

South Australia

Public Sector (Honesty and Accountability) Act 1995

An Act to impose duties of honesty and accountability on public sector office holders, employees and contractors; and for other purposes.

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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 *Public Sector (Honesty and Accountability) Act 1995*.

2—Interpretation

- (1) In this Act, unless the contrary intention appears—

administrative unit has the same meaning as in the *Public Sector Act 2009*;

advisory body means an unincorporated body comprised of members appointed by the Governor or a Minister (whether or not under an Act) with a function of providing advice to a public sector agency;

beneficiary includes a person who is an object of a discretionary trust;

contractor does not include a public sector agency;

contract work means work performed by a person as a contractor or as an employee of a contractor or otherwise directly or indirectly on behalf of a contractor, but does not include work performed as a member of an unincorporated body with a function of advising a public sector agency;

corporate agency executive means a person who is employed by a public sector agency that is a body corporate and is concerned or takes part in the management of the agency;

corporate agency member means—

- (a) a member of a public sector agency that is a body corporate; or
- (b) a member of the governing body of a public sector agency that is a body corporate;

debenture has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

domestic partner means a person who is a domestic partner within the meaning of the *Family Relationships Act 1975*, whether declared as such under that Act or not;

managed investment scheme has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

public sector agency has the same meaning as in the *Public Sector Act 2009*;

public sector employee has the same meaning as in the *Public Sector Act 2009*;

relative, in relation to a person, means the spouse, domestic partner, parent or remoter linear ancestor, son, daughter or remoter issue or brother or sister of the person;

relevant interest has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

relevant Minister, in relation to a person, means the Minister who has or assumes administrative responsibility in relation to the person for the purposes of this Act;

senior official means—

- (a) the Commissioner for Public Sector Employment; or
- (c) the chief executive of an administrative unit; or
- (d) a statutory office holder with the powers and functions of a chief executive of an administrative unit; or
- (e) a chief executive (or acting chief executive) of a public sector agency other than an administrative unit; or
- (f) a person declared by another Act or under subsection (2) to be a senior official;

spouse—a person is the spouse of another if they are legally married;

subsidiary has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

(1a) For the purposes of this Act—

- (a) a person is an **associate** of another person if—

- (i) the other person is a relative of the person or of the person's spouse or domestic partner; or
 - (ii) the other person—
 - (A) is a body corporate; and
 - (B) the person or a relative of the person or of the person's spouse or domestic partner has, or two or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or
 - (iii) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or domestic partner or a body corporate referred to in subparagraph (ii) is a beneficiary; or
 - (iv) the person is declared by the regulations to be an associate of the other person;
- (b) in determining whether a company is a *subsidiary* of a public sector agency, any shares held, or powers exercisable by, the agency or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the agency is an instrumentality of the Crown or holds its property on behalf of the Crown.
- (2) The Minister may, by notice published in the Gazette—
- (a) declare that a person for the time being performing specified duties is a senior official; or
 - (b) vary or revoke a notice under this subsection.

Note—

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

Part 2—Public sector duties

Division 1—Duties of corporate agency members

3—Application of Division

- (1) This Division does not apply in relation to a corporation sole.
- (2) This Division does not apply to a corporate agency member if provisions of the *Public Corporations Act 1993* apply to the public sector agency.

4—Duty of corporate agency members to exercise care and diligence

- (1) A corporate agency member must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.
- (2) If a corporate agency member is culpably negligent in the performance of his or her functions, the member is guilty of an offence.

Penalty: Division 4 fine.

- (3) A corporate agency member is not culpably negligent for the purposes of subsection (2) unless the court is satisfied the member's conduct fell sufficiently short of the standards required under this Act of the member to warrant the imposition of a criminal sanction.
- (4) A corporate agency member does not commit any breach of duty under this section by acting in accordance with a direction or requirement of the relevant Minister.

5—Duty of corporate agency members to act honestly

- (1) A corporate agency member must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

6—Duty of corporate agency members not to be involved in unauthorised transactions with agency or subsidiary

- (1) Neither a corporate agency member nor an associate of a corporate agency member may, without the approval of the relevant Minister, be directly or indirectly involved in a transaction with the agency or any subsidiary of the agency.
- (2) A person will be treated as being indirectly involved in a transaction for the purposes of subsection (1)—
 - (a) if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the transaction); and
 - (b) despite the fact that neither that person nor an agent, nominee or trustee of that person becomes a party to the transaction.
- (3) Subsection (1) does not apply—
 - (a) to the provision of services by the agency or any subsidiary of the agency in the ordinary course of its ordinary business and on ordinary terms; or
 - (b) to the employment of a person under a contract of service with the agency or a subsidiary of the agency or to a transaction that is ancillary or incidental to such employment; or
 - (c) to transactions of a prescribed class.
- (4) If a transaction is made with an agency or any subsidiary of the agency in contravention of subsection (1), the transaction is liable to be avoided by the agency or by the relevant Minister.
- (5) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.
- (6) A corporate agency member must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty:

