

South Australia

Public Sector Management Regulations 1995

under the *Public Sector Management Act 1995*

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Legislative history

1—Short title

These regulations may be cited as the *Public Sector Management Regulations 1995*.

2—Commencement

These regulations will come into operation on 17 July 1995.

3—Revocation

All regulations made under the *Government Management and Employment Act 1985* are revoked.

4—Interpretation

In these regulations—

the Act means the *Public Sector Management Act 1995*.

5—Disclosure of pecuniary interests (sections 18 and 27)

(1) The table below specifies—

- (a) the pecuniary interests to be disclosed—
 - (i) by a Chief Executive for the purposes of section 18(1)(a) or (b) of the Act; or
 - (ii) by the Commissioner for the purposes of section 27(1)(a) or (b) of the Act; and
- (b) the information that must be disclosed by the Chief Executive or the Commissioner in respect of any such pecuniary interest.

	Pecuniary Interest	Information Required
1	A contract of service, office, trade, vocation, business or profession in respect of which the person receives or is entitled to receive any remuneration, fee or other pecuniary sum (not being payable under the Act)	A description of the contract, office, trade, vocation, business or profession and the amount and source of the remuneration, fee or other pecuniary sum.
2	An office held by the person (whether as a director or otherwise) in a company or other body (whether or not incorporated) in respect of which the person received or is entitled to receive any remuneration, fee or other pecuniary sum	The name and address of the company or other body and the amount of the remuneration, fee or other pecuniary sum.
3	A company, partnership, association or other body in which the person is an investor	The name and address or description of the company, partnership, association or other body.
4	Land in which the person has a beneficial interest (other than by way of security for a debt)	The address or description of the land.
5	A trust (other than a testamentary trust) of which the person is a beneficiary or trustee	A description of the trust and the name and address of each trustee.
6	Any other pecuniary interest of the person of a kind determined by the Minister	The information required by the Minister to be disclosed in respect of that pecuniary interest.

(2) For the purposes of this regulation—

- (a) a reference to a beneficial interest in land includes a reference to a right to reacquire land;
- (b) a person who is an object of a discretionary trust is to be taken to be a beneficiary of that trust;
- (c) a person is an investor in a body if—
 - (i) the person has deposited money with, or lent money to, the body that has not been repaid and the amount not repaid equals or exceeds \$10 000; or

- (ii) the person holds, or has a beneficial interest in, shares in, or debentures of, the body or a policy of life insurance issued by the body.

6—Commissioner's annual report (section 28)

For the purposes of section 28(2) of the Act, the Commissioner's report to the Minister must describe—

- (a) the directions issued by the Commissioner under section 22 of the Act; and
- (b) the determinations made by the Commissioner under section 30 of the Act, during the financial year to which the report relates.

7—Publication of Commissioner's determinations (section 30)

For the purposes of section 30(2) of the Act, a determination of the Commissioner must be published as follows:

- (a) the Commissioner must distribute copies of the determination to the Chief Executives of all administrative units that the Commissioner considers may be affected by the determination;
- (b) the Chief Executive of an administrative unit must, on receipt of a determination, take reasonable steps to—
 - (i) make the contents of the determination known to all employees in the unit who are affected by the determination; and
 - (ii) keep copies of the determination readily available for inspection by any such employee.

8—Applications for variation or review of remuneration level of position (sections 31 and 32)

- (1) For the purposes of section 31(2) of the Act, an application by an employee for variation of the remuneration level of the employee's position must be made to the Chief Executive of the administrative unit in which the employee is employed in writing in a form approved by the Chief Executive.
- (2) An application by an employee under section 32 of the Act for a review of the remuneration level of the employee's position must be made to the Commissioner in writing in a form approved by the Commissioner.
- (3) An application under section 32 of the Act may not be made by an employee whose employment in the Public Service has continued for less than 12 months.
- (4) An application referred to in this regulation may be withdrawn by notice in writing signed by the applicant and delivered to the Chief Executive or Commissioner, as the case may require.

