

South Australia

## Public Sector Regulations 2010

under the *Public Sector Act 2009*

---

### Contents

#### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Substantive remuneration level (section 3 of Act)
- 5 Remuneration level (section 3 of Act)

#### Part 2—Public sector principles and practices

- 6 Rules relating to movement of employees within public sector (section 9(5) of Act)
- 7 Annual reports by public sector agencies (section 12 of Act)

#### Part 3—Commissioner for Public Sector Employment

- 8 Publication of public sector code of conduct (section 15(5) of Act)
- 9 Application of Commissioner's determinations (section 16(1)(b) of Act)
- 10 Publication of Commissioner's determinations (section 16(3)(d) of Act)
- 11 Commissioner's annual report (section 21(2)(c) of Act)

#### Part 4—Public Service

- 12 Chief executive's contracts (section 35(3) of Act)

#### Part 5—Public sector employment

##### Division 1—Application of Part

- 13 Application of Part 7 of Act (section 41 of Act)

##### Division 2—Executives

- 14 Executives' contracts (section 42(3) of Act)

##### Division 3—General employment processes and conditions

- 15 Engagement as term employee (section 45(3)(c) of Act)
- 16 Merit-based selection processes (section 46(1) of Act)
- 17 Exceptions to merit-based selection processes (section 46(2)(d) of Act)
- 18 Excess employees (section 53 of Act)

##### Division 4—Leave and working arrangements

- 19 Flexible leave and working arrangements (section 51 of Act—Schedule 1 clause 1)
- 20 Ordinary business hours (section 51 of Act—Schedule 1 clause 2)
- 21 Recreation leave (section 51 of Act—Schedule 1 clause 5)
- 22 Sick leave (section 51 of Act—Schedule 1 clause 6)
- 23 Long service leave (section 51 of Act—Schedule 1 clauses 7, 8 and 9)

- 24 Adjustment to leave rights based on prior service (section 51 of Act—Schedule 1 clause 10)

### Division 5—Review of employment decisions (other than dismissal)

- 25 Certain matters excluded from right of review (section 59(2) of Act)  
26 Internal review (section 61 of Act)  
27 Application for external review (section 62 of Act)  
28 Conduct of review by Public Sector Grievance Review Commission (section 62 of Act)  
29 Witness fees (section 64 of Act)  
30 Exclusion of appeal (section 64 of Act)

### Part 6—Miscellaneous

- 31 Service and receipt of notices (section 80 of Act)

### Legislative history

---

## Part 1—Preliminary

### 1—Short title

These regulations may be cited as the *Public Sector Regulations 2010*.

### 3—Interpretation

In these regulations—

*Act* means the *Public Sector Act 2009*;

*effective service* has the same meaning as in Schedule 1 clause 7 of the Act.

### 4—Substantive remuneration level (section 3 of Act)

An employee's substantive remuneration level is—

- (a) if the employee is currently a term employee or casual employee of a public sector agency but has a right to return to duties as an ongoing employee of a public sector agency (whether the same or a different agency)—the remuneration level applicable to the employee as an ongoing employee under the right of return;
- (b) if the employee is currently a term or casual employee of a public sector agency but has a right of return to duties as a term employee of a public sector agency (whether the same or a different agency)—the remuneration level applicable to the employee as a term employee under the right of return;
- (c) in any other case—the remuneration level currently applicable to the employee.

### 5—Remuneration level (section 3 of Act)

If there is no determination of the Commissioner under the Act that is applicable to an employee, the remuneration level of the employee is to be determined according to any applicable award or agreement under an industrial relations law.

## Part 2—Public sector principles and practices

### 6—Rules relating to movement of employees within public sector (section 9(5) of Act)

- (1) This regulation applies to the movement of employees within the public sector in cases where—
  - (a) an ongoing employee of a public sector agency (the *home agency*) accepts an offer of, or is transferred to, term or casual employment in another public sector agency (the *receiving agency*); or
  - (b) a term employee of a public sector agency (the *home agency*) accepts an offer of, or is transferred to, term or casual employment in another public sector agency (the *receiving agency*) for a period that is shorter than the term of engagement with the home agency.
- (2) The employee is to transfer to the receiving agency with a right to return to the home agency (a *temporary transfer*).
- (3) An employee may not exercise the right to return to the home agency earlier than the end of a term of engagement with a receiving agency except with the agreement of the home agency.
- (4) If an employee has been absent from a home agency for more than 2 years (or, instead, such other period agreed by the home agency and receiving agency) under a temporary transfer, the home agency may, by notice in writing, require the employee to make an election to return to the employment of the home agency on or before a specified date, or a date agreed to by the home agency, or lose the right to return to the home agency.
- (5) If the employee does not make an election within a period (of at least 28 days) allowed in the notice or does not return to the home agency in accordance with an election, the employee will be taken to have lost the right to return to the home agency.
- (6) If the employee makes an election within the period allowed in the notice to return to the home agency, the temporary transfer will end on the date specified or agreed to by the home agency with the result that the employee returns then to the employment of the home agency.
- (7) A receiving agency must notify the home agency in writing (or in some other form approved by the home agency) if—
  - (a) the employee ceases to be employed by the agency; or
  - (b) the term of engagement of the employee by the agency is extended; or
  - (c) the basis of engagement of the employee by the agency is changed; or
  - (d) there is any other change in the employee's employment or circumstances that might affect the employee's return to the home agency.
- (8) When an employee returns to the employment of the home agency—
  - (a) the basis on which the employee is engaged by the home agency is to be the same as before the temporary transfer; and

- (b) the employee is to be assigned duties by the home agency (although, subject to any agreement with the employee to the contrary, the duties may be different to the duties of the employee before the temporary transfer).
- (9) The chief executive or principal officer of a public sector agency—
  - (a) may determine that this regulation is not to apply in relation to a specified area of the agency's operations (as a home agency) if satisfied that the determination is warranted in the circumstances having regard to the urgency or significance of the operations; and
  - (b) may vary or revoke such a determination; and
  - (c) must ensure that employees affected by a determination are aware of the determination and its effect.
- (10) The chief executive or principal officer may not delegate the power to make, vary or revoke a determination under subregulation (9).
- (11) A public sector agency must report to the Commissioner the making, variation or revocation of any determinations under subregulation (9) (providing details of the circumstances warranting the determinations) within 1 month after the end of the financial year in which they were made, varied or revoked.