If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

7—Duty of corporate agency members not to have unauthorised interest in agency or subsidiary

- (1) Neither a corporate agency member nor an associate of a corporate agency member may, without the approval of the relevant Minister—
 - (a) have or acquire a beneficial interest in shares in, debentures of or managed investment schemes of the agency or any subsidiary of the agency; or
 - (b) have or hold or acquire (whether alone or with another person or persons) a right or option in respect of the acquisition or disposal of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency; or
 - (c) be a party to, or entitled to a benefit under, a contract under which a person has a right to call for or make delivery of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency.
- (2) A corporate agency member must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty:

If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

8—Duty of corporate agency members with respect to conflict of interest

- (1) A corporate agency member who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the agency or the governing body of the agency—
 - (a) must, as soon as reasonably practicable, disclose in writing to the agency or the governing body of the agency full and accurate details of the interest; and
 - (b) must not take part in any discussion by the agency or the governing body of the agency relating to that matter; and
 - (c) must not vote in relation to that matter; and
 - (d) must be absent from the meeting room when any such discussion or voting is taking place.

Penalty: Division 4 fine.

- (2) If a corporate agency member makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the agency; and
 - (b) the corporate agency member is not liable to account to the agency for profits derived from the contract.

- (3) If a corporate agency member fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the agency or by the relevant Minister.
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (5) Where a corporate agency member has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a corporate agency member of the agency, the corporate agency member must, as soon as reasonably practicable, disclose in writing to the agency or the governing body of the agency full and accurate details of the interest or office.
Penalty: Division 4 fine.
- (6) A disclosure under this section must be recorded in the minutes of the agency or the governing body of the agency and reported to the relevant Minister.
- (7) If, in the opinion of the relevant Minister, a particular interest or office of a corporate agency member is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the corporate agency member, the Minister may require the corporate agency member either to divest himself or herself of the interest or office or to resign from the agency or governing body of the agency (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the corporate agency member from the agency or governing body of the agency).
- (8) Without limiting the effect of this section, a corporate agency member will be taken to have an interest in a matter for the purposes of this section if an associate of the corporate agency member has an interest in the matter.
- (9) This section does not apply in relation to a matter in which a corporate agency member has an interest while the corporate agency member remains unaware that he or she has an interest in the matter, but in any proceedings against the corporate agency member the burden will lie on the corporate agency member to prove that he or she was not, at the material time, aware of his or her interest.
- (10) A corporate agency member who is an employee of the agency or an employee employed or assigned to assist the agency will not be taken to have a direct or indirect interest in a matter for the purposes of this section by reason only of the fact that the member is such an employee.

9—Removal of corporate agency members

Non-compliance by a corporate agency member with a duty imposed by this Division constitutes a ground for removal of the corporate agency member from office.

10—Civil liability for contravention of Division

- (1) If a person who is a corporate agency member or former corporate agency member is convicted of an offence for a contravention of this Division (other than an offence consisting of culpable negligence), the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the agency—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that the agency or a subsidiary of the agency suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (2) If a person who is a corporate agency member or former corporate agency member is guilty of a contravention of this Division for which a criminal penalty is fixed (other than a contravention consisting of culpable negligence), the agency or the relevant Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the agency or a subsidiary of the agency suffered loss or damage as a result of the contravention—compensation for the loss or damage.

Division 2—Duties of advisory body members

11—Duty of advisory body members to act honestly

- (1) An advisory body member must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

12—Duty of advisory body members with respect to conflict of interest

- (1) An advisory body member who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the body—
 - (a) must, as soon as reasonably practicable, disclose in writing to the relevant Minister full and accurate details of the interest; and
 - (b) must not take part in any discussion by the body relating to that matter; and
 - (c) must not vote in relation to that matter; and
 - (d) must be absent from the meeting room when any such discussion or voting is taking place.Penalty: Division 4 fine.
- (2) Without limiting the effect of this section, an advisory body member will be taken to have an interest in a matter for the purposes of this section if an associate of the advisory body member has an interest in the matter.

- (3) This section does not apply in relation to a matter in which an advisory body member has an interest while the member remains unaware that he or she has an interest in the matter, but in any proceedings against the advisory body member the burden will lie on the advisory body member to prove that he or she was not, at the material time, aware of his or her interest.

13—Removal of advisory body members

Non-compliance by an advisory body member with a duty imposed by this Division constitutes a ground for removal of the member from office.