9—Merit-based selection processes (sections 33, 39 and 42)

For the purposes of sections 33, 39 and 42 of the Act, selection processes to be conducted on the basis of merit must comply with the personnel management standards contained in Part 2 of the Act and any relevant directions issued by the Commissioner.

10—Further cases where non-executives may be employed under contract (section 40)

For the purposes of section 40(4) of the Act, conditions of employment in a position may (with the Commissioner's approval) be made subject to a contract if—

- (a) the Commissioner is satisfied after consultation with the Minister that the functions of the position are to cease to be Public Service functions within a period of five years; or
- (b) the Commissioner is satisfied that the position has been created on the basis that it would be funded wholly or substantially by grants or payments from a government other than the State Government or from a private or community body; or
- (c) the position is filled by a public sector employee incorporated into an administrative unit under section 7 of the Act and the employee's employment immediately before his or her incorporation into the Public Service was under a contract for a fixed term.

11—Appointment procedures (section 42)

- (1) For the purposes of section 42(2) and (3) of the Act, applications are to be sought for a position by notice—
 - (a) published in accordance with the directions of the Commissioner; and
 - (b) containing the information required in accordance with the directions of the Commissioner.
- (2) Except in cases of a kind approved by the Commissioner, applications may only be sought and accepted from—
 - (a) employees of the Public Service; and
 - (b) other public sector employees of a class determined by the Commissioner.
- (3) For the purposes of section 42(3) of the Act, pools of applicants may be established for the purpose of filling positions of a class determined by the Commissioner.
- (4) An applicant for a position must supply any information required in connection with the person's application and must ensure that the information contained in or supplied in connection with the application is accurate and complete.
- (5) A person appointed to a position from outside the Public Service must forthwith notify the Chief Executive of any material inaccuracy or omission in the information contained in or supplied in connection with the person's application that was not brought to the notice of the Chief Executive prior to the person's appointment.
- (6) For the purposes of section 42(5) of the Act, the Chief Executive may proceed directly to appoint a person selected for a position if—
 - (a) the remuneration level of the position is above that of the first level in the structure of remuneration levels for executives; or
 - (b) conditions of employment in the position are to be made subject to a contract under Part 7 of the Act.

- (7) Nomination of an employee for appointment to a position is to be by notice published in accordance with the directions of the Commissioner and will constitute sufficient advice to applicants of the outcome of their applications.

12—Promotion appeals (section 43)

- (1) An employee whose conditions of employment in his or her position are subject to a contract under Part 7 of the Act is not entitled to appeal against a nomination under section 43 of the Act unless the person's employment in the Public Service has continued for at least 12 months.
- (2) An appeal under section 43 of the Act must be in writing in a form approved by the Presiding Officer of the Promotion and Grievance Appeals Tribunal and be delivered to the Secretary to that Tribunal.
- (3) An appeal under section 43 of the Act may be withdrawn by notice in writing signed by the appellant and delivered to the Secretary to the Promotion and Grievance Appeals Tribunal.

13—Excess employees (section 50)

If an employee is transferred under section 50 of the Act to a position that has a lower remuneration level, the employee is, in the absence of an award or enterprise or industrial agreement covering the matter, entitled to be paid for such a period and subject to such conditions as may be determined by the Commissioner—

- (a) additional salary so that the employee's salary is the same as that payable in respect of his or her previous position; and
- (b) such allowances and monetary or other benefits (if any) as may be determined by the Commissioner having regard to the employee's remuneration and other benefits in his or her previous position.

14—Rules of employee conduct (section 57)—employment outside the Public Service

- (1) For the purposes of section 57(f) of the Act, an employee may engage in any remunerative employment, occupation or business outside the Public Service if the employee—
 - (a) is a part-time employee; or
 - (b) obtains the permission of the Chief Executive of the administrative unit in which the employee is employed.
- (2) The Chief Executive may withdraw permission given under this regulation.
- (3) The Chief Executive must when deciding whether to give permission or withdraw permission under this regulation comply with any relevant directions issued by the Commissioner.

