that' in the clause. Mr Miller noted that this provision would work more clearly than the current Act in recognising that a large number of disclosures may have multiple elements. He said it is clearer in this bill that a disclosure is not covered only 'to the extent that' it relates to a personal workplace matter – other parts of a mixed disclosure would be covered by the bill.<sup>44</sup>
- 2.26** On this issue, Professor Brown noted that the key precedent for dealing with workplace issues is embodied in the Commonwealth *Corporations Act 2001* as amended in 2019. While he suggested the wording of that Act is overly complex, Professor Brown said it was legally clear that if a disclosure is purely about a workplace grievance of that individual it does not attract protections, but if it is broader then it would come under the purview of that Act. Professor Brown suggested that clause 26(3) would be better worded to make it clear that the exclusion is intended to be for grievances that 'only personally affect' that individual, or affect that 'individual alone', along the lines of the *Corporations Act 2001* (Cth) wording.<sup>45</sup>

### Who is covered by the scheme

- 2.27** The Ombudsman-LECC Committee expressed concern that the definition of public official in the current act is too narrow to provide protection to all who should be entitled to it, and noted lack of clarity in some instances, such as regarding treatment of sub-contractors. It recommended the Act be amended to provide protection for people who report wrongdoing but do not meet the definition of 'public official'.<sup>46</sup> There were some questions in this inquiry regarding whether the bill provides sufficient protections for private sector employees contracted to government to make disclosures.

### Definition of 'public official'

- 2.28** Clause 14 of the bill sets out the meaning of 'public official' for the purposes of the public interest disclosure scheme. Clause 14(1) nominates categories of people who would be classed as a public official – this includes, under clause 14(1)(e) and (f), certain contractors and subcontractors providing services to the government. Clause 14(2) provides that a person may be deemed in regulations to be or not to be a public official for the purposes of the Act.

<sup>44</sup> Evidence, Mr Miller, NSW Ombudsman, 15 November 2021.

<sup>45</sup> Evidence, Professor Brown, 15 November 2021; Submission 8, Professor A J Brown, p 2.

<sup>46</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, pp 10-13; Recommendation 10, p 10.

- 2.29** In evidence, the Ombudsman noted that the definition of public official in the bill had expanded to include some staff in private sector organisations, although there are still some ambiguities about when private sector employees are included. He said one of the neat aspects of the bill as drafted is the capacity for people to be brought in and out of the definition of public official by regulation. He noted that one issue to resolve prior to commencement of the new Act is the development of regulations to clarify who from the private sector will be covered by the bill.<sup>47</sup>
- 2.30** Some evidence to this inquiry suggested there may be concerns about the pathways that private sector employees may have to make a public interest disclosure, as their employer may not be set up to appropriately handle a public interest disclosure without reprisal. In response to questions, Ms Michelle Falstein, Secretary of the NSW Council for Civil Liberties, suggested there are not adequate avenues for private sector employees to make a protected disclosure under this bill.<sup>48</sup>
- 2.31** On a related issue, the NSW Bar Association suggested that clause 14 as currently drafted appears not to cover whistleblowers or the subject of a disclosure unless both actors are public officials at the time of the disclosure. It suggested the clause be amended to include persons who fell within the definition of 'public official' at the time the alleged wrongdoing occurred or was identified.<sup>49</sup>

## **Voluntary public interest disclosures to members of Parliament or journalists**

- 2.32** A key area where the bill is not in line with the Ombudsman-LECC Committee's recommendations is the treatment of voluntary public interest disclosures to members of Parliament or journalists. The Ombudsman-LECC Committee recommended that the *Public Interest Disclosures Act 1994* be amended to provide that a public official must have an honest belief on reasonable grounds that they have information that shows wrongdoing covered by the Act, and to omit the requirement that the disclosure be 'substantially true'.<sup>50</sup>
- 2.33** Clause 28 of the bill deals with disclosures made to journalists or members of Parliament. In the bill as drafted, a disclosure made to a member of Parliament or a journalist will be protected as a public interest disclosure only if, in addition to complying with other requirements in the bill, the disclosure is 'substantially true', had previously been made (and not anonymously) to a relevant public agency, and was not adequately investigated within a certain time period.<sup>51</sup>
- 2.34** Several participants in this inquiry expressed concern about the handling of external disclosures in this bill. Representing media organisations, Australia's Right to Know (ARTK) expressed disappointment that the bill does not address concerns raised to previous inquiries about limited opportunities to make public disclosures of malfeasance in the NSW government. ARTK asserted that the bill 'continues to restrict disclosures to the public via the media, leaving the

---

<sup>47</sup> Evidence, Mr Miller, NSW Ombudsman, 15 November 2021.

<sup>48</sup> Evidence, Ms Falstein, 15 November 2021.

<sup>49</sup> Submission 6, NSW Bar Association, p 2.

<sup>50</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, Recommendation 11, p 13.

