

House of Assembly—No 53

As laid on the table and read a first time, 16 September 2010

South Australia

Lobbying and Ministerial Accountability Bill 2010

A BILL FOR

An Act to provide for the disclosure of lobbying of senior public officials, to make unlawful the holding and trading of certain property by serving Ministers, to regulate the post-ministerial employment of Ministers and ministerial advisers; and for other purposes.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation

Part 2—Lobbying of senior public officials

Division 1—Preliminary

- 4 Application of Part
- 5 Part not to affect personal lobbying activity

Division 2—Register of Lobbying Activity

- 6 Register of lobbying activity
- 7 Application for registration
- 8 Removal from register and reinstatement
- 9 Reinstatement on register

Division 3—Lobbying activity

- 10 Lobbying activity
- 11 Lobbyists to lodge returns
- 12 Auditor-General may require further information

Division 4—Investigation and offences

- 13 Australian Crime Commission may investigate lobbying activity
- 14 Report on completion of investigation or generally

Part 3—Divestiture of shares etc. by ministers

- 15 Offences by Ministers

Part 4—Restrictions on employment of former Ministers and ministerial advisers

- 16 Prohibited conduct before ceasing to be a Minister or ministerial adviser
- 17 Prohibited conduct after ceasing to be a Minister or ministerial adviser

Part 5—Miscellaneous

- 18 False or misleading statement
 - 19 Continuing offence
 - 20 Service
 - 21 Evidentiary provision
 - 22 Regulations
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Lobbying and Ministerial Accountability Act 2010*.

2—Commencement

5 This Act will come into operation 3 months after the date of assent.

3—Interpretation

(1) In this Act—

ACC means the Australian Crime Commission;

administrative unit has the same meaning as in the *Public Sector Act 2009*;

10 *consultant lobbyist*—see subsection (2);

employed lobbyist—see subsection (4);

lobbying activity—see section 10;

lobbyist means a person who is an employed lobbyist, a consultant lobbyist or both;

15 *Minister* means a Minister appointed in accordance with Part 3 of the *Constitution Act 1934* (and a reference in this Act to a Minister includes a reference to a Parliamentary Secretary appointed under that Act);

ministerial adviser means a member of a Minister's personal staff appointed under section 71 of the *Public Sector Act 2009*;

register—means the register of lobbying activity under section 6;

20 *related entity* has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

remuneration includes salary, allowances and other monetary benefits payable to a person;

senior public official means—

25 (a) a Minister;

(b) a Member of either House of Parliament;

(c) a ministerial adviser;

(d) the chief executive of an administrative unit;

30 (e) a statutory office holder with the powers and functions of a chief executive of an administrative unit;

(f) a chief executive of a public sector agency other than an administrative unit;

(g) the holder of any other office or position brought within the ambit of this definition by the regulations,

and includes a person for the time being holding or acting in a particular office or position.

(2) For the purposes of this Act, an *employed lobbyist* means a person who is employed by another person (the *employer*) and whose duties or activities with the employer include lobbying activity on behalf of—

- (a) the employer; or
- (b) if the employer is a body corporate—any related entity of the employer; or
- (c) any profession, business, trade, vocation or calling in relation to which the employer is a representative body.

(3) Without limiting subsection (2), an employee of an association within the meaning of the *Fair Work Act 1994* who engages in lobbying activity will be taken to be an employed lobbyist.

(4) For the purposes of this Act, a *consultant lobbyist* means a person (other than an employed lobbyist) who, directly or indirectly, receives remuneration for engaging in lobbying activity on behalf of any other person (the *client*) (and includes, to avoid doubt, a person who does not engage in lobbying activity on more than 1 occasion).

(5) To avoid doubt, a person may be an employed lobbyist and a consultant lobbyist at the same time or in relation to the same matter.

Part 2—Lobbying of senior public officials

Division 1—Preliminary

4—Application of Part

This Part applies to any person who is an employed lobbyist or consultant lobbyist.

5—Part not to affect personal lobbying activity

Nothing in this Part applies to lobbying activity engaged in by a natural person on his or her own behalf.

Division 2—Register of Lobbying Activity

6—Register of lobbying activity

(1) The Auditor-General must keep and maintain a register of lobbying activity.

