

Legislative Council—No 63

As introduced and read a first time, 16 November 2022

South Australia

Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Bill 2022

A BILL FOR

An Act to amend the *Public Finance and Audit Act 1987*.

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1 Transitional provision

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

5 This Act may be cited as the *Public Finance and Audit (Auditor-General Access to Cabinet Submissions) Amendment Act 2022*.

Part 2—Amendment of *Public Finance and Audit Act 1987*

2—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *authorised officer* insert:

10 *Cabinet submission* means a final version of a Cabinet submission signed by the relevant Minister and lodged for Cabinet and includes any attachments to the submission;

3—Amendment of section 34—Powers of Auditor-General to obtain information

(1) Section 34—after subsection (2) insert:

15 (2a) For the purposes of subsection (2)(b), it is not a reasonable excuse for the person to fail to comply with the summons on the ground that a document required to be produced by the summons is a Cabinet submission.

(2) Section 34—after subsection (5) insert:

20 (6) To avoid doubt, the Auditor-General or an authorised officer may only request, or issue a summons to require the production of, accounts, records or other documents that are, in the opinion of the Auditor-General or authorised officer (as the case requires), relevant to an audit, review or examination.

4—Insertion of section 34A

After section 34 insert:

34A—Provision, production and use of Cabinet submissions

- 5
- (1) This section applies if—
- (a) in response to a request by the Auditor-General or an authorised officer to provide accounts, records or other documents for the purposes of this Act; or
- (b) in response to a summons to produce relevant accounts, records or other documents under section 34,
- 10 a person produces or provides a Cabinet submission to the Auditor-General or authorised officer.
- (2) Before providing or producing a Cabinet submission to the Auditor-General or an authorised officer, the person must, in writing, notify the current leader of the political party of which the Premier at the time the Cabinet submission was lodged for Cabinet was a member.
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- (3) If the person provides or produces the Cabinet submission in good faith to the Auditor-General or authorised officer—
- (a) the person incurs no civil or criminal liability in respect of providing or producing the Cabinet submission; and
- 20 (b) the provision or production of the Cabinet submission is not to be regarded as a breach of any duty of secrecy or confidentiality imposed on the person by law.
- (4) The Auditor-General or authorised officer (as the case requires)—
- 25 (a) must ensure that the Cabinet submission is stored securely and is distributed only to members of the Auditor-General's staff who require access to the document in order to assist the Auditor-General in the exercise of the Auditor-General's functions; and
- 30 (b) may only make reference in a report to a decision of Cabinet where such a reference is, in the opinion of the Auditor-General or authorised officer (as the case requires), necessary for the proper exercise of the Auditor-General's functions; and
- 35 (c) must ensure that a reference to a decision of Cabinet in a report is made in such a way as to not disclose any other information regarding the deliberations of Cabinet; and
- (d) must ensure that a Cabinet submission is not published or annexed to, or quoted from or paraphrased in, a report.

(5) Providing or producing a Cabinet submission, or referring to a Cabinet submission so provided or produced or to the contents of such a Cabinet submission in a report under this Act, is not a waiver of, and does not otherwise impair, any of the following in relation to the Cabinet submission:

- (a) parliamentary privilege;
- (b) legal professional privilege;
- (c) public interest immunity;
- (d) any confidentiality attaching to the Cabinet submission;
- (e) any other confidentiality, privilege or immunity.

34B—Access to Cabinet submissions previously requested or summoned

(1) The Auditor-General may request, or issue a summons to require the production of, a Cabinet submission that—

- (a) the Auditor-General or an authorised officer has requested, or issued a summons to require the production of, before the commencement of this section; and
- (b) has not been provided or produced to the Auditor-General or an authorised officer; and
- (c) is relevant to a prescribed audit, review or examination.

(2) If subsection (1) applies—

- (a) this Act applies as if the request or summons (as the case may be) is in order to conduct an audit or review, or make an examination, under this Act; and
- (b) the Auditor-General may, if the Auditor-General considers it to be appropriate in the circumstances, prepare an amended report setting out the results of the prescribed audit, review or examination following the provision or production of the Cabinet submission; and
- (c) the report referred to in paragraph (b) must be dealt with in the same way as the report previously published or delivered for the prescribed audit, review or examination.

(3) In this section—

prescribed audit, review or examination means an audit, review or examination for which a report has been published or delivered in accordance with this Act.

Schedule 1—Transitional provisions

1—Transitional provision

- (1) The principal Act, as amended by this Act, applies in relation to—
- 5 (a) an audit, review or examination commenced before, but not completed by, the relevant day; and
 - (b) a Cabinet submission created or lodged before or after the relevant day; and
 - (c) a request for accounts, records or other documents made, but not complied with, before the relevant day; and
 - (d) a summons issued, but not complied with, before the relevant day; and
 - 10 (e) a Cabinet submission provided to the Auditor-General or an authorised officer before or after the relevant day in response to a request for accounts, records or other documents for the purposes of the principal Act; and
 - (f) a Cabinet submission produced to the Auditor-General or an authorised officer before or after the relevant day in response to a summons under
 - 15 section 34 of the principal Act; and
 - (g) a report prepared before, but not published or delivered by, the relevant day.

- (2) In this clause—

principal Act means the *Public Finance and Audit Act 1987*;

relevant day means the day on which this Act comes into operation.