

**House of Assembly—No 155**

As laid on the table and read a first time, 22 September 2016

South Australia

**Whistleblowers Protection (Miscellaneous)  
Amendment Bill 2016**

A BILL FOR

An Act to amend the *Whistleblowers Protection Act 1993*.

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**The Parliament of South Australia enacts as follows:**

### **Part 1—Preliminary**

#### **1—Short title**

- 5 This Act may be cited as the *Whistleblowers Protection (Miscellaneous) Amendment Act 2016*.

#### **2—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 *Whistleblowers Protection Act 1993***

#### **10 3—Amendment of section 5—Immunity for appropriate disclosures of public interest information**

- (1) Section 5(1)—delete "civil or criminal"
- (2) Section 5—after subsection (1) insert:
  - 15 (1a) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the person.

#### 4—Insertion of section 5A

After section 5 insert:

##### 5A—Disclosure to a member of Parliament or journalist

5 A disclosure by a person to a member of Parliament (other than a Minister of the Crown) or to a journalist is taken to be an *appropriate disclosure* of public interest information for the purposes of this Act if—

- 10 (a) the person has already made an appropriate disclosure of substantially the same information in accordance with section 5; and
- (b) the person to whom that disclosure was made or, if the matter was referred by that person to another person or authority, the person or authority to whom the matter was referred—
- 15 (i) decided not to investigate the matter; or
- (ii) decided to investigate the matter but did not complete the investigation within 120 days after the disclosure was made; or
- 20 (iii) investigated the matter but did not recommend the taking of any action in respect of the matter; or
- (iv) failed to notify the person who made the disclosure of action being taken in relation to the disclosure within 120 days after the disclosure was made; and
- 25 (c) the information is substantially true or the person making the disclosure believes on reasonable grounds that the information is substantially true.

#### 5—Amendment of section 9—Victimisation

(1) Section 9—after subsection (3) insert:

- 30 (3a) Subject to this section, the Crown is, for the purposes of this Act, vicariously liable for an act of victimisation by an agent or employee of a government agency committed while acting in the course of their agency or employment.
- 35 (3b) In proceedings brought under this section against the Crown in respect of an act alleged to have been committed by an agent or employee of a government agency while acting in the course of their agency or employment, it is a defence to prove that the principal officer of the government agency took reasonable steps to ensure that the agent or employee would not act in contravention of this Act.
- 40 (3c) Without limiting subsection (3b), a defence is established under that subsection in relation to an alleged act if the principal officer—
- (a) had in force at the relevant time an appropriate policy for the prevention of such an act; and

(b) had taken reasonable steps to implement and enforce the policy including—

(i) reasonable steps to make the employees and agents of the person aware of the terms of the policy; and

(ii) prompt investigation of any alleged act and taking appropriate action.

(3d) A person who personally commits an act of victimisation under this Act is guilty of an offence.

Maximum penalty: \$10 000.

(3e) A person who has made or who intends to make an appropriate disclosure of public interest information and who reasonably suspects that they will be subject to an act of victimisation by another person (the *respondent*) may apply to the Equal Opportunity Tribunal for an order requiring that the respondent refrain from the relevant act.

(3f) An order of the Equal Opportunity Tribunal under subsection (3e) is enforceable, and may be appealed against, as if it were an order of the Tribunal under section 96(1) of the *Equal Opportunity Act 1984*.

(2) Section 9(4)—after the definition of *detriment* insert:

*principal officer* of a government agency means—

(a) if the agency consists of an unincorporated board or committee—the presiding officer; or

(b) in any other case—

(i) the chief executive officer of the agency; or

(ii) if there is no chief executive officer of the agency—a person designated as principal officer of the agency for the purposes of this definition by the responsible Minister for the agency.