15—Rules of employee conduct (section 57)—disclosure of information

- (1) For the purposes of section 57(g) of the Act, an employee may disclose information gained in the employee's official capacity, or comment on matters affecting the Public Service or the business of the Public Service if the disclosure or comment—
 - (a) is required as part of the employee's official duties; or

- (b) is required or authorised under the *Freedom of Information Act 1991* or the *Whistleblowers Protection Act 1993* or is otherwise required by law; or
 - (c) is made with the permission of the Chief Executive of the administrative unit in which the employee is employed; or
 - (d) —
 - (i) does not give rise to any reasonably foreseeable possibility of prejudice to the Government in the conduct of its policies, having regard to the nature of the disclosure or comment, the employee's current position or previous positions in the Public Service and the circumstances in which the disclosure or comment is made; and
 - (ii) is not made with a view to securing a pecuniary or other advantage for the employee or any other person; and
 - (iii) does not involve—
 - (A) any disclosure of information contrary to any law or lawful instruction or direction; or
 - (B) any disclosure of trade secrets or information of commercial value the disclosure of which would diminish its value or unfairly advantage a person in commercial dealings with the Government; or
 - (C) any disclosure of information in breach of intellectual property rights.
- (2) Subregulation (1)(c) and (d) apply whether the disclosure or comment is made in an official or private capacity.
- (3) For the purposes of section 57(g) of the Act, an employee may comment on matters affecting the Public Service or the business of the Public Service if the comment is made in the employee's capacity as a member of the governing body of a recognised organisation.

16—Disciplinary appeals (section 61)

- (1) An appeal by an employee under section 61 of the Act against a decision that the employee is liable to disciplinary action or a decision as to disciplinary action to be taken or recommended in respect of the employee must be in writing in a form approved by the Presiding Officer of the Disciplinary Appeals Tribunal and be delivered to the Secretary to that Tribunal.
- (2) An appeal under section 61 of the Act may be withdrawn by notice in writing signed by the appellant and delivered to the Secretary to the Disciplinary Appeals Tribunal.

17—Grievance appeals (section 64)

- (1) An appeal by an employee under section 64 of the Act against an administrative act must be in writing in a form approved by the Presiding Officer of the Promotion and Grievance Appeals Tribunal and be delivered to the Secretary to that Tribunal.
- (2) An appeal under section 64 of the Act may be withdrawn by notice in writing signed by the appellant and delivered to the Secretary to the Promotion and Grievance Appeals Tribunal.

- (3) An employee does not have a right of appeal under section 64 of the Act against any of the following decisions:
- (a) appointment of a person to a position in the Public Service;
 - (b) nomination of an employee for appointment to a position;
 - (c) assignment of an employee to a position at a higher remuneration level under section 44 of the Act for a period of 12 months or less;
 - (d) a decision on an application for variation of the remuneration level of a position or on review of the remuneration level of a position under section 31 or 32 of the Act;
 - (e) termination of an employee's employment in a temporary or casual position;
 - (f) non-reappointment of an employee at the end of a term of employment under a contract governing the employee's employment under Part 7 of the Act;
 - (g) termination of the appointment of an employee who is on probation;
 - (h) a direction of the Commissioner under section 47 of the Act for reduction in salary arising from an employee's refusal or failure to carry out his or her duties;
 - (i) a decision related to the assignment, transfer, termination, remuneration or conditions of employment of an executive or any other matter affecting an executive.