14—Civil liability for contravention of Division

- (1) If a person who is an advisory body member or former advisory body member is convicted of an offence for a contravention of this Division, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the relevant Minister—
- (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (2) If a person who is an advisory body member or former advisory body member is guilty of a contravention of this Division, the relevant Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

Division 3—Duties of senior officials

15—Application of Division

This Division does not apply to a senior official if provisions of the *Public Corporations Act 1993* apply to the senior official.

16—Duty of senior official to act honestly

- (1) A senior official must at all times act honestly in the performance of his or her duties, whether within or outside the State.
- Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

17—Duty of senior officials with respect to conflict of interest

- (1) A senior official must—
- (a) on appointment as a senior official, disclose his or her pecuniary interests to the relevant Minister in writing in accordance with the regulations; and

- (b) on acquiring any further pecuniary interest of a kind specified in the regulations, disclose the pecuniary interest to the relevant Minister in writing in accordance with the regulations; and
- (c) if a pecuniary interest (whether or not required to be disclosed under paragraph (a) or (b)) or other personal interest of the senior official conflicts or may conflict with his or her duties—
 - (i) disclose in writing to the relevant Minister the nature of the interest and the conflict or potential conflict; and
 - (ii) not take action or further action in relation to the matter except as authorised in writing by the relevant Minister.

Penalty: Division 4 fine.

- (2) Subsection (1)(a) applies to a person who is a senior official on the commencement of this section as if the requirement to disclose interests on appointment as a senior official were a requirement to disclose the interests within one month after that commencement.
- (3) A senior official must comply with any written directions given by the relevant Minister to resolve a conflict between the senior official's duties and a pecuniary or other personal interest.

Penalty: Division 4 fine.

- (4) Without limiting the effect of this section, a senior official will be taken to have an interest in a matter for the purposes of this section if an associate of the senior official has an interest in the matter.
- (5) If a senior official makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided; and
 - (b) the senior official is not liable to account for profits derived from the contract.
- (6) If a senior official fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the relevant Minister.
- (7) A contract may not be avoided under subsection (6) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (8) This section does not apply in relation to a conflict or potential conflict between a senior official's duties and a pecuniary or other personal interest while the senior official remains unaware of the conflict or potential conflict, but in any proceedings against the senior official the burden will lie on the senior official to prove that he or she was not, at the material time, aware of the conflict or potential conflict.

18—Civil liability for contravention of Division

- (1) If a person is convicted of an offence against this Division, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the relevant Minister—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and

- (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (2) If a person contravenes this Division, the relevant Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

Division 4—Duties of corporate agency executives

19—Application of Division

- (1) This Division does not apply to a corporate agency executive if provisions of the *Public Corporations Act 1993* apply to the public sector agency.
- (2) Sections 20 and 23 do not apply to a corporate agency executive who is a senior official.

20—Duty of corporate agency executives to act honestly

- (1) A corporate agency executive must at all times act honestly in the performance of his or her duties, whether within or outside the State.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

21—Duty of corporate agency executives not to be involved in unauthorised transactions with agency or subsidiary

- (1) Neither a corporate agency executive nor an associate of a corporate agency executive may, without the approval of the relevant Minister, be directly or indirectly involved in a transaction with the agency or any subsidiary of the agency.
- (2) A person will be treated as being indirectly involved in a transaction for the purposes of subsection (1)—
 - (a) if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the transaction); and
 - (b) despite the fact that neither that person nor an agent, nominee or trustee of that person becomes a party to the transaction.
- (3) Subsection (1) does not apply—
 - (a) to the provision of services by the agency or any subsidiary of the agency in the ordinary course of its ordinary business and on ordinary terms; or
 - (b) to the employment of a person under a contract of service with the agency or a subsidiary of the agency or to a transaction that is ancillary or incidental to such employment; or

- (c) to transactions of a prescribed class.
- (4) If a transaction is made with an agency or any subsidiary of the agency in contravention of subsection (1), the transaction is liable to be avoided by the agency or by the relevant Minister.
- (5) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.
- (6) A corporate agency executive must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty:

If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

22—Duty of corporate agency executives not to have unauthorised interest in agency or subsidiary

- (1) Neither a corporate agency executive nor an associate of a corporate agency executive may, without the approval of the relevant Minister—
- (a) have or acquire a beneficial interest in shares in, debentures of or managed investment schemes of the agency or any subsidiary of the agency; or
- (b) have or hold or acquire (whether alone or with another person or persons) a right or option in respect of the acquisition or disposal of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency; or
- (c) be a party to, or entitled to a benefit under, a contract under which a person has a right to call for or make delivery of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency.
- (2) A corporate agency executive must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

Penalty:

If an intention to deceive or defraud is proved—Division 4 fine or division 4 imprisonment, or both.