#### **7—Annual reports by public sector agencies (section 12 of Act)**

A public sector agency's annual report to the agency's Minister 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;
- (h) employment opportunity programs;
- (i) the agency's performance management and development systems (including an assessment of their effectiveness and efficiency);
- (j) the number of instances and nature of fraud detected in the agency and the strategies implemented to control and prevent fraud;
- (k) the number of occasions on which public interest information has been disclosed to a responsible officer of the agency under the *Whistleblowers Protection Act 1993*;
- (l) 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;
- (m) the occupational health, safety and rehabilitation programs of the agency (including an evaluation of the programs and their effectiveness);
- (n) 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.

## **Part 3—Commissioner for Public Sector Employment**

### **8—Publication of public sector code of conduct (section 15(5) of Act)**

The Commissioner must cause the public sector code of conduct, and each variation of the code, to be published on the Internet and in the Gazette and must cause a consolidated copy of the code to be published on the Internet and made available for inspection at the Commissioner's office.

### **9—Application of Commissioner's determinations (section 16(1)(b) of Act)**

- (1) Subject to subregulation (2) and without limiting the operation of subregulation (3), public sector employment outside the Public Service to which Part 7 of the Act applies is employment to which section 16 of the Act applies.
- (2) A determination of the Commissioner applies to employment by virtue of the operation of subregulation (1) only to the extent that the determination is relevant to the application of the provisions of Part 7 of the Act that apply to the employment and, if those provisions are modified in their application to the employment, to the extent that the determination is relevant to the application of those provisions as so modified.
- (3) In addition to the operation of subregulations (1) and (2), public sector employment outside the Public Service that is covered by the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014* (or any enterprise agreement made in substitution for that enterprise agreement) is employment to which section 16 of the Act applies.
- (4) A determination of the Commissioner applies to employment by virtue of the operation of subregulation (3) only to the extent that the determination is relevant to—
  - (a) the management of excess employees; or
  - (b) special leave with pay.
- (5) In addition to the operation of subregulations (1) and (2), public sector employment outside the Public Service that is covered by the *ForestrySA Enterprise Agreement 2013* (or any enterprise agreement made in substitution for that enterprise agreement) is employment to which section 16 of the Act applies.
- (6) A determination of the Commissioner applies to employment by virtue of the operation of subregulation (5) only to the extent that the determination is relevant to the management of excess employees.

- (7) In addition to the operation of the other provisions of this regulation, but subject to subregulation (8), all public sector employment outside the Public Service is employment to which section 16 of the Act applies.
- (8) A determination of the Commissioner applies to employment by virtue of the operation of subregulation (7) only to the extent that the determination relates to special leave with pay and is relevant to domestic/family violence leave.

#### **10—Publication of Commissioner's determinations (section 16(3)(d) of Act)**

A determination of the Commissioner under section 16 of the Act must be published as follows:

- (a) the Commissioner must distribute copies of the determination to the public sector agencies that the Commissioner considers may be affected by the determination;
- (b) the public sector agency must, on receipt of a determination, take reasonable steps to—
  - (i) make the contents of the determination known to all employees of the agency who are affected by the determination; and
  - (ii) keep copies of the determination readily available for inspection by any such employee.

#### **11—Commissioner's annual report (section 21(2)(c) of Act)**

The Commissioner's annual report to the Minister must include information with respect to the following:

- (a) the issuing by the Commissioner of—
  - (i) variations or substitutions of the public sector code of conduct; and
  - (ii) public sector employment determinations; and
  - (iii) guidelines relating to public sector employment matters,during the financial year to which the report relates;
- (b) the number of occasions on which public interest information has been disclosed to the Commissioner under the *Whistleblowers Protection Act 1993* during the financial year to which the report relates.

### **Part 4—Public Service**

#### **12—Chief executive's contracts (section 35(3) of Act)**

A contract of employment of a person as a chief executive of an administrative unit may not exclude or modify section 35 of the Act.