18—Annual reports by public sector agencies (section 66)

For the purposes of section 66 of the Act, a public sector agency's report to the Minister responsible for the agency must contain information (including relevant statistics) with respect to the following:

- (a) the functions and objectives of the agency;
- (b) the legislation administered by the agency;
- (c) the organisation of the agency;
- (d) the agency's relationship to other agencies within the Minister's area of responsibility;
- (e) the agency's operations and initiatives (including an assessment of their effectiveness and efficiency);
- (f) the agency's strategic plans and the relationship of the plans to Government objectives;
- (g) executive employment in the agency (including the number of executives employed at each level of the executive remuneration structure and the number of new executive appointments);
- (h) equal employment opportunity programs established by the Minister under section 67 of the Act;
- (i) the number of instances and nature of fraud detected in the agency and the strategies implemented to control and prevent fraud;
- (j) the financial performance of the agency including—

- (i) audited financial statements prepared in accordance with the Treasurer's instructions and the report of the Auditor-General on the financial statements; and
- (ii) any other financial information in respect of the agency's operations required to be reported to Parliament under another Act;
- (k) the occupational health, safety and rehabilitation programs of the agency (including an evaluation of the programs and their effectiveness);
- (l) the extent to which external consultants have been engaged by the agency, the nature of the work undertaken by the consultants and the total cost to the agency of the consultancies;
- (m) human resource and personnel matters as required under the directions of the Commissioner (including the nature and extent of employee training and the use of contracts under Part 7 of the Act governing the employment of non-executives);
- (n) other matters as required by the Minister.

19—Service and receipt of notices (section 79)

- (1) Every administrative unit must keep a record of the residential address of each employee employed in the unit and, for that purpose and for the purposes of section 79 of the Act, an employee must give the Chief Executive written notice of his or her current residential address—
 - (a) when so required by the Chief Executive; and
 - (b) when there is any change in the employee's residential address.
- (2) In any proceedings, the date of receipt by an employee of any notice or document required or authorised to be given to or served on the employee may be proved by a certificate in writing certifying—
 - (a) that the copy of the notice or document on which the certificate is endorsed is a true copy of the notice or document in question;
 - (b) that the person making the certificate served the notice or document on the employee personally on the date specified in the certificate, or sent the notice or document on the date specified in the certificate by post addressed to the employee at the employee's residential address as last notified under subregulation (1).
- (3) Except where the Act or these regulations provide that a notice must be given in writing, a notice may be given directly to an employee by word of mouth or by telephone, telegram, facsimile transmission or electronic mail.
- (4) A notice or document will be taken to have been given or delivered to a Chief Executive or the Commissioner if the notice or document is given or delivered to the employee for the time being occupying a position nominated by the Chief Executive or Commissioner for the purpose of the receipt of such notices or documents.

20—Ordinary business hours (Schedule 2, clause 1)

For the purposes of clause 1 of Schedule 2 of the Act, the ordinary business hours for an administrative unit are (subject to any directions of the Chief Executive) 8.45 a.m. to 5.00 p.m. Monday to Friday inclusive.

21—Recreation leave (Schedule 2, clause 5)

- (1) Recreation leave may only be granted to an employee on application made to the Chief Executive of the administrative unit in which the employee is employed in writing in a form approved by the Chief Executive.
- (2) Subject to this regulation, recreation leave must be applied for by an employee and granted—
 - (a) so that the employee's recreation leave entitlement for his or her first service year is taken after the end of the first service year and before the end of the financial year in which the first service year ends; and
 - (b) so that the employee's recreation leave entitlement for a subsequent service year is taken during the financial year within which that subsequent service year ends.
- (3) For the purposes of subregulation (2), an employee will be regarded as having taken recreation leave during a financial year if the leave or any remaining balance of the leave is taken in a continuous period commencing before or at the end of that financial year.
- (4) If an employee refuses or fails to apply for and take recreation leave as referred to in subregulation (2), the Chief Executive may direct the employee to take that leave and the employee will, if he or she refuses or fails to comply with the direction, be liable to disciplinary action.
- (5) Subject to this regulation, no recreation leave may be taken by an employee in anticipation of the leave accruing due to the employee—
 - (a) unless the employee has completed his or her first service year;
 - (b) unless the employee also takes at the same time all current recreation leave entitlements;
 - (c) so that the leave taken in anticipation during a financial year exceeds the employee's expected recreation leave entitlement for that financial year.
- (6) The Chief Executive may approve the taking of recreation leave by an employee on a pro rata basis during the first year of the employee's service.
- (7) The Chief Executive may, in accordance with any relevant directions of the Commissioner, require or permit an employee to take recreation leave otherwise than in accordance with this regulation having regard to—
 - (a) the organisational convenience of the unit; and
 - (b) any other relevant considerations.
- (8) In this regulation—

service year in relation to an employee means the period of 12 months from the commencement of the employee's service in the Public Service or any of the succeeding periods of 12 months.