In any other case—Division 6 fine.

23—Duty of corporate agency executives with respect to conflict of interest

- (1) If a corporate agency executive has a pecuniary or other personal interest that conflicts or may conflict with the executive's duties, the executive must disclose in writing to the agency the nature of the interest and the conflict or potential conflict.
- (2) A corporate agency executive must comply with any written directions given by the agency to resolve a conflict between the executive's duties and a pecuniary or other personal interest.

- (3) Without limiting the effect of this section, a corporate agency executive will be taken to have an interest in a matter for the purposes of this section if an associate of the executive has an interest in the matter.
- (4) Failure by a corporate agency executive to comply with this section constitutes grounds for termination of the executive's employment (but this does not derogate from any statutory provisions or other law governing the process for discipline or termination of employment of an employee).
- (5) If a corporate agency executive makes a disclosure of interest under subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided; and
 - (b) the executive is not liable to account for profits derived from the contract.
- (6) If a corporate agency executive fails to make a disclosure of interest under subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the relevant Minister.
- (7) A contract may not be avoided under subsection (6) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (8) This section does not apply in relation to a conflict or potential conflict between a corporate agency executive's duties and a pecuniary or other personal interest while the executive remains unaware of the conflict or potential conflict, but in any proceedings against the executive the burden will lie on the executive to prove that he or she was not, at the material time, aware of the conflict or potential conflict.

24—Civil liability for contravention of Division

- (1) If a person is convicted of an offence against this Division, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the relevant Minister—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (2) If a person contravenes this Division, the relevant Minister may (whether or not proceedings have been brought for an offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

Division 5—Duties of public sector employees

25—Application of Division

This Division does not apply to a public sector employee if Division 3, Division 4 or provisions of the *Public Corporations Act 1993* apply to the employee.

26—Duty of employees to act honestly

- (1) A public sector employee must at all times act honestly in the performance of his or her duties, whether within or outside the State.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

27—Duty of employees with respect to conflict of interest

- (1) If a public sector employee has a pecuniary or other personal interest that conflicts or may conflict with the employee's duties, the employee must disclose in writing to the relevant authority the nature of the interest and the conflict or potential conflict.
- (2) A public sector employee must comply with any written directions given by the relevant authority to resolve a conflict between the employee's duties and a pecuniary or other personal interest.
- (3) Without limiting the effect of this section, a public sector employee will be taken to have an interest in a matter for the purposes of this section if an associate of the employee has an interest in the matter.
- (4) Failure by an employee to comply with this section constitutes grounds for termination of the employee's employment (but this does not derogate from any statutory provisions or other law governing the process for discipline or termination of employment of an employee).
- (5) If an employee makes a disclosure of interest under subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided; and
 - (b) the employee is not liable to account for profits derived from the contract.
- (6) If an employee fails to make a disclosure of interest under subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the relevant Minister.
- (7) A contract may not be avoided under subsection (6) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (8) This section does not apply in relation to a conflict or potential conflict between an employee's duties and a pecuniary or other personal interest while the employee remains unaware of the conflict or potential conflict, but in any proceedings against the employee the burden will lie on the employee to prove that he or she was not, at the material time, aware of the conflict or potential conflict.
- (9) In this section—

relevant authority means—

 - (a) in relation to an employee employed by or in a public sector agency with a chief executive (or acting chief executive)—the chief executive (or acting chief executive) of the agency; or
 - (b) in any other case—the relevant Minister or the nominee of the relevant Minister.

28—Civil liability for contravention of Division

- (1) If a person is convicted of an offence against this Division, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the relevant Minister—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (2) If a person contravenes this Division, the relevant Minister may (whether or not proceedings have been brought for an offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

Division 6—Duties of persons performing contract work**29—Duty of persons performing contract work to act honestly**

- (1) A person performing contract work for a public sector agency or the Crown must at all times act honestly in the performance of that work, whether within or outside the State.
Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

30—Duty of persons performing contract work with respect to conflict of interest

- (1) If a person performing contract work for a public sector agency or the Crown has a pecuniary or other personal interest that conflicts or may conflict with duties that the person has in that capacity and the conflict relates to a contract or proposed contract binding the agency or the Crown (other than the contract for the performance of the contract work), the person must—
 - (a) disclose in writing to the relevant authority the nature of the interest and the conflict or potential conflict; and
 - (b) not take action or further action in relation to the matter except as authorised in writing by the relevant authority.

Penalty: Division 4 fine.

- (2) Without limiting the effect of this section, a person will be taken to have an interest in a matter for the purposes of this section if an associate of the person has an interest in the matter.