## Part 5—Public sector employment

### Division 1—Application of Part

#### 13—Application of Part 7 of Act (section 41 of Act)

- (1) Section 51 of the Act to the extent that it provides that the rights of an employee of a public sector agency to leave are governed by Schedule 1 Part 6 (Long service leave) of the Act applies to—
- (a) police officers; and
  - (b) employees of the South Australian Fire and Emergency Services Commission, South Australian Metropolitan Fire Service, South Australian Country Fire Service or South Australian State Emergency Service; and
  - (c) public sector employees covered by the South Australian Metropolitan Fire Service Enterprise Agreement 2009 (or any enterprise agreement made in substitution for that enterprise agreement); and
  - (d) officers of both Houses of Parliament and persons under the separate control of the President of the Legislative Council or the Speaker of the House of Assembly or under their joint control (other than a person appointed to an office under the *Parliament (Joint Services) Act 1985*); and
  - (e) persons employed by the Crown in a public office under an Act and who do not have an entitlement to long service leave under that Act or under their conditions of employment (other than a person appointed to judicial office, a person who is remunerated solely by fees, allowances or commission or a person employed by a statutory corporation).
- (1aa) However, the provisions of Schedule 1 Part 6 of the Act that provide for an entitlement to skills and experience retention leave under clause 7(1a) of Schedule 1 of the Act will not apply to—
- (a) any person who is bound by the *South Australian Police Enterprise Agreement 2011* (including before clause 34 of that Agreement comes into effect);
  - (b) any other person who is entitled under a determination of the Commissioner of Police to leave that corresponds to Police Service Leave under clause 34 of the *South Australian Police Enterprise Agreement 2011* (including a determination made before that clause comes into effect).
- (1a) Section 51 of the Act to the extent that it provides that the rights of an employee of a public sector agency to leave are governed by Schedule 1 clause 7(1), (2)(a), (2a) and (4a) to (5) (inclusive) of the Act applies to—
- (a) persons employed under section 72 of the Act; and
  - (b) without limiting paragraph (a), persons employed in the position of Assistant or Research Officer to a Member of Parliament; and
  - (c) persons employed by the WorkCover Corporation of South Australia under Part 5 of the *WorkCover Corporation Act 1994*.

- (2) Part 7 Divisions 3 and 4 of the Act apply to an employee of the Land Management Corporation if, immediately before the commencement of these regulations, Part 7 Division 3 of the *Public Sector Management Act 1995* applied to the employee.
- (2a) Part 7 of the Act applies to an employee of the chief executive of TAFE SA under the *TAFE SA Act 2012* employed on or after 1 November 2012 if—
- (a) the employee is employed in duties that, on 1 November 2012, are classified in a classification contained in—
    - (i) the *S.A. Public Sector Salaried Employees Interim Award* (or any award made in substitution for that award); or
    - (ii) the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012* (or any enterprise agreement made in substitution for that enterprise agreement); or
  - (b) the employee is employed in executive level administrative duties.
- (2ab) Part 7 of the Act, as modified by subregulation (2ac), applies in relation to an employee of the Education and Early Childhood Services Registration and Standards Board of South Australia (the **Board**) under the *Education and Early Childhood Services (Registration and Standards) Regulations 2011* employed on or after 1 July 2013 if—
- (a) the employee is employed in duties that, on 1 July 2013, are classified in a classification contained in—
    - (i) the *S.A. Public Sector Salaried Employees Interim Award* (or any award made in substitution for that award); or
    - (ii) the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012* (or any enterprise agreement made in substitution for that enterprise agreement); or
  - (b) the employee is employed in executive level administrative duties.
- (2ac) For the purposes of subregulation (2ab), Part 7 of the Act is modified as follows:
- (a) sections 42, 45(3), 46, 54(2) and 54(3) do not apply in relation to an employee of the Board;
  - (b) section 48 is taken to be modified such that each employee of the Board is, when engaged as an employee of the Board, at first on probation for 12 months, unless the Board determines that no probation is required or determines a lesser period of probation.
- (2ad) Part 7 of the Act, as modified by subregulation (2ae), applies in relation to—
- (a) an employee of the employing authority under section 12 of the *Children's Services Act 1985* (other than an employee employed in duties that are classified in a classification contained in the *Pre-School (Kindergarten) Teaching Staff Award* (or any award made in substitution for that award)); and



- (b) an employee of the employing authority under section 101B of the *Education Act 1972* (other than an employee employed in duties as an hourly paid instructor or a swimming and aquatics instructor as classified in a classification contained in the *Teachers DECS Award* or the *SA School and Preschool Education Staff Enterprise Agreement 2012* (or any award or enterprise agreement made in substitution for that award or enterprise agreement)).
- (2ae) For the purposes of subregulation (2ad), Part 7 of the Act is modified as follows:
- (a) section 45(3) of the Act does not apply in relation to an employee referred to in that subregulation;
- (b) Part 7 Division 2 of the Act does not apply in relation to an employee employed under an executive employment contract entered into before the day on which this subregulation commences;
- (c) a grievance about an employment decision made before the day on which this subregulation commences is to be heard and determined, or to continue to be heard and determined, in accordance with policies and procedures, established by the Department for Education and Child Development for the purpose of dealing with such grievances, in force when the employment decision was made.
- (2b) Part 7 of the Act, as modified by subregulation (2c), applies in relation to an employee of the Lifetime Support Authority of South Australia (the **Authority**) under the *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* employed on or after 1 February 2014 if the employee is employed in duties that, on 1 February 2014, are classified in a classification contained in—
- (a) the *S.A. Public Sector Salaried Employees Interim Award* (or any award made in substitution for that award); or
- (b) the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012* (or any enterprise agreement made in substitution for that enterprise agreement).
- (2c) For the purposes of subregulation (2b), Part 7 of the Act is modified as follows:
- (a) sections 42, 43, 44, 45(3), 46, 53(2), 54(2) and 54(3) do not apply in relation to an employee of the Authority;
- (b) section 48 is taken to be modified such that each employee of the Authority is, when engaged as an employee of the Authority, at first on probation for 12 months, unless the Authority determines that no probation is required or determines a lesser period of probation.
- (2d) Part 7 of the Act, as modified by subregulation (2e), applies in relation to an employee of the Legal Profession Conduct Commissioner (the **Commissioner**) under the *Legal Practitioners Act 1981* employed on or after 1 July 2014 if the employee is employed in duties that, on 1 July 2014, are classified in a classification contained in—
- (a) the *S.A. Public Sector Salaried Employees Interim Award* (or any award made in substitution for that award); or

