

South Australia

# Whistleblowers Protection Act 1993

An Act to protect persons disclosing illegal, dangerous or improper conduct; and for other purposes.

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

### 1—Short title

This Act may be cited as the *Whistleblowers Protection Act 1993*.

### 3—Object of Act

The object of this Act is to facilitate the disclosure, in the public interest, of maladministration and waste in the public sector and of corrupt or illegal conduct generally—

- (a) by providing means by which such disclosures may be made; and
- (b) by providing appropriate protections for those who make such disclosures.

### 4—Interpretation

- (1) In this Act, unless the contrary intention appears—  
*adult* means of or above the age of 18 years;

**government agency** means—

- (a) a department or administrative unit of the Public Service; or
- (b) a body corporate that is an instrumentality or agency of the Crown;

**maladministration** includes impropriety or negligence;

**public interest information** means information that tends to show—

- (a) that an adult person (whether or not a public officer), body corporate or government agency is or has been involved (either before or after the commencement of this Act)—
  - (i) in an illegal activity; or
  - (ii) in an irregular and unauthorised use of public money; or
  - (iii) in substantial mismanagement of public resources; or
  - (iv) in conduct that causes a substantial risk to public health or safety, or to the environment; or
- (b) that a public officer is guilty of maladministration in or in relation to the performance (either before or after the commencement of this Act) of official functions;

**public officer** means—

- (a) a person appointed to public office by the Governor; or
- (b) a member of Parliament; or
- (c) a person employed in the Public Service of the State; or
- (d) a member of the police force; or
- (e) any other officer or employee of the Crown; or
- (f) a member, officer or employee of—
  - (i) an agency or instrumentality of the Crown; or
  - (ii) a body that is subject to control or direction by a Minister, agency or instrumentality of the Crown; or
  - (iii) a body whose members, or a majority of whose members, are appointed by the Governor or a Minister, agency or instrumentality of the Crown; or
- (g) a member of a local government body or an officer or employee of a local government body.

(2) The question whether a public officer—

- (a) is or has been involved in—
  - (i) an irregular and unauthorised use of public money; or
  - (ii) substantial mismanagement of public resources; or
- (b) is guilty of maladministration in or in relation to the performance of official functions,

is to be determined with due regard to relevant statutory provisions and administrative instructions and directions.

**Note—**

For definition of divisional penalties (and divisional expiation fees) see Appendix.

## **5—Immunity for appropriate disclosures of public interest information**

- (1) A person who makes an appropriate disclosure of public interest information incurs no civil or criminal liability by doing so.
- (2) A person makes an appropriate disclosure of public interest information for the purposes of this Act if, and only if—
  - (a) the person—
    - (i) believes on reasonable grounds that the information is true; or
    - (ii) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and
  - (b) the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure.
- (3) A disclosure is taken to have been made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure if it is made to an appropriate authority (but this is not intended to suggest that an appropriate authority is the only person to whom a disclosure of public interest information may be reasonably and appropriately made).
- (4) For the purposes of subsection (3), a disclosure of public interest information is made to an appropriate authority if it is made to a Minister of the Crown or—
  - (a) where the information relates to an illegal activity—to a member of the police force;
  - (b) where the information relates to a member of the police force—to the Police Ombudsman;
  - (c) where the information relates to the irregular or unauthorised use of public money—to the Auditor-General;
  - (d) where the information relates to a public sector employee—to the Commissioner for Public Sector Employment;
  - (e) where the information relates to a member of the judiciary—to the Chief Justice;
  - (f) where the information relates to a member of Parliament—to the Presiding Officer of the House of Parliament to which the member belongs;
  - (g) where the information relates to a public officer (other than a member of the police force or a member of the judiciary)—to the Ombudsman;
  - (h) where the information relates to a matter falling within the sphere of responsibility of an instrumentality, agency, department or administrative unit of government—to a responsible officer of that instrumentality, agency, department or administrative unit;

- (i) where the information relates to a matter falling within the sphere of responsibility of a local Government body—to a responsible officer of that body;
  - (j) where the information relates to a person or a matter of a prescribed class—to an authority declared by the regulations to be an appropriate authority in relation to such information.
- (5) If a disclosure of information relating to fraud or corruption is made, the person to whom the disclosure is made must pass the information on as soon as practicable to—
- (a) in the case of information implicating a member of the police force in fraud or corruption—the Police Ombudsman;
  - (b) in any other case—the Anti-Corruption Branch of the police force.