- (3) If a person performing contract work for a public sector agency or the Crown makes a disclosure of interest under subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided; and
 - (b) the person is not liable to account for profits derived from the contract.
- (4) If a person performing contract work for a public sector agency or the Crown fails to make a disclosure of interest under subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the relevant Minister.
- (5) A contract may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (6) This section does not apply in relation to a conflict or potential conflict between a person's duties and a pecuniary or other personal interest while the person remains unaware of the conflict or potential conflict, but in any proceedings against the person the burden will lie on the person to prove that he or she was not, at the material time, aware of the conflict or potential conflict.
- (7) In this section—

relevant authority means—

 - (a) in relation to a person performing contract work for a public sector agency with a chief executive (or acting chief executive)—the chief executive (or acting chief executive) of the agency; or
 - (b) in any other case—the relevant Minister or the nominee of the relevant Minister.

31—Civil liability for contravention of Division

- (1) If a person is convicted of an offence against this Division, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the relevant Minister—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.
- (2) If a person contravenes this Division, the relevant Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if any loss or damage has been suffered as a result of the contravention—compensation for the loss or damage.

Division 7—Exemptions

32—Exemptions

The Governor may, by regulation, exempt a person or class of persons, conditionally or unconditionally, from the application of a provision of this Part.

Part 3—Miscellaneous

33—Proceedings for offences

- (1) Proceedings may not be brought for an offence against this Act except with the consent of the Director of Public Prosecutions.
- (2) Notwithstanding any other Act, proceedings for a summary offence against this Act may be brought within the period of 3 years after the date on which the offence is alleged to have been committed or, with the consent of the Director of Public Prosecutions, at any later time.
- (3) A document purporting to be a consent of the Director of Public Prosecutions given under this section is, in the absence of proof to the contrary, proof of the consent.

34—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act, or as are necessary or expedient for the purposes of this Act.
- (2) A regulation—
 - (a) may be of general or limited application and may vary in operation according to factors stated in the regulation; and
 - (b) may leave a matter or thing to be determined, dispensed with, regulated or prohibited according to the discretion of the Minister, the Commissioner for Public Sector Employment or a chief executive of a public sector agency, either generally or in a particular case or class of cases; and
 - (c) may impose a penalty not exceeding a Division 8 fine for contravention of, or non-compliance with, the regulation.

Legislative history

Notes

- 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.

Formerly

Public Sector Management Act 1995

Legislation repealed by principal Act

The *Public Sector (Honesty and Accountability) Act 1995* repealed the following:

Government Management and Employment Act 1985

Legislation amended by principal Act

The *Public Sector (Honesty and Accountability) Act 1995* amended the following:

Industrial and Employee Relations Act 1994

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1995	39	<i>Public Sector Management Act 1995</i>	4.5.1995	17.7.1995 (<i>Gazette 13.7.1995 p54</i>)
1998	17	<i>Public Sector Management (Incompatible Public Offices) Amendment Act 1998</i>	2.4.1998	30.4.1998 (<i>Gazette 30.4.1998 p2022</i>)
2003	36	<i>Statutes Amendment (Honesty and Accountability in Government) Act 2003</i>	31.7.2003	Pt 5 (ss 18—29)—29.4.2004 (<i>Gazette 29.4.2004 p1173</i>) except new ss 6H & 6L (as inserted by s 21) and s 28—31.7.2005 (s 7(5) <i>Acts Interpretation Act 1915</i>)
2003	44	<i>Statute Law Revision Act 2003</i>	23.10.2003	Sch 1—24.11.2003 (<i>Gazette 13.11.2003 p4048</i>)
2005	25	<i>Public Sector Management (Chief Executive Accountability) Amendment Act 2005</i>	9.6.2005	9.6.2005
2006	41	<i>Statutes Amendment (Public Sector Employment) Act 2006</i>	14.12.2006	Pt 16 (s 73)—1.4.2007 (<i>Gazette 29.3.2007 p930</i>)

2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 71 (s 181)—1.6.2007 (<i>Gazette</i> 26.4.2007 p1352)
2007	25	<i>Protective Security Act 2007</i>	26.7.2007	Sch 1 (cl 30)—28.4.2008 (<i>Gazette</i> 3.4.2008 p1183)
2009	38	<i>Public Sector Management (Consequential) Amendment Act 2009</i>	23.7.2009	1.2.2010 (<i>Gazette</i> 28.1.2010 p319)

Provisions amended

New entries appear in bold.

