

Legislative Council—No 176

As introduced and read a first time, 17 November 2021

South Australia

**Freedom of Information (Ministerial Diaries)
Amendment Bill 2021**

A BILL FOR

An Act to amend the *Freedom of Information Act 1991*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Freedom of Information Act 1991*

- 4 Insertion of Part 1A
 - Part 1A—Proactive disclosure
 - 8A Ministerial diaries
 - 8B Review by Ombudsman
 - 8C Review by SACAT

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Freedom of Information (Ministerial Diaries) Amendment Act 2021*.

2—Commencement

This Act comes into operation 1 month after the day on which it is assented to by the Governor.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Freedom of Information Act 1991*

4—Insertion of Part 1A

After Part 1 insert:

15 Part 1A—Proactive disclosure

8A—Ministerial diaries

- 20 (1) Subject to subsection (2), a Minister must, within 7 days of the end of each calendar month, make publicly available a copy of the Minister's diary for the previous calendar month that sets out all meetings, events and functions attended by the Minister that relate to the Minister's responsibilities by publishing it on a website determined by the Minister responsible for the administration of this Act.

- 5
- (2) A Minister may determine not to make particular information in the Minister's diary publicly available if the Minister considers the disclosure of that information, on balance, would be contrary to the public interest (*prescribed information*).
- 10
- (3) If the Minister makes a determination under subsection (2), the Minister must publish the following statements along with the copy of the Minister's diary to which the determination relates:
- (a) a statement that the original record contained prescribed information that has been deleted or redacted from the published copy;
 - (b) a statement of the reasons the information was determined to be prescribed information;
 - (c) a statement that a person may apply to the Ombudsman or SACAT for a review of the determination.
- 15
- (4) The Minister's diary published in accordance with this section must, as far as reasonably practicable, be accurate, up-to-date and complete.

8B—Review by Ombudsman

- 20
- (1) Any person may apply to the Ombudsman for a review of a determination under section 8A(2) within 30 days after the date on which the copy of the Minister's diary to which the determination relates is published.
- (2) The Ombudsman may, in their discretion, extend the time for making an application under this section.
- 25
- (3) In conducting a review under this section, the Ombudsman—
- (a) may carry out an investigation into the subject matter of the application (and for the purposes of such an investigation may exercise the same investigative powers as are conferred on the Ombudsman by the *Ombudsman Act 1972* in relation to an investigation duly initiated under that Act, including the powers of a commission as defined in the *Royal Commissions Act 1917*); and
 - (b) may—
 - 35 (i) try to effect a settlement between the participants to a review at any time during the review; and
 - (ii) at the request of the Minister, suspend proceedings under this section at any time to allow an opportunity for a settlement to be negotiated.
- 40
- (4) Section 21 of the *Ombudsman Act 1972* does not apply in relation to a review under this section.

- 5
- (5) The Minister and the applicant must cooperate in the process proposed by the Ombudsman for the purposes of the conduct of a review under this section (including any attempt of the Ombudsman to effect a settlement between the participants), and must do all such things as are reasonably required to expedite the process.
- (6) The Ombudsman may dismiss an application if the Ombudsman considers that the applicant has failed to comply with subsection (5).
- 10
- (7) If, in the course of a review, the Minister administering this Act makes known to the Ombudsman that Minister's assessment of what the public interest requires in the circumstances of the case subject to the review, the Ombudsman must, in determining the application, uphold that assessment unless satisfied that there are cogent reasons for not doing so.
- 15
- (8) On an application under this section, the Ombudsman may (based on the circumstances existing at the time of the review) confirm, vary or reverse the determination the subject of the review.
- (9) On making a determination on a review under this section, the Ombudsman must notify the applicant and the Minister of the determination and the reasons for the determination.
- 20
- (10) If the Ombudsman considers it to be in the public interest or the interests of a Minister to do so, the Ombudsman may publish, in such manner as the Ombudsman thinks fit, the reasons for a determination made on a review under this section.
- 25
- (11) In publishing reasons for a determination, the Ombudsman may comment on any unreasonable, frivolous or vexatious conduct by the applicant or the Minister.

8C—Review by SACAT

- 30
- (1) Any person may apply to SACAT for a review of a determination under section 8A(2) under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* within 30 days after the date on which the copy of the Minister's diary to which the determination relates is published.
- 35
- (2) A person who is aggrieved by a determination made on a review under section 8B may apply for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the determination by SACAT.
- 40
- (3) A Minister that is aggrieved by a determination made on a review under section 8B may, with the permission of SACAT, apply for a review under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013* of the determination by SACAT.
- (4) However, the review under subsection (3) may only be as to a question of law and that question must be referred to a Presidential member of the Tribunal under section 26 of the *South Australian Civil and Administrative Tribunal Act 2013*.

- 5
- (5) Proceedings under subsection (2) or (3) must be commenced by the person or Minister within 30 days after notice of the determination to which the proceedings relate is given to the person or Minister.
- (6) Where an application for review is made under section 8B, a review by SACAT under this section cannot be commenced until that application is decided and the commencement of a review by SACAT bars any right to apply for a review under section 8B.
- (7) The following are parties to proceedings under this section:
- 10
- (a) the Minister;
- (b) in the case of a review by SACAT of a determination made on review under section 8B—the applicant for review under that section;
- 15
- (c) in the case of a review by SACAT of a determination that has not been the subject of a review under section 8B—the applicant for review under this section.
- (8) The Ombudsman cannot be a party to proceedings under this section.
- (9) If, in proceedings under this section, the Minister administering this Act makes known to SACAT that Minister's assessment of what the public interest requires in the circumstances of the case subject to the review, SACAT must, in determining the review, uphold that assessment unless satisfied that there are cogent reasons for not doing so.
- 20
- (10) In proceedings under this section—
- 25
- (a) in the case of proceedings commenced by a Minister—SACAT must order that the Minister pay the other party's reasonable costs; or
- 30
- (b) in any other case—SACAT must not make an order requiring a party to pay any costs of an agency unless SACAT is satisfied that the party acted unreasonably, frivolously or vexatiously in the bringing or conduct of the proceedings.