- (9) Nothing in this regulation operates so as to prevent an employee taking recreation leave that he or she is taken to have been granted by virtue of clause 4(2) of Schedule 2 of the Act.

22—Sick leave (Schedule 2, clause 6)

- (1) Sick leave may only be granted to an employee in respect of an absence from work if—
- (a) the employee, as soon as reasonably practicable, notifies the Chief Executive of the employee's unfitness for work due to sickness or injury and of the probable duration of his or her resulting absence; and
 - (b) the employee—
 - (i) has made an application for the leave to the Chief Executive in writing in a form approved by the Chief Executive; and
 - (ii) in the case of an absence for a continuous period of more than three working days or if required by the Chief Executive, has supported the application by furnishing a medical or other certificate or certificates in accordance with this regulation.
- (2) The Chief Executive may refuse an employee's application for sick leave if the Chief Executive is satisfied on the basis of evidence that has come to his or her notice that the employee was or is not in fact unfit for work due to sickness or injury for the period for which the leave has been claimed.
- (3) The Chief Executive may grant sick leave otherwise than in accordance with subregulation (1) if the Chief Executive determines that it is appropriate to do so in accordance with the directions of the Commissioner.
- (4) If an absence of an employee is claimed by the employee to be or have been due to sickness or injury, the Chief Executive may—
- (a) if satisfied that there are circumstances justifying such action, require the employee to submit to an examination by a specified person registered under the *Medical Practitioners Act 1983*, at some reasonable time and place specified by the Chief Executive; and
 - (b) if the employee refuses or fails to submit to such an examination, refuse to grant sick leave in respect of the absence.
- (5) A medical certificate referred to in subregulation (1) must—
- (a) be signed—
 - (i) by a person registered under the *Medical Practitioners Act 1983*; or
 - (ii) in the case of sickness or injury that gives rise to an absence for a continuous period of not more than five working days, by a person (other than a medical practitioner) of a kind approved under the directions of the Commissioner; and
 - (b) certify as to—
 - (i) the period (specifying its commencing and concluding days) for which the employee has been or will be unfit for work as a result of sickness or injury; and

- (ii) if the employee is suffering from a sickness of a contagious or infectious character, the date on which the employee's presence at work would no longer create any risk of contagion or infection.
- (6) If an employee is absent for a continuous period exceeding one working week, the employee must for the purposes of subregulation (1), if so required by the Chief Executive, furnish medical certificates in respect of each working week and part of a working week for which the employee is absent.
- (7) An employee's sick leave entitlement must be debited according to the length of time (counted to the nearest quarter of an hour) for which the employee is absent on sick leave.
- (8) In this regulation—
working week of an employee means the number of working days on which the employee is required to work in a week.

23—Special leave (Schedule 2, clause 7)

- (1) Special leave may only be granted to an employee on application made to the Chief Executive of the administrative unit in which the employee is employed in writing in a form approved by the Chief Executive.
- (2) The purposes for which special leave with pay may be granted to an employee are to be as determined under the directions of the Commissioner.
- (3) Special leave with pay may not be granted so that the period or aggregate of the periods of special leave with pay granted to an employee exceeds 15 days in a financial year unless the granting of further such leave is authorised under the directions of the Commissioner.
- (4) An employee applying for special leave without pay on the ground—
 - (a) that the employee is pregnant; or
 - (b) that the employee requires the leave to undertake the care of a young child not of school age of whom the employee is a parent or is exercising parental responsibilities,is entitled to the period of such leave required by the employee up to a maximum of 52 weeks.
- (5) The aggregate of the periods of special leave without pay that may be granted for pregnancy and for the care of a child born of the pregnancy may not exceed 52 weeks.
- (6) Special leave without pay to undertake the care of a child may be granted to more than one employee but not so that—
 - (a) more than one employee has such leave in relation to the same child at the same time; or
 - (b) the aggregate of the periods of such leave granted to the employees in relation to the same child exceeds 52 weeks.
- (7) The Chief Executive may grant special leave without pay otherwise than in accordance with subregulation (4), (5) or (6) if the Chief Executive determines that it is appropriate to do so in accordance with the directions of the Commissioner.