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

Provision	How varied	Commencement
Long title	amended by 44/2003 s 3(1) (Sch 1) substituted by 38/2009 s 4	24.11.2003 1.2.2010
Pt 1		
s 1	amended by 38/2009 s 5	1.2.2010
<i>s 2</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
s 2	s 3 redesignated as s 2 by 38/2009 s 6(11)	1.2.2010
<i>s 2</i>		
<i>s 2(1)</i>		
<i>administrative decision</i>	<i>amended by 36/2003 s 18(a)</i>	29.4.2004
	<i>deleted by 38/2009 s 6(1)</i>	1.2.2010
administrative unit	substituted by 38/2009 s 6(1)	1.2.2010
advisory body	inserted by 36/2003 s 18(b)	29.4.2004
beneficiary	inserted by 36/2003 s 18(b)	29.4.2004
<i>casual position</i>	<i>deleted by 38/2009 s 6(2)</i>	1.2.2010
<i>Chief Executive</i>	<i>deleted by 38/2009 s 6(2)</i>	1.2.2010
<i>the Commissioner</i>	<i>deleted by 38/2009 s 6(2)</i>	1.2.2010
contractor	inserted by 36/2003 s 18(c)	29.4.2004
contract work	inserted by 36/2003 s 18(c)	29.4.2004
corporate agency executive	inserted by 36/2003 s 18(c)	29.4.2004
corporate agency member	inserted by 36/2003 s 18(c)	29.4.2004
debenture	inserted by 36/2003 s 18(c)	29.4.2004
<i>the Disciplinary Appeals Tribunal</i>	<i>deleted by 38/2009 s 6(3)</i>	1.2.2010
domestic partner	inserted by 43/2006 s 181(1)	1.6.2007
<i>effective service</i>	<i>deleted by 38/2009 s 6(4)</i>	1.2.2010
<i>employee</i>	<i>deleted by 38/2009 s 6(4)</i>	1.2.2010
<i>executive</i>	<i>deleted by 38/2009 s 6(4)</i>	1.2.2010

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managed investment scheme	inserted by 36/2003 s 18(d)	29.4.2004
<i>merit</i>	<i>deleted by 38/2009 s 6(5)</i>	1.2.2010
<i>the Minister</i>	<i>deleted by 38/2009 s 6(5)</i>	1.2.2010
<i>the Promotion and Grievance Appeals Tribunal</i>	<i>deleted by 38/2009 s 6(5)</i>	1.2.2010
<i>the public sector</i>	<i>deleted by 38/2009 s 6(5)</i>	1.2.2010
public sector agency	amended by 36/2003 s 18(e), (f)	29.4.2004
	substituted by 38/2009 s 6(5)	1.2.2010
public sector employee	substituted by 38/2009 s 6(5)	1.2.2010
<i>recognised organisation</i>	<i>deleted by 38/2009 s 6(5)</i>	1.2.2010
relative	inserted by 36/2003 s 18(g)	29.4.2004
	amended by 43/2006 s 181(2)	1.6.2007
relevant interest	inserted by 36/2003 s 18(g)	29.4.2004
relevant Minister	inserted by 36/2003 s 18(g)	29.4.2004
	substituted by 38/2009 s 6(6)	1.2.2010
<i>remuneration</i>	<i>deleted by 38/2009 s 6(6)</i>	1.2.2010
<i>remuneration level</i>	<i>deleted by 38/2009 s 6(6)</i>	1.2.2010
<i>selection processes</i>	<i>deleted by 38/2009 s 6(6)</i>	1.2.2010
senior official	inserted by 36/2003 s 18(h)	29.4.2004
	amended by 38/2009 s 6(7), (8)	1.2.2010
	(b) deleted by 38/2009 s 6(7)	1.2.2010
spouse	inserted by 36/2003 s 18(h)	29.4.2004
	substituted by 43/2006 s 181(3)	1.6.2007
subsidiary	inserted by 36/2003 s 18(h)	29.4.2004
<i>temporary position</i>	<i>deleted by 38/2009 s 6(9)</i>	1.2.2010
<i>total remuneration package value</i>	<i>deleted by 38/2009 s 6(9)</i>	1.2.2010
<i>whole-of-government objectives</i>	<i>inserted by 25/2005 s 3</i>	9.6.2005
	<i>deleted by 38/2009 s 6(9)</i>	1.2.2010
s 2(1a)	s 3(1a) inserted by 36/2003 s 18(i)	29.4.2004
	s 3(1a) amended by 43/2006 s 181(4)	1.6.2007
s 2(2)	s 3(2) amended by 36/2003 s 18(j)	29.4.2004
	s 3(2) substituted by 38/2009 s 6(10)	1.2.2010
Pt 2	heading substituted by 36/2003 s 19	29.4.2004