<sup>51</sup> Public Interest Disclosures Bill 2021, cl 28(1).



public in the dark about what's really going on within the NSW government including but not limited to potential corruption and maladministration'.<sup>52</sup>

### **Requirement for a disclosure to be 'substantially true'**

**2.35** The Ombudsman-LECC Committee's review of the *Public Interest Disclosures Act 1994* noted that disclosures to the media or members of Parliament are a valuable part of the public interest disclosure regime, and a requirement for the disclosure to be 'substantially true', which is a higher requirement than for disclosure to public authorities, may discourage such external disclosures after internal processes have failed.<sup>53</sup>

**2.36** Clause 28(1)(a) of the bill sets the requirement for a disclosure to be 'substantially true' for it to be protected as a voluntary public interest disclosure. The Minister's second reading speech noted that clause 28 of the bill removes a requirement in the previous Act that the public official 'has reasonable grounds for believing that the disclosure is substantially true', but maintains a requirement that the disclosure is in fact substantially true.<sup>54</sup> The Minister gave the following reasoning for requiring a disclosure to be 'substantially true' to warrant protection as a public interest disclosure under the bill:

- In contrast with some other jurisdictions, New South Wales has a 'comprehensive array' of integrity agencies able to investigate wrongdoing, and the bill is designed to facilitate disclosure to those agencies, ensuring it is dealt with in the executive arm of government.
- The ability to disclose to a journalist or MP is a safety net that should be used in 'the very rare circumstance' where integrity agencies have failed to deal with proven misconduct.
- Public disclosure of some allegations may damage reputations unjustifiably, if allegations are subsequently found to be inaccurate.
- In the event that a public official decides a disclosure has not been adequately addressed within government, it is an appropriate safeguard to require the disclosure to be true before conferring protections on a person disclosing something that may be confidential or defamatory outside the executive arm of government.<sup>55</sup>

**2.37** Several stakeholders expressed concern with the requirement that disclosures to journalists be 'substantially true', pointing out that it could be difficult for a discloser to prove that wrongdoing had in fact occurred, considering it was not their place to investigate the wrongdoing.<sup>56</sup> NSW Council for Civil Liberties' submission suggested that if disclosure channels are differentiated in any manner, the disclosure process should not be onerous and must allow disclosures based on reasonable suspicion, such as in the UK *Public Interest Disclosure Act*. It expressed support for the LECC-Ombudsman Committee's recommendation to remove this threshold, and ensure a

<sup>52</sup> Submission 8, Australia's Right to Know coalition of media organisations, p 1.

<sup>53</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, pp 14-15.

<sup>54</sup> *Hansard*, NSW Legislative Council, 14 October 2021, p 18 (Don Harwin).

<sup>55</sup> *Hansard*, NSW Legislative Council, 14 October 2021, p 18 (Don Harwin).

<sup>56</sup> For example, Submission 4, NSW Council for Civil Liberties, p 5; Submission 5, Australia's Right to Know, pp 1-2.

disclosure to the media or an MP is protected provided the person making the disclosure believes honestly, on reasonable grounds, that their disclosure indicates serious wrongdoing.<sup>57</sup>

**2.38** The Ombudsman's Special Report examined the bill's treatment of disclosures to journalists and MPs in some detail.<sup>58</sup> With respect to the requirement to that an external disclosure be 'substantially true', the Ombudsman noted that:

- There is no case law in New South Wales on what 'substantially true' means in this context, but the Crown Solicitor's Office has advised that the public official would need to prove that the wrongdoing referred to in their disclosure has in fact occurred.
- The requirement for an external disclosure to be 'substantially true' to qualify as a public interest disclosure represents a 'significant hurdle' to public officials gaining whistleblower protections if they make disclosures to the media.<sup>59</sup>

**2.39** In evidence, the Ombudsman told this committee that the Ombudsman's position has consistently been that the 'substantially true' threshold is too high, and should be amended, but that the government has maintained a different view. Nevertheless, Mr Miller suggested, given the significantly positive reforms in this bill, it would be unfortunate to delay it due to the impasse on this issue.<sup>60</sup>

**2.40** Professor Brown submitted that it is 'highly regrettable' that the circumstances for a public disclosure to be protected continue to include the requirement for the disclosure to be 'substantially true' – querying what substantially true actually means.<sup>61</sup> In evidence, he noted that it would be very difficult, if not impossible in some circumstances for a whistleblower to show that a disclosure is substantially true.<sup>62</sup> He further noted that there is no 'best practice' in Australia in this area currently, and that it is a matter that has been subject to significant public debate.<sup>63</sup> He suggested the issue should remain under consideration by the Public Interest Disclosures Steering Committee and by Parliament, with a view to further reform.

### **Requirement to have made the disclosure to an executive agency**

**2.41** Clause 28(1) of the bill provides that, for a disclosure to a journalist or MP to qualify for protection as a public interest disclosure, it must first have been made internally or to an integrity agency (clause 28(1)(b)), and that the previous disclosure was not made anonymously (clause 28(1)(c)).<sup>64</sup> In addition, the maker of the previous disclosure must not have received notice in a specified timeframe on how the disclosure was dealt with, or received notification of a decision not to deal with or to cease dealing with the disclosure (clause 28(1)(e)).<sup>65</sup>

---

<sup>57</sup> Submission 4, NSW Council for Civil Liberties, p 5.

<sup>58</sup> See Submission 1, NSW Ombudsman, Special Report, Annexure D, pp 58-63.

<sup>59</sup> Submission 1, NSW Ombudsman, Special Report, Annexure D, p 58.

<sup>60</sup> Evidence, Mr Miller, 15 November 2021.

<sup>61</sup> Submission 8, Professor A J Brown, p 2.

<sup>62</sup> Evidence, Professor Brown, 15 November 2021.