- (b) the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012* (or any enterprise agreement made in substitution for that enterprise agreement).
- (2e) For the purposes of subregulation (2d), Part 7 of the Act is modified as follows:
  - (a) sections 42, 43, 44, 45(3), 46, 53(2), 54(2) and 54(3) do not apply in relation to an employee of the Commissioner;
  - (b) section 48 is taken to be modified such that each employee of the Commissioner is, when engaged as an employee of the Commissioner, at first on probation for 12 months, unless the Commissioner determines that no probation is required or determines a lesser period of probation.
- (2f) Part 7 of the Act, as modified by subregulation (2g), applies in relation to an employee of an employing authority under the *Health Care Act 2008* if—
  - (a) the employee is employed in duties that are classified in a classification contained in the *South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2014* (or any enterprise agreement made in substitution for that enterprise agreement); or
  - (b) the employee is employed in executive level administrative duties.
- (2g) For the purposes of subregulation (2f), Part 7 of the Act is modified as follows:
  - (a) section 45(3) of the Act does not apply in relation to an employee referred to in that subregulation;
  - (b) Part 7 Division 2 of the Act does not apply in relation to an employee employed under an executive employment contract entered into before the day on which this subregulation commences;
  - (c) a grievance about an employment decision made before the day on which this subregulation commences is to be heard and determined, or to continue to be heard and determined, in accordance with the *SA Health (Health Care Act) Human Resources Manual*.
- (3) For the purposes of this regulation (other than subregulation (1a)), the service or effective service of an employee to whom this regulation applies includes—
  - (a) service recognised, immediately before the commencement of these regulations, as service or effective service (as the case requires) for the purposes of determining the employee's long service leave or other entitlements; and
  - (b) service that would be counted as service or effective service (as the case requires) under Schedule 1 clause 10 of the Act if the employee were a Public Service employee.
- (4) For the purposes of subregulation (1a), the effective service of an employee to whom that subregulation applies includes—
  - (a) service recognised, immediately before the commencement of that subregulation, as effective service for the purposes of determining the employee's long service leave entitlements; and
  - (b) service that would be counted as effective service under Schedule 1 clause 10 of the Act if the employee were a Public Service employee.

- (5) Section 51 of the Act to the extent that it provides for an entitlement to skills and experience retention leave under Schedule 1 Part 6 of the Act (and to the extent that it does not apply under subregulation (2a)) applies to all employees of the chief executive of TAFE SA under the *TAFE SA Act 2012*.
- (6) Subregulations (1aa) and (5) will take effect from 1 July 2012.
- (7) For the purposes of Schedule 1 clause 7(4a) of the Act—
- (a) the amount of \$180 (indexed) for each working day of skills and experience retention leave accrued during a particular financial year (which will be reduced on a *pro rata* basis in relation to a part of a working day and in relation to part-time work) is fixed by these regulations; and
  - (b) an entitlement to such leave may be converted to the amount fixed under paragraph (a) if an election is made to a public sector agency (or an office or division within a public sector agency) nominated by the Minister, in a manner determined by the Commissioner, by 31 August immediately following the financial year in which the entitlement accrues; and
  - (c) an amount payable on account of an election under paragraph (b) will be paid to the employee at a time, and in a manner, determined by the Commissioner for the purposes of this paragraph; and
  - (d) an amount payable in relation to a part of a working day or part-time work will be determined in a manner determined by the Commissioner.
- (8) The amount of \$180 (indexed) referred to subregulation (7)(a) is to be adjusted on an annual basis (commencing in relation to days accrued in the 2013/2014 financial year) by multiplying that amount by a proportion obtained by dividing the Consumer Price Index for the March quarter in the immediately preceding financial year by the Consumer Price Index for the March quarter, 2012 (with an adjustment applying according to when a leave entitlement accrues rather than when a payment is made).
- (8a) An amount determined under subregulation (8) is to be rounded up or down to the nearest \$1 (and if the amount to be rounded is 50 cents, then the amount is to be rounded up).
- (9) In this regulation—

**Consumer Price Index** means the *Consumer Price Index (All groups index for Adelaide)* published by the Australian Bureau of Statistics;

**South Australian Police Enterprise Agreement 2011** means the *South Australian Police Enterprise Agreement 2011* made between the Chief Executive, Department of the Premier and Cabinet and the Police Association of South Australia under the *Fair Work Act 1994* that came into force on 18 May 2011 and includes any successor industrial instrument under the *Fair Work Act 1994*.

## Division 2—Executives

### 14—Executives' contracts (section 42(3) of Act)

A contract of employment of a person as an executive employee of a public sector agency may not exclude or modify sections 9 or 42 of the Act.

## Division 3—General employment processes and conditions

### 15—Engagement as term employee (section 45(3)(c) of Act)

A person may be engaged as a term employee for a specified term not exceeding 5 years if—

- (a) the functions are to cease to be public sector functions within a period of 5 years; or
- (b) the public sector agency is satisfied that the engagement is to 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 engagement is as a result of a transfer under section 9 of the Act and immediately before the transfer the person was a public sector employee to whom Part 7 of the Act did not apply and the person's employment was under a contract for a fixed term.

### 16—Merit-based selection processes (section 46(1) of Act)

- (1) This regulation sets out how a public sector agency is to conduct selection processes on the basis of merit.
- (2) A public sector agency must, for the purpose of engaging an employee to perform particular duties—
  - (a) cause applications to be sought in accordance with this regulation and an applicant selected on the basis of merit; or
  - (b) cause an applicant to be selected on the basis of merit from amongst applicants in a pool of applicants that has been established in accordance with this regulation.
- (3) A public sector agency may establish a pool of applicants from which further selections may be made to engage employees to perform duties of a particular class as from time to time required—
  - (a) by causing applications to be sought in accordance with this regulation and causing selections to the pool to be made on the basis of merit; or

**Note—**

The pool could be established on a whole-of-government basis (for example, a pool of graduates, apprentices or scholarship candidates) or for the purposes of the particular agency.