	heading substituted by 38/2009 s 7	1.2.2010
<i>Pt 2 Div 1 before deletion by 38/2009</i>	<i>heading inserted by 36/2003 s 19</i>	29.4.2004
<i>s 6</i>	<i>amended by 36/2003 s 20</i>	29.4.2004
Pt 2 Div 1	deleted by 38/2009 s 8	1.2.2010
<i>Pt 2 Div 2</i>	<i>inserted by 36/2003 s 21</i>	29.4.2004
	deleted by 38/2009 s 8	1.2.2010
Pt 2 Div 1	Pt 2 Div 3 inserted by 36/2003 s 21	29.4.2004 except s 6H— 31.7.2005
	Pt 2 Div 3 redesignated as Pt 2 Div 1 by 38/2009 s 9	1.2.2010
<i>s 3</i>	<i>s 6C redesignated as s 3 by 38/2009 s 10</i>	1.2.2010
<i>s 4</i>	<i>s 6D redesignated as s 4 by 38/2009 s 11</i>	1.2.2010
<i>s 5</i>	<i>s 6E redesignated as s 5 by 38/2009 s 12</i>	1.2.2010
<i>s 6</i>	<i>s 6F redesignated as s 6 by 38/2009 s 13</i>	1.2.2010
<i>s 7</i>	<i>s 6G redesignated as s 7 by 38/2009 s 14</i>	1.2.2010
<i>s 8</i>	<i>s 6H redesignated as s 8 by 38/2009 s 15(2)</i>	1.2.2010
<i>s 8(10)</i>	<i>s 6H(10) inserted by 38/2009 s 15(1)</i>	1.2.2010
<i>s 9</i>	<i>s 6I redesignated as s 9 by 38/2009 s 16</i>	1.2.2010
<i>s 10</i>	<i>s 6J redesignated as s 10 by 38/2009 s 17</i>	1.2.2010
Pt 2 Div 2	Pt 2 Div 4 inserted by 36/2003 s 21	29.4.2004 except s 6L— 31.7.2005
	Pt 2 Div 4 redesignated as Pt 2 Div 2 by 38/2009 s 18	1.2.2010
<i>s 11</i>	<i>s 6K redesignated as s 11 by 38/2009 s 19</i>	1.2.2010
<i>s 12</i>	<i>s 6L redesignated as s 12 by 38/2009 s 20</i>	1.2.2010
<i>s 13</i>	<i>s 6M redesignated as s 13 by 38/2009 s 21</i>	1.2.2010
<i>s 14</i>	<i>s 6N redesignated as s 14 by 38/2009 s 22</i>	1.2.2010
Pt 2 Div 3	Pt 2 Div 5 inserted by 36/2003 s 21	29.4.2004
	Pt 2 Div 5 redesignated as Pt 2 Div 3 by 38/2009 s 23	1.2.2010
<i>s 15</i>	<i>s 6O redesignated as s 15 by 38/2009 s 24</i>	1.2.2010
<i>s 16</i>	<i>s 6P redesignated as s 16 by 38/2009 s 25</i>	1.2.2010
<i>s 17</i>	<i>s 6Q redesignated as s 17 by 38/2009 s 26</i>	1.2.2010
<i>s 18</i>	<i>s 6R redesignated as s 18 by 38/2009 s 27</i>	1.2.2010
Pt 2 Div 4	Pt 2 Div 6 inserted by 36/2003 s 21	29.4.2004
	Pt 2 Div 6 redesignated as Pt 2 Div 4 by 38/2009 s 28	1.2.2010
<i>s 19</i>	<i>s 6S redesignated as s 19 by 38/2009 s 29(2)</i>	1.2.2010
<i>s 19(2)</i>	<i>s 6S(2) amended by 38/2009 s 29(1)</i>	1.2.2010
<i>s 20</i>	<i>s 6T redesignated as s 20 by 38/2009 s 30</i>	1.2.2010
<i>s 21</i>	<i>s 6U redesignated as s 21 by 38/2009 s 31</i>	1.2.2010
<i>s 22</i>	<i>s 6V redesignated as s 22 by 38/2009 s 32</i>	1.2.2010
<i>s 23</i>	<i>s 6W redesignated as s 23 by 38/2009 s 33</i>	1.2.2010
<i>s 24</i>	<i>s 6X redesignated as s 24 by 38/2009 s 34</i>	1.2.2010