(2) The register must contain the following information:

- (a) the name and business address of each lobbyist registered on the register;
- (b) the information provided in returns lodged under this Act;
- (c) the information provided to the Auditor-General pursuant to notices served under section 12;
- (d) any other information required by the regulations,

and may contain any other information the Auditor-General thinks fit.

- (3) Subject to this section, the register may be kept in such manner and form as the Auditor-General considers convenient.
- (4) A person is entitled to inspect (without charge) the register at the Auditor-General's office during ordinary office hours.
- 5 (5) A person may, on payment of the prescribed fee, obtain a copy of any part of the register.
- (6) The Auditor-General must cause a copy of the register to be published on a website established by the Minister for that purpose.

7—Application for registration

- 10 (1) A natural person is eligible to apply for registration on the register.
- (2) However, the Auditor-General may refuse to register a person on the register if, in the opinion of the Auditor-General, the person is not a fit and proper person to be so registered.
- (3) An application for registration must—
 - 15 (a) be made to the Auditor-General in the manner and form approved by the Auditor-General; and
 - (b) be accompanied by the fee fixed under this Act.

8—Removal from register and reinstatement

- 20 (1) The Auditor-General must, on application by a person registered on register, remove the person from the register.
- (2) The Auditor-General may remove a person from the register—
 - (a) if the person is convicted of an offence against this Act; or
 - (b) if the person is, in the opinion of the Auditor-General, not a fit and proper person to be registered; or
 - 25 (c) if the details of the person as recorded on the register are inaccurate.
- (3) Nothing in this section prevents a person from applying for reinstatement on the register.

9—Reinstatement on register

- 30 (1) An applicant for reinstatement on the register must, if the Auditor-General so requires, provide the Auditor-General with specified information to enable the Auditor-General to determine the application.
- (2) The Auditor-General may refuse to reinstate the applicant on the register until all complaints (if any) laid against the applicant under this Act, or a law of another State or a Territory of the Commonwealth providing for the registration of lobbyists, or arising out of the applicant's lobbying activities (whether in this State or elsewhere) have been finally disposed of.
- 35 (3) An application for reinstatement must—
 - (a) be made to the Auditor-General in the manner and form approved by the Auditor-General; and

- (b) be accompanied by the reinstatement fee fixed under this Act.

Division 3—Lobbying activity

10—Lobbying activity

- 5 (1) For the purposes of this Act, a person engages in *lobbying activity* if the person communicates with a senior public official in any manner intended to influence—
- (a) the development of any legislative proposal by the State Government or by a Member of either House of Parliament; or
 - (b) the introduction of any Bill in either House of Parliament or the passage or amendment of any Bill that is before either House of Parliament; or
 - 10 (c) the making, disallowance or variation of any subordinate legislation; or
 - (d) introduction of or change to any State Government policy or programme; or
 - (e) the exercise of any authority or power conferred under any Act or law; or
 - (f) the expenditure of public money,
- and includes arranging or attending a meeting between a senior public official and any other person for a purpose related to such communication.
- 15 (2) However, lobbying activity does not include—
- (a) a communication that is—
 - (i) made by a senior public official, or by any other person holding office under any Act or law, in his or her official capacity; or
 - 20 (ii) made on behalf of the government of State, or the Commonwealth or another State or Territory; or
 - (iii) made on behalf of the government of a foreign country; or
 - (iv) constituted by any application required or authorised by any Act or law; or
 - 25 (v) made in response to a written request from a senior public official acting in his or her official capacity; or
 - (vi) made by a representative or employee of a media organisation for the purposes of gathering and disseminating news and information to the public; or
 - 30 (vii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, or other medium of mass communication; or
 - (viii) made in a petition to either House of Parliament or in evidence or submissions to a committee of either of those Houses, or a joint committee of both Houses of Parliament; or
 - 35 (ix) made in the course of any judicial proceedings; or
 - (b) arranging or attending a meeting with a senior public official—
 - (i) that is open to members of the public; or

- (ii) by a representative or employee of a media organisation for the purposes of gathering and disseminating news and information to the public.