### **6—Informant to assist with official investigation**

- (1) A person who discloses public interest information must assist with any investigation of the matters to which the information relates by the police or any other official investigating authority.
- (2) Such a person is not, however, obliged to assist with an investigation by an authority or body to which, or a person to whom, the public interest information relates.
- (3) A person who fails, without reasonable excuse, to comply with the obligation imposed by subsection (1) forfeits the protection of this Act.

### **7—Identity of informant to be kept confidential**

- (1) A person to whom another makes an appropriate disclosure of public interest information must not, without the consent of that person, divulge the identity of that other person except so far as may be necessary to ensure that the matters to which the information relates are properly investigated.
- (2) The obligation to maintain confidentiality imposed by this section applies despite any other statutory provision, or a common law rule, to the contrary.

### **8—Informant to be informed of outcome of complaint**

If an appropriate disclosure of public interest information is made to a public official, that official must, wherever practicable and in accordance with the law, notify the informant of the outcome of any investigation into the matters to which the disclosure relates.

### **9—Victimisation**

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information commits an act of victimisation.
- (2) An act of victimisation under this Act may be dealt with—
  - (a) as a tort; or
  - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (3) Where a complaint alleging an act of victimisation under this Act has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In this section—

*detriment* includes—

  - (a) injury, damage or loss; or
  - (b) intimidation or harassment; or
  - (c) discrimination, disadvantage or adverse treatment in relation to a person's employment; or
  - (d) threats of reprisal.

#### **10—Offence to make false disclosure**

- (1) A person who makes a disclosure of false public interest information knowing it to be false or being reckless about whether it is false is guilty of an offence.  
Penalty: Division 5 fine or division 5 imprisonment.
- (2) A person who makes a disclosure of public interest information in contravention of this section is not protected by this Act.

#### **11—Non-derogation**

This Act is in addition to, and does not derogate from, any privilege, protection or immunity existing apart from this Act under which information may be disclosed without civil or criminal liability.

#### **12—Regulations**

The Governor may make regulations for purposes contemplated by this Act.

#### **13—Review of operation of Act**

- (1) The Attorney-General must, as soon as practicable after the first appointment of an Independent Commissioner Against Corruption under the *Independent Commissioner Against Corruption Act 2012*, conduct a review of the operation and effectiveness of this Act.
- (2) The Attorney-General, or a person conducting the review on behalf of the Attorney-General, must consult the Independent Commissioner Against Corruption in relation to the review and have regard to any recommendations of the Commissioner for the amendment or repeal of this Act (unless the Commissioner is the person conducting the review).

- (3) The Attorney-General must, within 12 months of the first appointment of an Independent Commissioner Against Corruption, prepare a report based on the review and must, within 12 sitting days after the report is prepared, cause copies of the report to be laid before each House of Parliament.

## Legislative history

### Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1993	21	<i>Whistleblowers Protection Act 1993</i>	8.4.1993	20.9.1993 ( <i>Gazette 16.9.1993 p1140</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 163 (s 368)—1.2.2010 ( <i>Gazette 28.1.2010 p320</i> )
<b>2012</b>	<b>52</b>	<b><i>Independent Commissioner Against Corruption Act 2012</i></b>	<b>6.12.2012</b>	<b>Sch 3 (cl 75)—20.12.2012 (<i>Gazette 20.12.2012 p5742</i>); cl 76—1.9.2013 (<i>Gazette 23.5.2013 p2006</i>)</b>
2016	60	<i>Police Complaints and Discipline Act 2016</i>	8.12.2016	Sch 1 (cl 47)—4.9.2017 ( <i>Gazette 29.8.2017 p3794</i> )

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 5		
s 5(4)	amended by 84/2009 s 368	1.2.2010
	amended by 52/2012 Sch 3 cl 75	20.12.2012
s 5(5)	amended by 52/2012 Sch 3 cl 75	20.12.2012
<b>s 13</b>	<b>inserted by 52/2012 Sch 3 cl 76</b>	<b>1.9.2013</b>

### Historical versions

1.2.2010

20.12.2012

## Appendix—Divisional penalties and expiation fees

At the date of publication of this version divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

*Note: This appendix is provided for convenience of reference only.*