

South Australia

# Public Sector Management (Consequential) Amendment Act 2009

An Act to amend the *Public Sector Management Act 1995*.

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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 Management (Consequential) Amendment Act 2009*.

#### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

#### **3—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 *Public Sector Management Act 1995***

#### **4—Amendment of long title**

Long title—delete the long title and substitute:

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

## 5—Amendment of section 1—Short title

Section 1—delete "*Management*" and substitute:

*(Honesty and Accountability)*

## 6—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *administrative decision* and *administrative unit*—delete the definitions and substitute:

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

- (2) Section 3(1), definition of *casual position*, *Chief Executive* and *the Commissioner*—delete the definitions
- (3) Section 3(1), definition of *the Disciplinary Appeals Tribunal*—delete the definition
- (4) Section 3(1), definitions of *effective service*, *employee* and *executive*—delete the definitions
- (5) Section 3(1), definitions of *merit*, *the Minister*, *the Promotion and Grievance Appeals Tribunal*, *the public sector*, *public sector agency*, *public sector employee* and *recognised organisation*—delete the definitions and substitute:

*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*;

- (6) Section 3(1), definitions of *relevant Minister*, *remuneration*, *remuneration level* and *selection processes*—delete the definitions and substitute:

*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;

- (7) Section 3(1), definition of *senior official*, (a) and (b)—delete paragraphs (a) and (b) and substitute:

(a) the Commissioner for Public Sector Employment; or

- (8) Section 3(1), definition of *senior official*, (c) and (d)—delete "Chief Executive" wherever occurring and substitute in each case:

chief executive

- (9) Section 3(1), definitions of *temporary position*, *total remuneration package value* and *whole-of-Government objectives*—delete the definitions

- (10) Section 3(2)—delete subsection (2) and substitute:

(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.

- (11) Section 3—redesignate the section as amended by this section as section 2

## **7—Amendment of heading to Part 2**

Heading to Part 2—delete the heading to Part 2 and substitute:

### **Part 2—Public sector duties**

## **8—Repeal of Divisions 1 and 2**

Divisions 1 and 2—delete the Divisions

## **9—Redesignation of Part 2 Division 3**

Part 2 Division 3—redesignate the Division as Division 1

## **10—Redesignation of section 6C—Application of Division**

Section 6C—redesignate the section as section 3

## **11—Redesignation of section 6D—Duty of corporate agency members to exercise care and diligence**

Section 6D—redesignate the section as section 4

## **12—Redesignation of section 6E—Duty of corporate agency members to act honestly**

Section 6E—redesignate the section as section 5

## **13—Redesignation of section 6F—Duty of corporate agency members not to be involved in unauthorised transactions with agency or subsidiary**

Section 6F—redesignate the section as section 6

## **14—Redesignation of section 6G—Duty of corporate agency members not to have unauthorised interest in agency or subsidiary**

Section 6G—redesignate the section as section 7

## **15—Amendment and redesignation of section 6H—Duty of corporate agency members with respect to conflict of interest**

(1) Section 6H—after subsection (9) insert:

(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.

(2) Section 6H—redesignate the section as amended by this section as section 8

## **16—Redesignation of section 6I—Removal of corporate agency members**

Section 6I—redesignate the section as section 9

## **17—Redesignation of section 6J—Civil liability for contravention of Division**

Section 6J—redesignate the section as section 10

**18—Redesignation of Part 2 Division 4**

Part 2 Division 4—re designate the Division as Division 2

**19—Redesignation of section 6K—Duty of advisory body members to act honestly**

Section 6K—re designate the section as section 11

**20—Redesignation of section 6L—Duty of advisory body members with respect to conflict of interest**

Section 6L—re designate the section as section 12

**21—Redesignation of section 6M—Removal of advisory body members**

Section 6M—re designate the section as section 13

**22—Redesignation of section 6N—Civil liability for contravention of Division**

Section 6N—re designate the section as section 14

**23—Redesignation of Part 2 Division 5**

Part 2 Division 5—re designate the Division as Division 3

**24—Redesignation of section 6O—Application of Division**

Section 6O—re designate the section as section 15

**25—Redesignation of section 6P—Duty of senior official to act honestly**

Section 6P—re designate the section as section 16

**26—Redesignation of section 6Q—Duty of senior officials with respect to conflict of interest**

Section 6Q—re designate the section as section 17

**27—Redesignation of section 6R—Civil liability for contravention of Division**

Section 6R—re designate the section as section 18

**28—Redesignation of Part 2 Division 6**

Part 2 Division 6—Re designate the Division as Division 4

**29—Amendment and redesignation of section 6S—Application of Division**

(1) Section 6S(2)—delete "6T and 6W" and substitute:

20 and 23

(2) Section 6S—re designate the section as amended by this section as section 19

**30—Redesignation of section 6T—Duty of corporate agency executives to act honestly**

Section 6T—re designate the section as section 20

**31—Redesignation of section 6U—Duty of corporate agency executives not to be involved in unauthorised transactions with agency or subsidiary**

Section 6U—re designate the section as section 21

**32—Redesignation of section 6V—Duty of corporate agency executives not to have unauthorised interest in agency or subsidiary**

Section 6V—re designate the section as section 22

**33—Redesignation of section 6W—Duty of corporate agency executives with respect to conflict of interest**

Section 6W—re designate the section as section 23

**34—Redesignation of section 6X—Civil liability for contravention of Division**

Section 6X—re designate the section as section 24

**35—Amendment of Part 2 Division 7 heading**

- (1) Part 2 Division 7 heading—before "employees" insert:

public sector

- (2) Part 2 Division 7—re designate the Division as amended by this section as Division 5

**36—Amendment and redesignation of section 6Y—Application of Division**

- (1) Section 6Y—delete "an employee if Division 5, Division 6" and substitute:

a public sector employee if Division 3, Division 4

- (2) Section 6Y—re designate the section as amended by this section as section 25

**37—Redesignation of section 6Z—Duty of employees to act honestly**

Section 6Z—re designate the section as section 26

**38—Redesignation of section 6ZA—Duty of employees with respect to conflict of interest**

Section 6ZA—re designate the section as section 27

**39—Redesignation of section 6ZB—Civil liability for contravention of Division**

Section 6ZB—re designate the section as section 28

**40—Redesignation of Part 2 Division 8**

Part 2 Division 8—re designate the Division as Division 6

**41—Redesignation of section 6ZC—Duty of persons performing contract work to act honestly**

Section 6ZC—re designate the section as section 29

**42—Redesignation of section 6ZD—Duty of persons performing contract work with respect to conflict of interest**

Section 6ZD—re designate the section as section 30

**43—Redesignation of section 6ZE—Civil liability for contravention of Division**

Section 6ZE—re designate the section as section 31

**44—Redesignation of Part 2 Division 9**

Part 2 Division 9—re designate the Division as Division 7

**45—Amendment and redesignation of section 6ZF—Exemptions**

- (1) Section 6ZF—delete "other than a provision of Division 1 or 2"
- (2) Section 6ZF—re designate the section as amended by this section as section 32

**46—Repeal of Parts 3, 4, 5, 6, 7, 8 and 9**

Parts 3, 4, 5, 6, 7, 8 and 9—delete the Parts and substitute:

**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.

**47—Repeal of Schedules 1, 2, 3 and 4**

Schedules 1, 2, 3 and 4—delete the Schedules