<sup>63</sup> Evidence, Professor Brown, 15 November 2021.

<sup>64</sup> Public Interest Disclosure Bill 2021, cl 28(b).

<sup>65</sup> Public Interest Disclosure Bill 2021, cl 28(e).

- 2.42 The Ombudsman-LECC Committee supported the requirement for a disclosure to have first been made internally or a relevant investigating agency. That committee noted the then NSW Ombudsman's evidence that:
- While external disclosures are a vital accountability mechanism, public authorities should retain a primary role in dealing with matters relating to the conduct of their staff.
  - External disclosures in the first instance could undermine confidentiality, lead to a higher risk of reprisals against the person making a disclosure and/or unreasonably damage the reputations of people against whom allegations are made.
  - The role of investigating authorities in the New South Wales public interest disclosures scheme means that there is an alternative reporting avenue for people fearing reprisals in their own organisation.<sup>66</sup>
- 2.43 ARTK, a coalition of media organisations, expressed concern that a protected disclosure may only be made to the media in very narrow circumstances after an internal disclosure process. It particularly highlighted that clause 28(c), which prohibits disclosures made anonymously from being made public via the media, is a new provision not in the current Act. It described insertion of this clause as 'an unnecessary extension of an already restrictive regime for public disclosures of malfeasance in the NSW government'.<sup>67</sup>
- 2.44 Ms Falstein of the NSW Council for Civil Liberties suggested in evidence that due to gaps in other parts of the bill, there are certain types of wrongdoing for which disclosers might not attract protection, and hence the discloser would have no pathway except to journalists or MPs to make the disclosure. She proposed there may also be circumstances in which an agency tries to cover up a complaint without proper investigation, and the high threshold for making an external disclosure may preclude such instances from being exposed.<sup>68</sup>
- 2.45 The Bar Association seemed to support a higher threshold for disclosures to MPs and journalists, noting that this is a protection against 'honest but baseless' allegations about public officials being made public.<sup>69</sup> In evidence, Mr Dillon noted the Bar Association's position that it is appropriate for disclosures to be first made internally, so that agencies can operate with reasonable confidence in their internal processes. He also noted that if agencies attempt to cover up wrongdoing, then it is appropriate that people be able to go to the press and reveal what they believe is happening.<sup>70</sup>

### **Time frame to reach the threshold to make an external disclosure**

- 2.46 The Ombudsman's Special Report highlighted a drafting change in the bill compared with section 19 of the existing Act. According to that report, section 19 of the current Act is problematic because a person making a disclosure may not know what the agency decided with

<sup>66</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, p 14.

<sup>67</sup> Submission 5, Australia's Right to Know coalition of media organisations, pp 1-2.

<sup>68</sup> Evidence, Ms Falstein, 15 November 2021.

<sup>69</sup> Submission 6, NSW Bar Association, p 3.

<sup>70</sup> Evidence, Mr Dillon, 15 November 2021.

regard to their internal disclosure, thus would not necessarily know whether the threshold for them to make an external disclosure had been triggered.<sup>71</sup>

- 2.47 According to the Ombudsman, the new clause 28 is a significant improvement, because it bases the threshold on the time that an agency notifies the person who made the disclosure of their actions in relation to the disclosure.<sup>72</sup> However, the Ombudsman also noted that this could cause a new problem, if an agency told a discloser that a proper investigation had been undertaken and this was not in fact the case. While that could lead to grounds for a new public interest disclosure, it could also mean having to wait another six months before the disclosure could be made externally. Although noting this scenario may seem unlikely, the Ombudsman proposed new drafting of section 28 that would potentially address this issue.<sup>73</sup>

### **Ombudsman's suggested redrafting of section 28**

- 2.48 As noted above, the Ombudsman put on record his concern that the current threshold of 'substantially true' before an external disclosure would qualify as a public interest disclosure is too onerous, and may put public officials seeking to make disclosures that are genuinely in the public interest at risk.<sup>74</sup>
- 2.49 Respecting the government's reservations about removing the 'substantially true' threshold entirely, the Ombudsman suggested an alternative approach, which would retain the 'substantially true' threshold, but only where allegations had been tested through an investigation and found not to be substantiated. For other cases, the threshold would be the same as in clause 26(1), that is, that the person making the disclosure 'honestly, and on reasonable grounds believes' that the disclosure shows serious wrongdoing. Detailed suggestions for alternative drafting of section 28 are in the Ombudsman's Special Report.<sup>75</sup>

### **Protection from detrimental action**

- 2.50 Protection of the person making a disclosure from detrimental action is a key part of a public interest disclosures regime. Chapter 3 of the Ombudsman-LECC Committee report focused on detrimental action, and made several recommendations for amendments to the existing *Public Interest Disclosures Act* to enhance such protections for whistleblowers.<sup>76</sup> Part 3 of the bill sets out measures to protect persons who make public interest disclosures from detriment and liability.

---

<sup>71</sup> Submission 1, NSW Ombudsman, Special Report, Annexure D, p 59.

<sup>72</sup> Evidence, Mr Miller, 15 November 2021, see also Submission 1, NSW Ombudsman, Special Report, Annexure D, p 59.

<sup>73</sup> Submission 1, NSW Ombudsman, Special Report, Annexure D, pp 59, 62-3.

<sup>74</sup> Submission 1, NSW Ombudsman, Special Report, Annexure D, p 61.