- (b) by causing selections to be made on the basis of merit from amongst a pool or pools of applicants established under paragraph (a) by the agency or some other agency; or
  - (c) by causing selections to be made on the basis of merit from amongst persons who were unsuccessful applicants for public sector employment involving similar duties within the previous 12 months.
- (4) Subject to any determinations of the Commissioner, a public sector agency may choose to seek and accept applications from public sector employees only.
- (5) Applications are to be sought by notice published as required by the Commissioner.

- (6) If appropriate, other additional means may be used to seek applications, including advertising in newspapers or specialist publications, on Internet sites or by email or through recruitment agencies.
- (7) An applicant 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.

### **17—Exceptions to merit-based selection processes (section 46(2)(d) of Act)**

- (1) Section 46(1) of the Act does not apply—
  - (a) to the transfer of an employee between public sector agencies provided, subject to paragraphs (b) and (c), that the employee is not promoted to a higher remuneration level; or
  - (b) to the engagement of a person as a term employee, or the temporary promotion of an employee (including through a temporary transfer between public sector agencies), for duties required to be performed because of the absence of another employee or while selection processes are conducted in respect of the duties; or
  - (c) to the engagement of a person as a term employee, or the temporary promotion of an employee (including through a temporary transfer between public sector agencies), for duties that are otherwise of a temporary nature provided that the term of the engagement or temporary promotion does not continue beyond a total of 2 years; or
  - (d) to changing the basis on which a person is engaged as an employee of a public sector agency to engagement as an ongoing employee, or re-engaging a person as a term employee, if the person was engaged following a selection process conducted on the basis of merit and the person is to continue to perform the same or similar duties; or
  - (e) to the return of an employee to a home agency following a movement within the public sector to which regulation 6 applies; or
  - (f) to the engagement of an employee in accordance with a rehabilitation and return to work plan under the *Workers Rehabilitation and Compensation Act 1986*; or
  - (g) to the engagement of an employee who is excess to the requirements of a public sector agency; or
  - (h) to the promotion of an employee as the result of a determination of the Commissioner affecting classification structures; or
  - (i) if, in a particular case, a chief executive or principal officer of a public sector agency determines that special circumstances exist warranting the engagement of a person without the conduct of merit-based selection processes in accordance with these regulations taking into account—
    - (i) the person's abilities, aptitude, skills, qualifications, knowledge, experience (including community experience) and personal qualities relevant to the carrying out of the duties in question; and
    - (ii) if relevant—

- (A) the manner in which the person carried out any previous employment or occupational duties or functions; and
  - (B) the extent to which the person has potential for development.
- (2) The chief executive or principal officer may not delegate the power to make a determination under subregulation (1)(i).
- (3) A public sector agency must report to the Commissioner any determinations made under subregulation (1)(i) (providing details of the circumstances warranting the determinations) within 1 month after the end of the financial year in which they were made.
- (4) In this regulation—
- absence* of an employee from duties means the absence of an employee in circumstances in which the employee may return to the duties.

**Note—**

Section 46(2) of the Act provides that section 46(1) does not apply—

- (a) to the engagement of a casual employee; or
- (b) to the promotion of an employee by way of reclassification of the employee's remuneration level in accordance with the regulations; or
- (c) to the engagement of an employee under an employment opportunity program.

## **18—Excess employees (section 53 of Act)**

If an employee's remuneration level is reduced under section 53(1)(a) of the Act, 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 before the reduction of the remuneration level; 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 before the reduction of the remuneration level.

## **Division 4—Leave and working arrangements**

### **19—Flexible leave and working arrangements (section 51 of Act—Schedule 1 clause 1)**

- (1) The determinations of the Commissioner under Schedule 1 clause 1 of the Act must include arrangements under which an employee of a public sector agency—
- (a) may be granted up to 15 days leave with pay in a 12 month period for special purposes; and
  - (b) has an entitlement to be granted accrued sick leave as family carer's leave as required by the employee up to a maximum of 10 days in a 12 month period; and
  - (c) has an entitlement to be granted a specified amount of leave with pay on the grounds of giving birth to a child or taking custody of an adopted child; and

- (d) has an entitlement to be granted leave without pay as required by the employee to enable the employee to be on leave for up to a specified maximum period to undertake the care of a young child not of school age of whom the employee is a parent or is exercising parental responsibilities.
- (2) The determinations of the Commissioner may include conditions, limitations and exceptions in relation to leave entitlements or granting of leave, including, without limitation, for any of the following purposes:
- (a) specifying application and other processes (including presentation of relevant supporting documentation) relating to the granting of leave;
  - (b) specifying the purposes for which, and the circumstances in which, leave may be granted;
  - (c) providing for the circumstances in which leave for special purposes, rather than sick leave, may be granted as family carer's leave;
  - (d) requiring a minimum period of continuous service before an employee becomes entitled to be granted leave;
  - (e) if both parents of a child are public sector employees, limiting the circumstances in which leave may be taken concurrently by those employees, or requiring aggregation of their entitlements to leave, for the purposes of undertaking the care of the child;
  - (f) preventing a period of leave without pay extending past the end of the term of a contract of a term employee;
  - (g) excluding casual employees from entitlements.
- (3) The following provisions apply in relation to part-time employment:
- (a) an employee engaged in part-time employment is required to attend at the employee's place of employment as determined by the agency rather than throughout the hours fixed as ordinary business hours in relation to the agency;
  - (b) the Commissioner's determinations may include—
    - (i) provisions for pro rata adjustments to entitlements to leave, remuneration during periods of leave, or the calculation of service for the accrual of leave entitlements or the taking of leave, to accommodate part-time employment;
    - (ii) in relation to the taking of long service leave by an employee whose effective service includes part-time employment, an arrangement under which the employee may nominate whether the adjustments are to apply so as to affect the remuneration to be paid during the leave, the period of the leave or both the remuneration and the period.