11—Lobbyists to lodge returns

- 5 (1) Each employed lobbyist, and each consultant lobbyist who carried out lobbying activity in the relevant quarter, must, on or before the last day of each quarter, prepare and provide a return with the Auditor-General setting out the information set out in subsection (3).
- Maximum penalty: \$5 000.
- 10 (2) Subject to this section, a return must be in the prescribed form.
- (3) A return lodged under this section must set out the following information:
- (a) in the case of a return for an employed lobbyist—
 - (i) the name and business address of the employed lobbyist;
 - (ii) the name and business address of the employer of the employed lobbyist;
 - 15 (iii) if the employer is a body corporate—the name and business address of any related entity of the employer that has a direct interest in the outcome of the employed lobbyist’s lobbying activity;
 - (iv) any other person that has a direct interest in the outcome of the employed lobbyist’s lobbying activity;
 - 20 (v) a description of the employer’s principal businesses or activities;
 - (vi) a description of the subject matter of the lobbying activity;
 - (vii) particulars to identify any matter referred to in section 10(1) to which the lobbying activity related;
 - 25 (viii) if a senior public official in relation to whom lobbying activity was directed was a Minister, a Member of either House of Parliament or a ministerial adviser—the name of the senior public official;
 - (ix) if a senior public official in relation to whom lobbying activity was directed is other than a person referred to in paragraph (viii)—the name of the office or position held by the senior public official;
 - 30 (x) any other information required by the regulations;
 - (b) in the case of a return for a consultant lobbyist in relation to each instance of lobbying activity carried out in the quarter—
 - (i) the name and business address of the consultant lobbyist;
 - 35 (ii) the name and business address of any business, corporation or other entity (if any) through which the consultant lobbyist carried out the lobbying activity;
 - (iii) the name and business address of the client;
 - (iv) the name and business address of any person that controls or directs the activities of the client and has a direct interest in the outcome of the consultant lobbyist’s lobbying activity;
 - 40

Lobbying and Ministerial Accountability Bill 2010

Part 2—Lobbying of senior public officials

Division 3—Lobbying activity

- (v) if the client is a body corporation—the name and business address of any related entity of the client that has a direct interest in the outcome of the consultant lobbyist's lobbying activity;
- (vi) a description of the subject matter of the lobbying activity;
- 5 (vii) particulars to identify any matter referred to in section 10(1) to which the lobbying activity related;
- (viii) the date on which the lobbying activity occurred;
- (ix) if a senior public official in relation to whom lobbying activity was directed was a Minister, a Member of either House of Parliament or a ministerial adviser—the name of the senior public official;
- 10 (x) if a senior public official in relation to whom lobbying activity was directed is other than a person referred to in paragraph (ix)—the name of the office or position held by the senior public official;
- (xi) whether any remuneration payable in respect of the lobbying activity is wholly or partly contingent on the consultant lobbyist's degree of success in influencing the matters referred to in the preceding subparagraphs;
- 15 (xii) any other information required by the regulations.

(4) It is a defence to a charge of an offence under subsection (1) related to a failure to disclose a person or an interest of a kind referred to in subsection (3)(a)(iii) or (iv), or subsection (3)(b)(iv) or (v), that the lobbyist did not know, and could not reasonably have been expected to know, of the existence of the person or interest.

(5) The Auditor-General may, on the application of a lobbyist, extend the time within which a quarterly return required by subsection (1) must be lodged by not more than 14 days.

(6) If an employed lobbyist has not engaged in any lobbying activity in a particular quarter, the employed lobbyist must lodge a return stating that he or she has not engaged in any lobbying activity in that quarter.

(7) The Auditor-General may, without further notice, remove from the register a person who refuses or fails to provide the required return by the due date.

(8) In this section—

quarter means the 3 month period beginning on 1 January, 1 April, 1 July or 1 October in each year;

relevant quarter means the quarter to which a particular return under this section relates.

12—Auditor-General may require further information

(1) The Auditor-General may, by notice in writing served on a lobbyist, require the lobbyist to provide such further written information in relation to a return lodged pursuant to section 11 as the Auditor-General thinks fit.

(2) A person who, without reasonable excuse, refuses or fails to comply with a notice under subsection (1) is guilty of an offence.