<sup>75</sup> Submission 1, NSW Ombudsman, Special Report, Annexure D, pp 62-3.

<sup>76</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, pp 20-30, recommendations 15-23.

### Agency responsibilities

- 2.51** The Ombudsman-LECC Committee highlighted a need to clarify the responsibility of agencies to afford protection to disclosers from detrimental action. Its recommendations included making the head of public authorities responsible for having procedures to assess risk of detrimental action and notifying the Ombudsman when allegations of detrimental action are made, while allowing for reasonable management action not related to suspicion the person had made a disclosure.<sup>77</sup>
- 2.52** The Ombudsman's report assessed that the bill has broadly implemented the committee's recommendations to clarify the responsibility of agency heads, including that:
- clause 6(2) provides that an agency head is responsible for ensuring that agency's compliance with the Act and its PID policy
  - clause 43 provides that a PID policy must specify the agency's procedures for assessing and minimising risk of detrimental action
  - clause 61 provides that a responsible agency must take steps to assess and minimise risk of detrimental action against a discloser, and clause 62 deals with agency liability for injury, damage or loss incurred through an agency's failure to do so.<sup>78</sup>
- 2.53** Professor Brown described clauses 61 to 62, supporting clause 43, as a 'world-first achievement' in explicitly creating a basis for liability along with remedies where damage results from an agency's failure to assess and take reasonable steps to minimise risk of detriment to a whistleblower.<sup>79</sup> In evidence to the committee, Professor Brown said the bill is a historic document in its recognition that employers should be liable for damage suffered by whistleblowers when there has been a failure to assess risk of reprisals to whistleblowers, who often suffer a range of collateral damage such as stress or ostracism.<sup>80</sup>

### Remedies for detrimental action

- 2.54** The Ombudsman-LECC Committee report made a number of recommendations relating to remedies for detrimental action. Among them were:
- removing restrictions on what damages a public official can claim as a result of detrimental action
  - providing that disclosers will not be liable for costs, unless proceedings are vexatious
  - lowering the threshold for seeking a remedy for detrimental action
  - clarifying the orders courts can make when granting an injunction.<sup>81</sup>

<sup>77</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, Recommendations 15 – 18.

<sup>78</sup> Submission 1, NSW Ombudsman, Special Report, p 29.

<sup>79</sup> Submission 8, Professor Brown, p 1.

<sup>80</sup> Evidence, Professor Brown, 15 November 2021.

<sup>81</sup> Joint Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission, *Review of the Public Interest Disclosures Act 1994*, Recommendations 19-23, pp 25-30.

**2.55** Clauses 32 to 38 of this bill deal with definition, creation of an offence, and remedies for detrimental action. The Ombudsman's report highlighted the following sections as implementing the Ombudsman-LECC Committee's recommendations:

- Clause 35 of the bill provides that a person who takes detrimental action against another person is liable in damages for injury, damage or loss suffered, provided certain conditions are met, and clause 36(6) explicitly includes exemplary damages.
- Clause 36 deals with employer liability for detrimental action by an employee.
- Clause 62 provides that a person who suffers injury, damage or loss as a result of an agency's failure to comply with risk management obligations may recover damages, including exemplary damages.<sup>82</sup>
- Clause 38 provides that a person instituting proceedings for detrimental action is not liable to pay costs incurred by another party unless the proceedings were vexatious or the costs caused by an unreasonable act or omission.<sup>83</sup>
- Clause 33(1) of the bill implements the recommendation to lower the threshold for seeking a remedy to detrimental action. This clause provides that a person must not take detrimental action against another person if that person suspects, believes or is aware that the other person has made a public interest disclosure, and that the suspicion, belief or awareness is a 'contributing factor' to the detrimental action.<sup>84</sup>

**2.56** In evidence to this inquiry, Professor Brown welcomed improvements to whistleblower protections in clauses 32 to 36, in particular in changes to the scope of detriment, grounds for relief and onus of proof. He said these provisions make a number of important improvements to the ability of whistleblowers to achieve remedies.<sup>85</sup>

**2.57** However, Professor Brown cautioned that in general the provisions continue to be framed with the effect that the criminal offence of causing detriment (clause 33) is likely to overshadow and complicate the effectiveness of civil remedies and relief, as outlined in clause 35. According to Professor Brown, this is because the constituent elements remain more aligned with active, deliberate or knowing reprisals rather than with individual negligent omissions, such as 'turning a blind eye' to reprisals or damage caused by individual failures of duty. He suggested that there is an issue with the framing of 'detrimental conduct', which should include detrimental omissions, and having the primary remedy as criminal, which may restrict the way civil offences are framed. As an alternative, Professor Brown suggested creating a legislated positive duty to protect whistleblowers. Any failures to adhere to this could then trigger an action for damages, with an easier burden for whistleblowers to discharge than is provided for in the current drafting. Further, Professor Brown suggested these provisions should remain under scrutiny by the Public Interest Disclosures Steering Committee with a view to future law reform as more experience emerges.<sup>86</sup>

---

<sup>82</sup> Submission 1, NSW Ombudsman, Special Report, pp 30-1.

<sup>83</sup> Submission 1, NSW Ombudsman, Special Report, pp 31.

<sup>84</sup> Submission 1, NSW Ombudsman, Special Report, p 31.