## **20—Ordinary business hours (section 51 of Act—Schedule 1 clause 2)**

For the purposes of Schedule 1 clause 2 of the Act, the ordinary business hours for a public sector agency are 8.45 am to 5.00 pm Monday to Friday inclusive.

## **21—Recreation leave (section 51 of Act—Schedule 1 clause 5)**

- (1) Recreation leave may only be granted to an employee of a public sector agency on application made to the agency in a form approved by the agency.
- (2) Recreation leave must be applied for by an employee of a public sector agency and granted so that the employee's recreation leave entitlement is taken within 24 months after its accrual.
- (3) For the purposes of subregulation (2), an employee will be regarded as having taken recreation leave within 24 months after its accrual if the leave or any remaining balance of the leave is taken in a continuous period commencing before or at the end of that 24 months.
- (4) A public sector agency may require or permit an employee to take recreation leave in anticipation of its accrual, without application or later than 24 months after its accrual having regard to—
  - (a) the organisational convenience of the agency; and
  - (b) any other relevant considerations.

## **22—Sick leave (section 51 of Act—Schedule 1 clause 6)**

- (1) Subject to this clause and the determinations of the Commissioner under Schedule 1 clause 1 of the Act, sick leave may only be granted to an employee of a public sector agency if—
  - (a) the employee, as soon as reasonably practicable, notifies the public sector agency of the employee's unfitness to work due to illness or injury and of the probable duration of the employee's absence; and
  - (b) the employee has made an application to the agency in a form approved by the agency; and
  - (c) in the case of an absence for a continuous period of more than 3 working days or if required by the public sector agency, the employee has supported the application by furnishing a medical or other certificate or certificates in accordance with this regulation.
- (2) A public sector agency may refuse an employee's application for sick leave if the agency is satisfied on the basis of evidence that has come to its 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) A public sector agency may grant sick leave otherwise than in accordance with subregulation (1) if the agency determines that it is appropriate to do so.
- (4) If an absence of an employee of a public sector agency is claimed by the employee to be or have been due to sickness or injury, the public sector agency may—
  - (a) if satisfied that there are circumstances justifying such action, require the employee to submit to a medical examination by a medical practitioner selected by the employee from a panel of medical practitioners nominated by the agency; 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) The public sector agency must furnish the employee with a copy of any report on the results of a medical examination required under subregulation (4).
- (6) A medical certificate referred to in subregulation (1) must—
- (a) be signed—
    - (i) by a medical practitioner; or
    - (ii) in the case of sickness or injury that gives rise to an absence for a continuous period of not more than 5 working days, by a person (other than a medical practitioner) of a kind approved under the determinations 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.
- (7) If an employee is absent for a continuous period exceeding 1 working week, the employee must for the purposes of subregulation (1), if so required by the public sector agency, furnish medical certificates in respect of each working week and part of a working week for which the employee is absent.
- (8) 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.
- (9) 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—Long service leave (section 51 of Act—Schedule 1 clauses 7, 8 and 9)**

- (1) Long service leave may only be granted to an employee of a public sector agency on application made to the agency in a form approved by the agency.
- (2) Subject to any determinations of the Commissioner, long service leave is to be taken at times and for periods agreed on by the employee and public sector agency.
- (3) Every day occurring during a period of long service leave is (whether it is a working day or not) to be regarded as a day of that leave.
- (4) An employee may elect to take long service leave on half salary, and in that event—
- (a) the period of leave is to be twice the period to which the employee would otherwise have been entitled; and
  - (b) the first half of the leave is to be taken to be on full pay; and
  - (c) the second half of the leave is to be taken to be leave without pay.

- (5) 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 *Public Sector Management Act 1995*; or
  - (d) under section 53(1)(a), (b) or (c) of the Act,

then, for the purposes of Schedule 1 clause 8 of the Act, 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.

- (6) If an employee of a public sector agency who is entitled to long service leave dies or ceases for any reason to be an employee of the agency, then—
- (a) in the case of death—the employee's personal representative; or
  - (b) in the case of cessation of service for any other reason—the employee,
- must be paid, in addition to the amount payable under Schedule 1 clause 9 of the Act—
- (c) if the employee's service ceases during a year of service—a sum that bears to the salary or wages that would have been payable in respect of long service leave for that year of service if it had been completed the same proportion as the number of complete months served in that year bears to 12; and
  - (d) the allowances (if any) determined by the Commissioner.

#### **24—Adjustment to leave rights based on prior service (section 51 of Act—Schedule 1 clause 10)**

The following are prescribed for the purposes of Schedule 1 clause 10 of the Act:

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

### **Division 5—Review of employment decisions (other than dismissal)**

#### **25—Certain matters excluded from right of review (section 59(2) of Act)**

Part 7 Division 4 Subdivision 2 of the Act (Review of employment decisions (other than dismissal)) does not apply to the following decisions:

- (a) a decision of a Minister;
- (b) a decision of the Commissioner under Part 4 of the Act;
- (c) a decision to the extent that it affects an executive employee;

- (d) a decision to the extent that it affects a casual employee;
- (e) a decision not to re-engage a term employee at the end of the employee's term of employment;
- (f) a decision to select an employee as a consequence of selection processes conducted on the basis of merit to the extent that it affects an employee other than an employee who made due application in accordance with the selection processes for the particular duties and was eligible for appointment;
- (g) a decision to engage, transfer or promote an employee in accordance with the Act and these regulations to the extent that it affects another employee (but not so as to limit the right to apply for review of a decision to select an employee as a consequence of selection processes conducted on the basis of merit);
- (h) a decision to change the duties of an employee to the extent that it affects another employee;
- (i) a decision to suspend an employee from duty under section 57(1) of the Act (but a decision under section 57(3) of the Act that the suspension is to be without remuneration is subject to review);
- (j) a decision to give a direction under section 69(2) of the Act for reduction in salary arising from an employee's refusal or failure to carry out his or her duties.