Maximum penalty: \$5 000.

Division 4—Investigation and offences

13—Australian Crime Commission may investigate lobbying activity

- (1) The ACC may investigate any matter relating to any lobbying activity carried out by a lobbyist.
- 5 (2) Without limiting subsection (1), the ACC may investigate whether a lobbyist has, in the course of any lobbying activity—
- (a) adequately disclosed to the relevant senior public official the person on whose behalf the lobbying activity was being conducted; or
- 10 (b) provided accurate and factual information to the relevant senior public official; or
- (c) been accorded any unfairly preferential or discriminatory treatment by the relevant senior public official; or
- (d) attempted to apply any improper influence on the relevant public officer; or
- 15 (e) represented competing or conflicting interests without the consent of those whose interests were involved.
- (3) If, during the course of an investigation under this section, the ACC suspects that a person has committed an offence, a breach of discipline or otherwise engaged in conduct which may be the subject of further action, the ACC may refer that conduct to an appropriate authority for further action.
- 20 (4) In this section—
- appropriate authority* means—
- (a) if the matter involves an allegation of fraud or corruption—the Anti-Corruption Branch of the police force; or
- (b) in any other case—the Auditor-General;
- 25 *relevant senior public official* means the senior public official to whom the lobbying activity was directed.

14—Report on completion of investigation or generally

- (1) If the ACC conducts an investigation under section 13, the ACC must within a reasonable period and in any event, not longer than 6 months after commencing the investigation, prepare and provide to the Auditor-General a written report in relation to the matter the subject of the investigation.
- 30 (2) The Auditor-General must, within 6 sitting days of receiving a report under this subsection (1), cause a copy of the report to be laid before each House of Parliament.

Part 3—Divestiture of shares etc. by ministers

15—Offences by Ministers

- (1) Subject to this Act, a Minister must, within 28 days of becoming a Minister, divest himself or herself of all control of all securities and derivatives (including any legal or equitable rights in such securities or derivatives) that he or she controls.

Maximum penalty: \$20 000.

- (2) A Minister must not, during the period of his or her ministry—

(a) purchase any securities or derivatives (including any legal or equitable rights or interests in such securities or derivatives); or

(b) instruct any person to purchase any securities or derivatives (including any legal or equitable rights or interests in such securities or derivatives).

Maximum penalty: \$20 000.

- (3) Without derogating from any other Act or law, a Minister must notify Cabinet in writing of his or her residual interest (if any) in any securities or derivatives formerly controlled by the Minister which are the subject matter of, or related to, a submission before Cabinet.

Maximum penalty: \$20 000.

- (4) A Minister will be taken not to have divested himself or herself of all control of the matters referred to in subsection (1) if he or she divests them to an associate.

- (5) Nothing in this section prevents a Minister from entering an arrangement where securities or derivatives controlled by the Minister are transferred to a trustee who, without consulting the Minister or an associate of the Minister and being expressly prohibited by the terms of the trust from consulting the Minister or an associate of the Minister, deals with the trust property in an ordinary commercial manner (including sales of assets and purchase of further assets), on behalf of the Minister.

- (6) In this section—

associate has the same meaning as in the *Public Sector (Honesty and Accountability) Act 1995*;

residual interest, in relation to securities or derivatives formerly controlled by a Minister, means any interest retained by the Minister in the securities or derivatives once they have been placed in a trust of a kind contemplated by subsection (5).

Part 4—Restrictions on employment of former Ministers and ministerial advisers

16—Prohibited conduct before ceasing to be a Minister or ministerial adviser

- (1) A Minister must not allow himself or herself to be influenced in the conduct of official duties and responsibilities by plans for or offers of employment or other remuneration proposed for a time after he or she ceases to be a Minister.

Maximum penalty: Imprisonment for 2 years.

- (2) A ministerial adviser must not allow himself or herself to be influenced in the conduct of official duties and responsibilities by plans for or offers of employment or other remuneration proposed for a time after he or she ceases to be a ministerial adviser.

Maximum penalty: Imprisonment for 2 years.