- (8) For the purposes of this regulation, every day occurring during a period of special leave without pay will (whether it is a working day or not) be regarded as a day of that leave.

24—Long service leave (Schedule 2, clauses 8, 9 and 10)

- (1) Long service leave may only be granted to an employee on application made to the Chief Executive of the administrative unit in which the employee is employed in writing in a form approved by the Chief Executive.
- (2) Long service leave may not be taken for a period of less than seven consecutive calendar days unless the Chief Executive approves a lesser period due to special circumstances.
- (3) The Chief Executive must, in determining whether to permit an employee with not less than seven years effective service to take pro rata long service leave, have regard to the organisational convenience of the administrative unit.
- (4) If an employee has been transferred to some other position in the public sector at a lower level of remuneration—
- (a) under section 77 of the repealed *Public Service Act 1967* or on the ground that the employee was unfit to discharge the employee's duties due to injury or illness under section 78 of that Act; or
 - (b) under section 59, 60, 60A or 73A of the repealed *Government Management and Employment Act 1985*; or
 - (c) under section 50, 51, 52 or 68 of the Act,

then, for the purposes of clause 10(1)(b) of Schedule 2 of the Act, the Commissioner must determine that additional salary equal to the difference between the salary to which the employee would have been entitled if the employee had continued to be employed at the higher level of remuneration and the salary appropriate to the employee's position during the long service leave will be payable to the employee for a part of the employee's long service leave proportionate to the part of the employee's effective service up until when the employee ceased to be employed at the higher level of remuneration.

- (5) If the effective service of an employee includes part-time service, the employee may notify the Chief Executive that the employee wishes to receive the salary to which the employee is entitled during long service leave as if the employee's effective service had not consisted in whole or in part of part-time service, and, in that event—
- (a) salary is to be paid to the employee during the long service leave at the rate applicable for full-time employment; and
 - (b) the period of the long service leave is to be determined in accordance with the directions of the Commissioner.

25—Adjustment to leave rights based on prior service (Schedule 2, clause 12)

The following are prescribed for the purposes of clause 12(b) of Schedule 2 of the Act:

- (a) officers or employees employed by bodies approved by the Commissioner;
- (b) officers or employees specifically approved by the Commissioner.

26—Witness fees (Schedule 3, clause 12)

- (1) For the purposes of clause 12 of Schedule 3 of the Act, a witness is, subject to subregulation (2), entitled to reimbursement of expenses in accordance with the Rules made under the *Magistrates Court Act 1991*.
- (2) If an employee appears as a witness in proceedings before the Promotion and Grievance Appeals Tribunal or the Disciplinary Appeals Tribunal, the employee is not entitled to reimbursement in accordance with subregulation (1) but—
 - (a) will be taken not to be absent from work for the period for which the employee's presence is required for the purposes of the proceedings; and
 - (b) will, if attendance at the proceedings necessitates the absence of the employee from the employee's usual place of employment, be entitled to be reimbursed from the funds of the administrative unit in which the employee is employed for expenses in respect of travel, accommodation and meals in accordance with rates determined by the Commissioner.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Legislation revoked by principal regulations

The *Public Sector Management Regulations 1995* revoked the following:

all regulations made under the Government Management and Employment Act 1985

Principal regulations

Year	No	Reference	Commencement
1995	157	<i>Gazette 13.7.1995 p85</i>	17.7.1995: r 2