**Note—**

Section 59(2) of the Act provides that Part 7 Division 4 Subdivision 2 (Review of employment decisions (other than dismissal)) does not apply—

- (a) to the dismissal of a public sector employee; or
- (b) to a decision to select a person who is not a public sector employee as a consequence of selection processes conducted on the basis of merit.

## **26—Internal review (section 61 of Act)**

- (1) An application for internal review of an employment decision of a public sector agency must be made to the agency, in a form approved by the agency—
  - (a) in the case of a decision to select an employee as a consequence of selection processes conducted on the basis of merit—within 7 days after the day on which the employee is notified by the agency of the outcome of the selection processes; or
  - (b) in any other case—within 21 days after the day on which the employee is notified by the agency of the decision.
- (2) A public sector agency may, in a particular case, extend the period within which an application for internal review must be made.
- (3) An application for internal review may be withdrawn by notice in writing signed by the employee and delivered to the public sector agency (or by some other form of notice approved by the agency).
- (4) An internal review of a decision must commence within 21 days after the making of the application for internal review.

- (5) An internal review of a decision must be completed within 21 days after the applicant has finished providing information and making submissions on the application.
- (6) The public sector agency may extend the time for completion of a review but only if there are special reasons in the circumstances of the individual case for doing so.
- (7) If the employment decision subject to internal review was made personally by the public sector agency or by the chief executive or principal officer of the public sector agency, the review must be conducted by a person who is not an employee of the agency.
- (8) An internal review must be conducted—
  - (a) as quickly, and with as little formality, as a proper consideration of the matter allows; and
  - (b) in accordance with the rules of natural justice.
- (9) The parties to an internal review are not to be legally represented, but nothing prevents the applicant from being assisted by a person other than a legal practitioner in presenting his or her case.

**Note—**

Under section 60 of the Act, a public sector agency is required to endeavour to resolve its employees' grievances by conciliation (regardless of the fact that employees may apply for review of its decisions).

**27—Application for external review (section 62 of Act)**

- (1) An employee aggrieved by an employment decision of a public sector agency may apply to the appropriate review body for a review of the decision without having applied for an internal review of the decision if—
  - (a) the decision was made on an internal review; or
  - (b) the decision is a decision to select an employee as a consequence of selection processes conducted on the basis of merit.
- (2) If an application is made under subregulation (1), it must be made as follows:
  - (a) in the case of a decision made on an internal review—within 21 days after the day on which the employee is notified by the agency of the outcome of the review;
  - (b) in the case of a decision to select an employee as a consequence of selection processes conducted on the basis of merit—within 7 days after the day on which the employee is notified by the agency of the outcome of the selection processes.
- (3) An employee aggrieved by an employment decision of a public sector agency may apply to the appropriate review body for a review of the decision without an internal review of the decision having been completed if—
  - (a) an application for internal review was made after the period allowed for such an application and the appropriate review body is of the opinion that the refusal of the agency to extend the period was unreasonable; or

- (b) the agency has extended the time for completion of a review and the appropriate review body is of the opinion that the extension was unreasonable.
- (4) If an application is made under subregulation (3), it must be made as follows:
  - (a) in the case of a refusal to extend the period for an application for internal review of a decision—within 7 days after the day on which the employee is notified by the agency of the decision to refuse the extension;
  - (b) in the case of an extension of time for completion of an internal review of a decision—within 7 days after the day on which the employee is notified by the agency of the decision to grant the extension.
- (5) If an internal review of an employment decision has been completed, an application to the appropriate review body for a review of the decision must be made within—
  - (a) in the case of a decision to select an employee as a consequence of selection processes conducted on the basis of merit—7 days; or
  - (b) in any other case—21 days,after the day on which the employee is notified by the agency of the outcome of the internal review of the decision.
- (6) In this regulation—  
*appropriate review body* has the same meaning as in section 62 of the Act.

## **28—Conduct of review by Public Sector Grievance Review Commission (section 62 of Act)**

- (1) A review must be conducted by the Public Sector Grievance Review Commission—
  - (a) as quickly, and with as little formality, as a proper consideration of the matter allows; and
  - (b) in accordance with the rules of natural justice.
- (2) The Commission may extend a limitation of time.
- (3) The Commission must give a party to the proceedings before the Commission reasonable notice of the time and place at which the Commission is to hear those proceedings.
- (4) If a party does not attend at the time and place fixed by the notice, the Commission may hear the proceedings in the absence of that party.
- (5) If an employee of a public sector agency attends proceedings before the Commission to give evidence, the employee—
  - (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 public sector agency for expenses in respect of travel, accommodation and meals in accordance with rates determined by the Commissioner.

- (6) At the conclusion of a review, the Commission must, at the request of a party to the review, provide the party with a statement of the reasons for the Commission's decision on the review.

### **29—Witness fees (section 64 of Act)**

Despite section 162 of the *Fair Work Act 1994*, if an employee of a public sector agency attends as a witness on a summons, or gives evidence at the request of a party, in proceedings under the Act, the employee is not entitled to an allowance 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 public sector agency for expenses in respect of travel, accommodation and meals in accordance with rates determined by the Commissioner.

### **30—Exclusion of appeal (section 64 of Act)**

Section 207 of the *Fair Work Act 1994* (Right of appeal) does not apply to a decision of the Industrial Relations Commission under Part 7 Division 4 Subdivision 2 of the Act (Review of employment decisions (other than dismissal)).