<sup>85</sup> Submission 8, Professor A J Brown, p 1, and evidence, Professor Brown, 15 November 2021.

<sup>86</sup> Submission 8, Professor A J Brown, p 1, and evidence, Professor Brown, 15 November 2021.

- 2.58** Professor Brown further suggested that clause 43(1) has a notable omission in that it requires agencies to have procedures for dealing with allegations of 'offences' of detrimental action, but not procedures for remedying actual detriment (whether caused through offences or through other non-criminal acts or omissions).<sup>87</sup>

## Preparation for commencement

- 2.59** There was some discussion during the inquiry regarding the preparations for commencement of the legislation, and related to this, the provision of necessary resources to the NSW Ombudsman, which carries responsibility for implementation.

### Preparation required to implement the new legislation

- 2.60** The Ombudsman's Special Report on the bill noted that significant work will be required for all public sector agencies, statutory bodies and local councils, as well as contracted service providers who will be affected by this legislation, to prepare for implementation. There is a need for detailed regulation and guidance to be developed, and organisations will have to develop and implement new policies. There will be a need for training and awareness raising for managers and staff across all NSW government and related agencies.<sup>88</sup> For this reason, the Ombudsman said he supports the longer period – of up to eighteen months from date of assent – before commencement, which is allowed under clause 2 of the bill.<sup>89</sup>
- 2.61** The Ombudsman also noted that, while in this preparation phase, the old *Public Interest Disclosures Act* will continue to operate, meaning there may be some confusion as agencies prepare new policies, while continuing to be subject to the current Act.<sup>90</sup>

### Resourcing requirements

- 2.62** The Ombudsman highlighted a need for additional resources for the Ombudsman's office to undertake the work needed to prepare for commencement of the bill's provisions, and to establish the enhanced oversight functions that it will take on once the legislation is operational. It also noted there will be resource implications for other agencies, as they will need to develop new policies and templates and train all managers on their new responsibilities under the legislation.<sup>91</sup>
- 2.63** External stakeholders supported the Ombudsman's calls for adequate funding to implement and oversee this legislation. The Law Society of New South Wales and NSW Council for Civil Liberties both noted the important functions assigned to the Ombudsman under this bill, and called for the Ombudsman's office to be sufficiently resourced or risk overburdening an already

<sup>87</sup> Submission 8, Professor A J Brown, p 1.

<sup>88</sup> Submission 1, NSW Ombudsman, Special Report, p 2.

<sup>89</sup> Submission 1, NSW Ombudsman, Special Report, p 4. Clause 2 of the bill provides that the Act will commence either 18 months after date of assent, or on an earlier date appointed by proclamation.

<sup>90</sup> Submission 1, NSW Ombudsman, Special Report, p 14.

<sup>91</sup> Submission 1, NSW Ombudsman, Special Report, p 13.

stretched integrity system.<sup>92</sup> Professor Brown likewise noted that a challenge of effective whistleblower protection is that such legislation is not self-enforcing, and resources are required for effective implementation.<sup>93</sup>

## Future areas for improvement

**2.64** The Ombudsman's Special Report identified a number of areas where the Public Interest Disclosures Steering Committee considered the bill has not fully addressed gaps or ambiguities in the existing legislation. Specific areas where further consideration may be needed include:

- the definition of 'serious wrongdoing' under the bill, and whether it should be expanded to include additional categories, or be otherwise simplified
- the definition of 'maladministration' under the bill, and whether it should be expanded to include other workplace wrongdoing
- the definition of 'public official' under the bill, and whether it deals appropriately with contracted-out services.<sup>94</sup>

**2.65** As reflected above, many of these issues were raised in evidence to the committee by stakeholders with concerns about what types of disclosures would be covered under the bill, and whether it deals adequately with private sector employees working for government.

**2.66** The Ombudsman's Special Report indicates that the Public Interest Disclosures Steering Committee does not believe consideration of these issues should hold up the passage, commencement or implementation of the bill. It notes the Ombudsman's intention that the Steering Committee given them further consideration and report their advice to the government at a future date.<sup>95</sup>

**2.67** Witnesses to this inquiry highlighted the importance of future review of this legislation, to refine issues that may not be able to be immediately dealt with in this bill. Mr Dillon from the NSW Bar Association suggested that once in operation the Act will be subject to further refinements.<sup>96</sup> Similarly, Professor Brown noted the importance of continuous monitoring of the legislation effectiveness, and further improvements as necessary.<sup>97</sup>

## Committee comment

**2.68** Effective protections for whistleblowers are fundamental to transparent and accountable government. While New South Wales was a leader in establishing protections for those who make public interest disclosures when the present legislative arrangements were put in place in 1994, previous parliamentary inquiries have clearly shown that the existing Act, as amended over the years, had significant gaps leaving people who make public interest disclosures

---

<sup>92</sup> Submission 7, Law Society of NSW, pp 1-2. Submission 4, NSW Council for Civil Liberties, p 6.

<sup>93</sup> Submission 8, Professor A J Brown, p 1.

<sup>94</sup> Submission 1, NSW Ombudsman, Special Report, pp 66-70.

<sup>95</sup> Submission 1, NSW Ombudsman, Special Report, p 66.

<sup>96</sup> Evidence, Mr Dillon, 15 November 2021.

<sup>97</sup> Evidence, Professor Brown, 15 November 2021.



potentially unprotected due to a technicality. The current regime is also overly technical and complex, and a new bill that is easier to navigate and understand for all in the public sector is a welcome development.