5 **17—Prohibited conduct after ceasing to be a Minister or ministerial adviser**

- (1) A former Minister must not—

- 10 (a) provide advice for personal profit or for commercial advantage on any aspect of work undertaken by an administrative unit of the Public Service for which the former Minister had ministerial responsibility during the preceding 2 years; or
- (b) accept employment with a person or body, or accept an appointment to the board of directors or equivalent body of an entity, that had significant dealings with an administrative unit of the Public Service for which the former Minister had ministerial responsibility during the preceding 2 years; or
- 15 (c) enter into a contract for services with any commercial entity which had significant commercial dealings with an administrative unit of the Public Service for which the former Minister had ministerial responsibility during the preceding 2 years; or
- 20 (d) undertake lobbying activities for or on behalf of any other person or body to an administrative unit of the Public Service for which the former Minister had ministerial responsibility during the preceding 2 years.

Maximum penalty: Imprisonment for 2 years.

- (2) A former ministerial adviser must not—

- 25 (a) provide advice for personal profit or for commercial advantage on any aspect of work undertaken by an administrative unit of the Public Service for which the former ministerial adviser's Minister had ministerial responsibility during the preceding 2 years; or
- 30 (b) accept employment with a person or body, or accept an appointment to the board of directors or equivalent body of an entity, that had significant dealings with an administrative unit of the Public Service for which the former ministerial adviser's Minister had ministerial responsibility during the preceding 2 years; or
- 35 (c) enter into a contract for services with any commercial entity which had significant commercial dealings with an administrative unit of the Public Service for which the former ministerial adviser's Minister had ministerial responsibility during the preceding 2 years; or
- (d) undertake lobbying activities for or on behalf of any other person or body to an administrative unit of the Public Service for which the former ministerial adviser's Minister had ministerial responsibility during the preceding 2 years.

40 Maximum penalty: Imprisonment for 2 years.

- (3) However, nothing in this section prevents a former Minister or a former ministerial adviser from taking action on behalf of or engaging in the service of—

- (a) a charitable organisation; or

(b) official duties on behalf of the State, or the Commonwealth or another State or territory; or

(c) a political party.

(4) In this section—

former Minister means a Minister who has ceased to be a Minister in accordance with the *Constitution Act 1934*;

former ministerial adviser means a ministerial adviser who has ceased to be a ministerial adviser in accordance with section 71 of the *Public Sector Act 2009*.

Part 5—Miscellaneous

18—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information kept or provided under this Act.

Maximum penalty: \$20 000.

19—Continuing offence

(1) A person convicted of an offence against a provision of this Act in respect of a continuing act or omission—

(a) is liable, in addition to the penalty otherwise applicable to the offence, to a penalty for each day during which the act or omission continued of not more than one-tenth of the maximum penalty prescribed for that offence; and

(b) is, if the act or omission continues after the conviction, guilty of a further offence against the provision and liable, in addition to the penalty otherwise applicable to the further offence, to a penalty for each day during which the act or omission continued after the conviction of not more than one-tenth of the maximum penalty prescribed for the offence.

(2) If an offence consists of an omission to do something that is required to be done, the omission will be taken to continue for as long as the thing required to be done remains undone after the end of the period for compliance with the requirement.

20—Service

(1) A notice, order or other document required to be given or sent to, or served on, a person for the purposes of this Act may—

(a) be given to the person personally; or

(b) be posted in an envelope addressed to the person at the person's last known residential or (in the case of a corporation) registered address; or

(c) be left for the person at the person's last known residential or (in the case of a corporation) registered address with someone apparently over the age of 16 years; or

(d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or document will be taken to have been given or served at the time of transmission).

- (2) Without limiting the effect of subsection (1), a notice, order or other document required to be given or sent to, or served on, a person for the purposes of this Act may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served on the person in accordance with that Act.

5 **21—Evidentiary provision**

In proceedings for an offence against this Act an allegation in the complaint that a person was or was not at a specified time a senior public official will be accepted as proved in the absence of proof to the contrary.

22—Regulations

- 10 (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) create offences punishable by a fine not exceeding \$5 000;
- (b) fix expiation fees for alleged offences against the regulations;
- 15 (c) make provision facilitating proof of the commission of offences against the regulations.