## **Part 6—Miscellaneous**

### **31—Service and receipt of notices (section 80 of Act)**

- (1) Every public sector agency must keep a record of the residential address of each of its employees and, for that purpose and for the purposes of section 80 of the Act, an employee must give the public sector agency notice of his or her current residential address in writing or in some other form approved by the agency—
  - (a) when so required by the agency; 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 a 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; and
  - (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 or in some other form approved by a public sector agency, a notice may be given directly to an employee by word of mouth or by telephone, telegram, fax or email.

- (4) A notice or document will be taken to have been given or delivered to a public sector agency if the notice or document is given or delivered to the employee for the time being occupying a position or performing duties nominated by the agency for the purpose of the receipt of such notices or documents.

## Legislative history

### Notes

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

### Legislation revoked by principal regulations

The *Public Sector Regulations 2010* revoked the following:

*Public Sector Management Regulations 1995*

### Principal regulations and variations

New entries appear in bold.

| Year        | No        | Reference                            | Commencement         |
|-------------|-----------|--------------------------------------|----------------------|
| 2010        | 9         | <i>Gazette 28.1.2010 p335</i>        | 1.2.2010: r 2        |
| 2011        | 159       | <i>Gazette 16.6.2011 p2612</i>       | 1.7.2011: r 2        |
| 2012        | 237       | <i>Gazette 22.11.2012 p5177</i>      | 22.11.2012: r 2      |
| 2012        | 249       | <i>Gazette 6.12.2012 p5469</i>       | 6.12.2012: r 2       |
| 2013        | 38        | <i>Gazette 16.5.2013 p1548</i>       | 16.5.2013: r 2       |
| 2014        | 23        | <i>Gazette 23.1.2014 p387</i>        | 23.1.2014: r 2       |
| 2014        | 39        | <i>Gazette 13.2.2014 p894</i>        | 13.2.2014: r 2       |
| 2014        | 197       | <i>Gazette 26.6.2014 p3076</i>       | 1.7.2014: r 2        |
| 2015        | 28        | <i>Gazette 19.3.2015 p1195</i>       | 19.3.2015: r 2       |
| 2015        | 176       | <i>Gazette 25.6.2015 p3085</i>       | 25.6.2015: r 2       |
| <b>2016</b> | <b>47</b> | <b><i>Gazette 9.6.2016 p2074</i></b> | <b>1.7.2016: r 2</b> |
| <b>2016</b> | <b>48</b> | <b><i>Gazette 9.6.2016 p2077</i></b> | <b>1.7.2016: r 2</b> |
| 2016        | 262       | <i>Gazette 15.11.2016 p4415</i>      | 15.3.2017: r 2       |

### Provisions varied

New entries appear in bold.

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

| Provision  | How varied   | Commencement    |
|------------|--|-----------------|
| Pt 1       |  |                 |
| <i>r 2</i> | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2011</i> |



|                            |  |                 |
|----------------------------|--|-----------------|
| Pt 3                       |  |                 |
| r 9                        |  |                 |
| r 9(1)                     | varied by 28/2015 r 4(1)   | 19.3.2015       |
| r 9(2)                     | varied by 28/2015 r 4(2)   | 19.3.2015       |
| r 9(3)                     | inserted by 28/2015 r 4(3)   | 19.3.2015       |
| r 9(4)                     | inserted by 28/2015 r 4(3)   | 19.3.2015       |
|                            | <b>substituted by 48/2016 r 4(1)</b>                               | <b>1.7.2016</b> |
| r 9(5) and (6)             | inserted by 176/2015 r 4   | 25.6.2015       |
| <b>r 9(7) and (8)</b>      | <b>inserted by 48/2016 r 4(2)</b>                                  | <b>1.7.2016</b> |
| Pt 5                       |  |                 |
| Div 1                      |  |                 |
| r 13                       |  |                 |
| r 13(1aa)                  | inserted by 249/2012 r 4(1)  | 6.12.2012       |
| r 13(1a)                   | inserted by 159/2011 r 4(1)  | 1.7.2011        |
|                            | varied by 38/2013 r 4(1)   | 16.5.2013       |
| r 13(2a)                   | inserted by 237/2012 r 4   | 22.11.2012      |
| r 13(2ab) and (2ac)        | inserted by 39/2014 r 4  | 13.2.2014       |
| <b>r 13(2ad) and (2ae)</b> | <b>inserted by 47/2016 r 4(1)</b>                                  | <b>1.7.2016</b> |
| r 13(2b) and (2c)          | inserted by 23/2014 r 4  | 23.1.2014       |
| r 13(2d) and (2e)          | inserted by 197/2014 r 4   | 1.7.2014        |
| <b>r 13(2f) and (2g)</b>   | <b>inserted by 47/2016 r 4(2)</b>                                  | <b>1.7.2016</b> |
| r 13(3)                    | amended by 159/2011 r 4(2)   | 1.7.2011        |
| r 13(4)                    | substituted by 159/2011 r 4(3)                                     | 1.7.2011        |
| r 13(5)—(8)                | inserted by 249/2012 r 4(2)  | 6.12.2012       |
| r 13(8a)                   | inserted by 38/2013 r 4(2)   | 16.5.2013       |
| r 13(9)                    | inserted by 249/2012 r 4(2)  | 6.12.2012       |
| <i>Sch 1</i>               | <i>omitted under Legislation Revision and Publication Act 2002</i> | <i>1.7.2011</i> |

## Historical versions

1.7.2011  
22.11.2012  
6.12.2012  
16.5.2013  
23.1.2014  
13.2.2014  
1.7.2014  
19.3.2015  
25.6.2015