- 2.69** This committee welcomes the Public Interest Disclosures Bill 2021 as a significant step forward. It appreciates that the bill addresses many of the issues raised in previous parliamentary inquiries, and notes the finding of the NSW Ombudsman that the bill has implemented the findings of the Ombudsman-LECC and ICAC Committees' reports in all but one crucial aspect.
- 2.70** The main ongoing concern arising from the Ombudsman-LECC committee's review, which has not been addressed in the bill, is the treatment of disclosures to members of Parliament and journalists. This committee is disappointed the government has not accepted the evidence of stakeholders nor the findings of the Ombudsman-LECC Committee that the threshold for making a public interest disclosure to a journalist or MP is too high. We are concerned that the requirement that disclosures to MPs or journalists be 'substantially true' to qualify for protection is too onerous, placing too high a burden of proof on the discloser. We are also concerned about the new requirement that previous internal disclosures not be anonymous, requiring a potential discloser to 'out themselves' internally before making an external disclosure. In the view of the committee and a number of inquiry participants, both these requirements could discourage important public disclosures of wrongdoing. We suggest this aspect of the bill be re-examined in future, even if there is no scope to amend the current bill.
- 2.71** There are a number of areas where evidence to this committee suggests there is room to refine the drafting of the bill, to clarify its intent. In particular, the committee notes that the wording in clauses 26(2) and 26(3) could be clarified to ensure that disclosures are excluded if they 'only' relate to disagreement with a government policy or an individual employment grievance. The NSW Ombudsman has provided an example of how clause 26(2) may be redrafted.
- 2.72** The committee notes the calls from the Ombudsman and other stakeholders to ensure the implementation of this bill be adequately resourced. For this new scheme to be effective, public agencies will need to develop new policies and to train staff and managers in their new responsibilities. It is essential that the Ombudsman be provided with the resources required to lead this change across the public sector, as well as to undertake its enhanced monitoring and oversight responsibilities under the proposed legislation.
- 2.73** Based on the evidence we have received, the committee also considers there are issues that will need to be reviewed and possibly refined in future, in particular with regard to whistleblowers' access to remedies for detrimental action, as well as the issues identified above. We encourage the government to ensure that ongoing oversight of the legislation is resourced, and that reviews of the legislation are able to address issues that arise based on evidence of how the scheme is functioning.
- 2.74** Overall, like the numerous stakeholders who have contributed to this inquiry, the committee considers this bill an important improvement to the existing public interest disclosures scheme. We recommend that the Legislative Council proceed to debate it, addressing concerns identified by inquiry participants during debate in the House.

---

**Recommendation 1**

That the Legislative Council proceed to debate the Public Interest Disclosures Bill 2021, and that the concerns identified by stakeholders as set out in this report be addressed during debate in the House.

---

## Appendix 1 Submissions

<b>No.</b>	<b>Author</b>
1	NSW Ombudsman
1a	NSW Ombudsman
1b	NSW Ombudsman
2	Auditor-General of New South Wales
3	Information and Privacy Commission NSW
4	NSW Council for Civil Liberties
5	Australia's Right to Know coalition of media organisations
6	NSW Bar Association
7	The Law Society of New South Wales
8	Professor A J Brown

## Appendix 2 Witnesses at hearing

---

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Monday, 15 November 2021</b>	Mr Paul Miller	NSW Ombudsman
<b>Macquarie Room</b>	Ms Helen Wodak	Acting Deputy Ombudsman
<b>Parliament House, Sydney</b>	<i>(via videoconference)</i>	
	Ms Michelle Falstein	Secretary, NSW Council for Civil Liberties
	Professor A J Brown	Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University, and Board Member, Transparency International Australia
	<i>(via videoconference)</i>	
	Mr Hugh Dillon	Representative, NSW Bar Association

---

## Appendix 3 Minutes

### Minutes no. 45

Thursday 21 October 2021

Portfolio Committee No. 1 – Premier and Finance

Members' Lounge, Parliament House, Sydney at 1.40 pm

#### 1. Members present

Ms Moriarty, *Chair*

Ms Boyd

Mr Franklin

Mr Martin

Mr Searle (*substituting for Ms Sharpe for the duration of the inquiry into the Public Interest Disclosures Bill 2021*)

#### 2. Apologies

Mr Borsak

Mr Poulos

#### 3. Correspondence

##### *Received*

- 20 October 2021 – Email from the office of the Opposition Whip advising that Hon Adam Searle MLC will substitute for Hon Penny Sharpe MLC for the duration of the inquiry into the Public Interest Disclosures Bill 2021.

#### 4. Inquiry into the Public Interest Disclosures Bill 2021

##### 4.1 Terms of reference

The committee noted the referral on 19 October 2021 of the following terms of reference:

That:

- the Public Interest Disclosures Bill 2021 be referred to Portfolio Committee No. 1 – Premier and Finance for inquiry and report,
- the bill be referred to the committee at the conclusion of the mover's second reading speech,
- the resumption of the second reading debate on the bill not proceed until the tabling of the committee report,
- the committee report by 15 November 2021.

The committee further noted that on 21 October 2021 the House extended the reporting date to Tuesday 23 November 2021.