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Pt 2 Div 5	Pt 2 Div 7 inserted by 36/2003 s 21	29.4.2004
	Pt 2 Div 7 redesignated as Pt 2 Div 5 by 38/2009 s 35(2)	1.2.2010
heading	varied by 38/2009 s 35(1)	1.2.2010
s 25	s 6Y amended and redesignated as s 25 by 38/2009 s 36(1), (2)	1.2.2010
s 26	s 6Z redesignated as s 26 by 38/2009 s 37	1.2.2010
s 27	s 6ZA redesignated as s 27 by 38/2009 s 38	1.2.2010
s 28	s 6ZB redesignated as s 28 by 38/2009 s 39	1.2.2010
Pt 2 Div 6	Pt 2 Div 8 inserted by 36/2003 s 21	29.4.2004
	Pt 2 Div 8 redesignated as Pt 2 Div 6 by 38/2009 s 40	1.2.2010
s 29	s 6ZC redesignated as s 29 by 38/2009 s 41	1.2.2010
s 30	s 6ZD redesignated as s 30 by 38/2009 s 42	1.2.2010
s 31	s 6ZE redesignated as s 31 by 38/2009 s 43	1.2.2010
Pt 2 Div 7	Pt 2 Div 9 inserted by 36/2003 s 21	29.4.2004
	Pt 2 Div 9 redesignated as Pt 2 Div 7 by 38/2009 s 44	1.2.2010
s 32	s 6ZF amended and redesignated as s 32 by 38/2009 s 45(1), (2)	1.2.2010
Pt 3	substituted by 38/2009 s 46	1.2.2010
<i>Pt 4 before deletion by 38/2009</i>		
<i>s 12</i>		
<i>s 12(1)</i>	<i>amended by 36/2003 s 22</i>	29.4.2004
	<i>amended by 25/2005 s 4(1), (2)</i>	9.6.2005
<i>s 14</i>	<i>substituted by 25/2005 s 5</i>	9.6.2005
<i>s 15</i>		
<i>s 15(1)</i>	<i>substituted by 25/2005 s 6</i>	9.6.2005
<i>s 18</i>	<i>deleted by 36/2003 s 23</i>	29.4.2004
Pt 4	deleted by 38/2009 s 46	1.2.2010
<i>Pt 5 before deletion by 38/2009</i>		
<i>s 21</i>		
<i>s 21(1)</i>	<i>amended by 36/2003 s 24</i>	29.4.2004
<i>s 27</i>	<i>deleted by 36/2003 s 25</i>	29.4.2004
Pts 5—7	deleted by 38/2009 s 46	1.2.2010
<i>Pt 8 before deletion by 38/2009</i>		
<i>s 56</i>	<i>deleted by 36/2003 s 26</i>	29.4.2004
Pt 8	deleted by 38/2009 s 46	1.2.2010
<i>Pt 9 before deletion by 38/2009</i>		
<i>s 66</i>	<i>deleted by 36/2003 s 27</i>	29.4.2004
<i>s 70A</i>	<i>inserted by 17/1998 s 3</i>	30.4.1998

<i>s 74</i>		
<i>s 74(1)</i>	<i>amended by 36/2003 s 28(a), (b)</i>	31.7.2005
<i>s 74(2)</i>	<i>amended by 36/2003 s 28(c), (d)</i>	31.7.2005
<i>s 74(3)</i>	<i>amended by 36/2003 s 28(e)</i>	31.7.2005
<i>s 74(4)</i>	<i>inserted by 36/2003 s 28(f)</i>	31.7.2005
<i>s 79A</i>	<i>inserted by 36/2003 s 29</i>	29.4.2004
Pt 9	<i>deleted by 38/2009 s 46</i>	1.2.2010
<i>Sch 1 before deletion by 38/2009</i>		
<i>cl 1</i>		
<i>cl 1(1)</i>	<i>amended by 41/2006 s 73(1), (2)</i>	1.4.2007
	<i>amended by 25/2007 Sch 1 (cl 30)</i>	28.4.2008
Sch 1	<i>deleted by 38/2009 s 47</i>	1.2.2010
<i>Sch 2 before deletion by 38/2009</i>		
<i>Pt 1</i>	<i>heading preceding cl 1 deleted and Pt 1 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 2</i>	<i>heading preceding cl 3 deleted and Pt 2 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 3</i>	<i>heading preceding cl 5 deleted and Pt 3 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 4</i>	<i>heading preceding cl 6 deleted and Pt 4 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 5</i>	<i>heading preceding cl 7 deleted and Pt 5 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 6</i>	<i>heading preceding cl 8 deleted and Pt 6 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 7</i>	<i>heading preceding cl 12 deleted and Pt 7 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
<i>Pt 8</i>	<i>heading preceding cl 13 deleted and Pt 8 heading inserted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003
Schs 2—4	<i>deleted by 38/2009 s 47</i>	1.2.2010
<i>Sch 5</i>	<i>deleted by 44/2003 s 3(1) (Sch 1)</i>	24.11.2003

Historical versions

Reprint No 1—30.4.1998

Reprint No 2—24.11.2003

29.4.2004

9.6.2005

31.7.2005

1.4.2007

1.6.2007

28.4.2008

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.