

House of Assembly—No 46

As laid on the table and read a first time, 30 October 2014

South Australia

**Freedom of Information (Offences) Amendment
Bill 2014**

A BILL FOR

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

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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 *Freedom of Information (Offences) Amendment Act 2014*.

5 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 *Freedom of Information Act 1991*

3—Insertion of Part 3 Division 4

- 10 After section 29 insert:

Division 4—Offences

29A—Improper directions and influence

- (1) A person who, in relation to an application for access to an agency's documents—
 - 15 (a) directs a prescribed officer of the agency to make a decision or determination for the purposes of this Act that the person knows, or ought reasonably to have known, is not a decision or determination that the officer should, in the circumstances, make; or
 - 20 (b) directs a prescribed officer of the agency to act in a manner that the person knows, or ought reasonably to have known, is inconsistent with section 3 or is otherwise contrary to the requirements of this Act; or

- (c) improperly influences (whether directly or indirectly) the making of a decision or determination for the purposes of this Act by a prescribed officer of the agency,

is guilty of an offence.

Maximum penalty: \$20 000.

- (2) A prescribed officer of an agency who (whether in relation to a particular application for access to the agency's documents or in relation to such applications generally)—
- (a) is given a direction that he or she suspects is a direction contemplated by subsection (1); or
- (b) becomes aware of an attempt to improperly influence him or her in relation to his or her functions under this Act,

must, as soon as is reasonably practicable, report the matter to the Office of Public Integrity.

Maximum penalty: \$10 000.

- (3) Subsection (2) does not apply to a prescribed officer in relation to a particular matter if he or she has reported the matter to the Office of Public Integrity in accordance with the *Independent Commissioner Against Corruption Act 2012*.

- (4) A report under subsection (2)—

- (a) must be made in a manner and form determined by the Commissioner; and
- (b) may, if the Commissioner considers it appropriate to do so, be dealt with under the *Independent Commissioner Against Corruption Act 2012* as if it were a report made under that Act.

- (5) The Commissioner must, by notice in writing, advise the President of the Legislative Council and the Speaker of the House of Assembly of the receipt of a report under subsection (2).

- (6) The President of the Legislative Council and the Speaker of the House of Assembly must, on the next sitting day after receiving a notice under subsection (5), lay it before their respective Houses.

- (7) This section is in addition to, and does not derogate from, the *Independent Commissioner Against Corruption Act 2012* or any other Act or law.

- (8) In this section—

Commissioner, inquiry agency and **law enforcement agency** have the same meanings as in the *Independent Commissioner Against Corruption Act 2012*;

Office of Public Integrity means the Office of Public Integrity established under the *Independent Commissioner Against Corruption Act 2012*;

prescribed officer, of a particular agency, means—

- (a) an accredited FOI officer in relation to the agency; or
- (b) any other officer of the agency who is, in respect of a particular application for access to the agency's documents, required or permitted to make a decision or determination under this Act.

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