##### 4.2 Transcript

The committee noted Hansard's advice that within the context of the sittings of the Houses, Budget Estimates and technological limitations, a transcript cannot be provided until sometime in December.

##### 4.3 Proposed timeline

Resolved, on the motion of Mr Franklin: That the committee adopt the following timeline for the conduct of the inquiry:

- Friday 5 November 2021 – submissions close
- Monday 15 November 2021 – half day hearing (afternoon)
- Friday 19 November 2021 – circulate Chair's draft report
- Monday 22 November 2021 – report deliberative (8.30 am start)

- Tuesday 23 November 2021 – report tabling.

The committee noted that the report will be written primarily on the basis of submissions received, but that the secretariat will take notes in the hearing and add comments as possible to the report.

#### **4.4 Stakeholder and witness list**

The committee noted that due to the tight timeframe of the inquiry and the specific issues under review, the inquiry will not be open to public submissions. Rather, submissions will be sought from members of the Public Interest Disclosures Steering Committee and certain additional stakeholders.

Resolved, on the motion of Mr Searle: That the following nominated stakeholders be invited to make a submission to the inquiry and/or indicate their interest in giving evidence at the hearing on Monday 15 November 2021, and that the witnesses be determined by the Chair in consultation with the committee via email after submissions close on 5 November 2021:

- The Ombudsman
- The Secretary of the Department of Premier and Cabinet
- The Auditor General
- The Chief Commissioner of the Independent Commission Against Corruption
- The Chief Commissioner of the Law Enforcement Conduct Commission
- The Chief Executive of the Office of Local Government
- The Police Commissioner
- The Information Commissioner
- The Public Service Commissioner
- NSW Council for Civil Liberties
- Transparency International Australia
- Joint Media Organisations
- NSW Bar Association
- Law Society of New South Wales
- Professor AJ Brown, Centre for Governance and Public Policy, Griffith University.

#### **4.5 Post hearing responses**

The committee noted that there is insufficient time for stakeholders to provide answers to questions on notice or supplementary questions.

#### **4.6 Online questionnaire and proformas**

The committee noted that due to the extremely short timeframe for this inquiry, public input via an online questionnaire will not be sought, nor proformas accepted.

### **5. Adjournment**

The committee adjourned at 1.45 until 9 Wednesday 27 October 2021, 9.30 am (Budget Estimates hearing).

Merrin Thompson  
**Committee Clerk**

**Minutes no. 52**

Monday 15 November 2021

Portfolio Committee No. 1 – Premier and Finance

Macquarie Room, Parliament House, Sydney at 2.20 pm

**1. Members present**

Ms Moriarty (from 4.30 pm)

Ms Boyd (from 2.25 pm)

Mr Khan (*substituting for Mr Franklin for the duration of the inquiry into the Public Interest Disclosures Bill 2021*)

Mr Martin

Mr Poulos

Mr Searle

**2. Apologies**

Mr Borsak

**3. Election of acting Chair**

The Clerk noted the absence of both the Chair and Deputy Chair from the meeting.

The Clerk called for nominations for a member to act as Chair for the purpose of the meeting.

Mr Khan moved: That Mr Searle be elected acting Chair of the Committee for the purpose of the meeting.

There being no further nominations, the Clerk declared Mr Searle acting Chair.

Mr Searle took the Chair.

**4. Draft minutes**

Resolved, on the motion of Mr Martin: That draft minutes no. 45 be confirmed.

**5. Correspondence**

Committee noted the following items of correspondence:

***Received***

- 11 October 2021 – Email from Ms Jodie Miller to the Committee, requesting that her submission to the General Purpose Standing Committee's inquiry into bullying in WorkCover NSW be removed from the inquiry website
- 20 October 2021 – Email from the office of the Opposition Whip to the Chair advising that Hon Adam Searle MLC will substitute for Hon Penny Sharpe MLC for the duration of the inquiry into the Public Interest Disclosures Bill 2021
- 21 October 2021 – Email from the Office of the Hon Victor Dominello MP, Minister for Digital and Minister for Customer Service, clarifying evidence given by Mr Greg Wells, NSW Government Information and Digital Officer, Department of Customer Service, at a hearing on 3 February 2021 for the inquiry into cybersecurity
- 21 October 2021 – Email from Ms Shani Murphy, Whip's Adviser, Office of the Hon Shayne Mallard MLC to the Chair, advising that the Hon Trevor Khan MLC will be substituting for the Hon Ben Franklin MLC for the duration of the inquiry
- 21 October 2021 – Email from A J Brown, Professor of Public Policy & Law Program Leader, Public Integrity & Anti-Corruption to the Secretariat, requesting to appear at the committee hearing virtually
- 21 October 2021 – Email from Ms Kate Smithers, Executive Strategy Officer, NSW Ombudsman to the secretariat, advising that the NSW Ombudsman tabled a report about the Public Interest Disclosures Bill in Parliament on 19 October 2021

- 28 October 2021 – Letter from Ms Kathrina Lo, Public Service Commissioner, advising that the Public Interest Disclosures Steering Committee supports the bill in its present form, and declining the invitation to make a submission or give evidence at a public hearing
- 3 November 2021 – Letter from Mr Roy Waldron, Solicitor to the Commission, Independent Commission Against Corruption, advising that the Commission supports the bill being passed in its present form and will not make a submission to the Public Interest Disclosures Bill inquiry
- 5 November 2021 – Email from Ms Jessica Friendship, Law Enforcement Conduct Commission, to the secretariat, advising that the Commission will not be making a submission to the Public Interest Disclosures Bill inquiry
- 10 November 2021 – Letter from Ms Ally Dench, Executive Director Local Government, Office of Local Government, advising that OLG will not be making a submission to the Public Interest Disclosures Bill inquiry
- 10 November 2021 – Email from Ms Vicky Kuek, Principal Lawyer, Policy and Practice, Law Society of NSW to the secretariat advising that the Law Society does not have substantive matters to raise beyond what is in its written submission to the Public Interest Disclosures Bill inquiry.

