

House of Assembly—No 11

As laid on the table and read a first time, 27 May 2010

South Australia

**Statutes Amendment (Public Interest Disclosure)
Bill 2010**

A BILL FOR

An Act to amend the *Public Sector Act 2009* and the *Whistleblowers Protection Act 1993*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Public Interest Disclosure) Act 2010*.

5 2—Commencement

- (1) Subject to subsection (2), this Act comes into operation on the day on which it is assented to by the Governor.
- (2) Part 2 will come into operation 2 months after the day on which this Act is assented to by the Governor.

10 3—Amendment provisions

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 *Public Sector Act 2009*

4—Amendment of section 3—Interpretation

- 15 Section 3(1)—after the definition of *misconduct* insert:
public interest disclosure and investigation system—see section 7;

5—Substitution of section 7

Section 7—delete the section and substitute:

7—Public sector public interest disclosure and investigation systems

- 5 (1) Each public sector agency must—
- (a) establish a public interest disclosure and investigation system; and
 - (b) make information about its public interest disclosure and investigation system available to employees of the agency.
- 10 (2) A public interest disclosure and investigation system for a public sector agency must—
- (a) designate 1 or more responsible officers for the agency for the purposes of the *Whistleblowers Protection Act 1993*; and
 - 15 (b) encourage disclosure to the responsible officer or other appropriate authority under that Act of public interest information (within the meaning of that Act) relating to the agency or its employees or contractors; and
 - (c) establish procedures for the investigation or appropriate referral of such disclosures; and
 - 20 (d) contain measures for the protection of persons who make such disclosures against acts of victimisation under that Act; and
 - (e) require the Commissioner to be informed of each such disclosure and of how it has been investigated or otherwise dealt with by the agency; and
 - 25 (f) be approved by the Commissioner.

6—Amendment of section 12—Agencies to report annually

Section 12—after subsection (6) insert:

- 30 (6a) The report must describe the agency's public interest disclosure and investigation system and contain information (including relevant statistics) about disclosures of public interest information to responsible officers for the agency under the *Whistleblowers Protection Act 1993* and the outcome of investigations into the matters to which the disclosures relate.

7—Amendment of section 14—Functions of Commissioner

- (1) Section 14(c)—delete "and employment determinations" and substitute:
 , employment determinations and public interest disclosure and investigation systems
- (2) Section 14(g)—after "*Whistleblowers Protection Act 1993*" insert:
 or a public interest disclosure and investigation system
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8—Amendment of section 21—Annual report of Commissioner

Section 21(2)—after paragraph (b) insert:

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- (ba) contain information (including relevant statistics) about disclosures of public interest information to the Commissioner under the *Whistleblowers Protection Act 1993* and the outcome of investigations into the matters to which the disclosures relate; and
- (bb) contain information (including relevant statistics) about investigations conducted by the Commissioner as a consequence of information being provided to the Commissioner under public interest disclosure and investigation systems of public sector agencies and the outcome of such investigations; and
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Part 3—Amendment of *Whistleblowers Protection Act 1993*

9—Amendment of section 4—Interpretation

Section 4(1), definition of *public interest information*—after subparagraph (iv) insert:

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- (v) in an act of victimisation under this Act; or

10—Amendment of section 5—Immunity for appropriate disclosures of public interest information

(1) Section 5(2)(b)—after "disclosure" second occurring insert:

or the disclosure is made in the circumstances set out in subsection (4a)

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(2) Section 5—after subsection (2) insert:

- (2a) A person's motivation in making a disclosure is irrelevant in determining whether the conditions specified in subsection (2) are satisfied.

(3) Section 5(4)—delete "Minister of the Crown" and substitute:

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member of Parliament

(4) Section 5—after subsection (4) insert:

(4a) If—

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- (a) a disclosure of public interest information has been made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure; and
- (b) that person has not acted on the information within a reasonable time; and
- (c) the person making the disclosure believes on reasonable grounds that the information relates to a substantial and imminent risk to public health or safety,

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the information may be disclosed to a representative of the news media.

(5) Section 5—after subsection (5) insert:

- 5 (6) If a disclosure of information relating to a public officer (other than a member of the police force or a member of the judiciary) is made to a person other than the Ombudsman, the person to whom the disclosure is made must pass the information on as soon as practicable to the Ombudsman.

11—Insertion of section 5A

After section 5 insert:

5A—Role of Ombudsman

10 For the purposes of the *Ombudsman Act 1972*—

- 15 (a) a practice or procedure relating to the handling or investigation of a disclosure of public interest information is an administrative practice and procedure; and
- (b) an act or omission in response to a disclosure of public interest information is an administrative act.