Resolved, on the motion of Mr Khan: That the committee:

- publish the correspondence from the Minister for Digital and Minister for Customer Services, dated 21 October 2021
- insert a footnote on page 26 of the transcript from 3 February 2021 for the Inquiry into cybersecurity to clarify the evidence given by Mr Greg Wells, NSW Government Information and Digital Officer, Department of Customer Service in relation to the minimum level of maturity the Department has mandated in implementing the Cyber Security Policy.

Resolved, on the motion of Mr Khan: That the committee agree to the request of Ms Jodie Miller, received 11 October 2021, that her submission to the General Purpose Standing Committee's inquiry into bullying in WorkCover NSW be removed from the inquiry website.

## **6. Inquiry into the Public Interest Disclosures Bill 2021**

### **6.1 Public submissions**

The following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-7 and 1a.

### **6.2 Questions on notice and supplementary questions**

Resolved, on the motion of Mr Khan: That there be no questions taken on notice at the public hearing or supplementary questions from members.

### **6.3 No transcript**

The Committee noted that Hansard has advised that within the context of the sittings of the Houses, Budget Estimates and technological limitations, a transcript cannot be provided in time for the report. The report will be written primarily on the basis of submissions received, but the secretariat will take notes in the hearing and will add comments as possible to the report.

### **6.4 Public hearing**

Witnesses, the public and the media were admitted.

The acting Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Paul Miller, NSW Ombudsman
- Ms Helen Wodak, Acting Deputy Ombudsman.

Mr Miller tendered the following document:

- 'Disagreements with Government policy'



Mr Searle tabled the following document:

- '11. Best-practice whistleblowing legislation for the public sector: the key principles', A J Brown, Paul Latimer, John MacMillan and Chris Wheeler.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Michelle Falstein, Secretary, NSW Council for Civil Liberties.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Professor A J Brown, Professor of Public Policy and Law, Centre for Governance and Public Policy, Griffith University, and Board Member, Transparency International Australia (via videoconference).

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Hugh Dillon, Representative, NSW Bar Association.

The evidence concluded and the witness withdrew.

The public hearing concluded at 4.40 pm. The public and the media withdrew.

#### **6.5 Tendered documents**

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents, tendered during the public hearing:

- 'Disagreements with Government policy', tendered by Mr Miller
- '11. Best-practice whistleblowing legislation for the public sector: the key principles', A J Brown, Paul Latimer, John MacMillan and Chris Wheeler, tabled by Mr Searle.

#### **6.6 Public submission**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of submission no. 8.

### **7. Adjournment**

The committee adjourned at 4.43 pm until 22 November 2021, 8.30 am (report deliberative, inquiry into the Public Interest Disclosures Bill 2021).

Merrin Thompson  
Committee Clerk

**Draft minutes no. 53**

22 November 2021

Portfolio Committee no. 1 – Premier and Finance

Room 1043, NSW Parliament House, 8.32 am

**1. Members present**

Ms Moriarty (*via videoconference*)

Ms Boyd (*via videoconference*)

Mr Khan

Mr Martin

Mr Poulos (*via videoconference*)

Mr Searle

**2. Apologies**

Mr Borsak

**3. Previous minutes**

Resolved, on the motion of Mr Martin: That draft minutes no. 52 be confirmed.

**4. Inquiry into the Public Interest Disclosure Bill 2021**

**4.1 Submissions**

Resolved, on the motion of Mr Khan: That the committee authorise the publication of supplementary submission no. 1b.

**4.2 Consideration of Chair's draft report**

The Chair submitted her draft report entitled Public Interest Disclosures Bill 2021, which, having been previously circulated, was taken as being read.

Resolved, on the motion of Mr Searle: That paragraph 2.19 be amended to omit 'baseless' before 'allegations being made public', and insert instead 'inaccurate'.

Resolved, on the motion of Mr Searle: That paragraph 2.57 be amended to omit 'feasibility' before 'of civil remedies and relief', and insert instead 'effectiveness'.

Resolved, on the motion of Mr Searle: That paragraph 2.57 be amended by inserting the following sentences before the final sentence: 'As an alternative, Professor Brown suggested creating a legislated positive duty to protect whistleblowers. Any failures to adhere to this could then trigger an action for damages, with an easier burden for whistleblowers to discharge than is provided for in the current drafting. Further,'

Resolved, on the motion of Mr Khan: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House;
- The submissions, tabled documents, and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished submissions, tabled documents and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- The report will be tabled in the house shortly after 2.30 pm on 23 November 2021.

- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

**5. Inquiry into the Workers Compensation Amendment Bill 2021**

\*\*\*

**6. Adjournment**

The committee adjourned at 8.44 am, *sine die*.

Peta Leemen  
**Committee Clerk**





