

SOUTH AUSTRALIA

MINISTERIAL CODE OF CONDUCT

CONTENTS

1. INTRODUCTION.....	1
1.1 Background.....	1
1.2 Aim of this Code	1
1.3 Status	1
1.4 Enforcement of Code	2
2. GENERAL STANDARDS OF CONDUCT.....	2
2.1 Compliance with Codes, Laws and Orders	2
2.2 Responsibility for Conduct.....	2
2.3 Reputation	2
2.4 Honesty.....	3
2.5 Fairness and Diligence in Decision Making.....	3
2.6 Accountability	3
2.7 Financial Accountability	3
2.8 Cabinet Collective responsibility	4
2.9 Cabinet Confidentiality	4
3. CONFLICTS OF INTEREST	4
3.1 Obligation	4
3.2 Nature of Conflicts of Interest	5
3.3 Disclosure of Actual, Potential or Apparent Conflicts of Interest.....	5
3.4 Cabinet Register for Declaration by Ministers	6
3.5 Cabinet Deliberations	6
3.6 Consideration of Disclosures	7
3.7 Consequences of Failure to Disclose a Conflict.....	7
4. DEALING WITH DIFFERENT TYPES OF CONFLICTS OF INTEREST.....	8
4.1 Business Interests	8
4.2 Public Appointments	8
4.3 Non-public Bodies	8
4.4 Trade Unions and Professional Associations.....	8
4.5 Product Endorsement.....	9
4.6 Shares and Financial Interests.....	9
4.7 Directorships	10
4.8 Employment of Relatives.....	10
4.9 Gifts and Benefits.....	11
5. USE OF INFORMATION OBTAINED IN THE COURSE OF OFFICIAL DUTIES.....	11
6. USE OF PUBLIC PROPERTY	11

7. CONTINUING OBLIGATIONS.....	12
7.1 Employment.....	12
7.2 Use of Information	12
8. RELATIONS WITH THE PUBLIC SERVICE	13
9. CARETAKER CONVENTIONS	13
APPENDIX 1: RELEVANT LEGISLATION	14
APPENDIX 2: STANDING ORDERS RELEVANT TO CONDUCT.....	21
APPENDIX 3: DECLARATION OF INTEREST BY MINISTERS.....	23

CODE OF CONDUCT FOR MINISTERS OF THE GOVERNMENT OF SOUTH AUSTRALIA

1. INTRODUCTION

1.1 Background

Ministers of the Crown are in a position of trust bestowed by the people of South Australia. Ministers have a great deal of discretionary power, being responsible for decisions which can markedly affect an individual, groups of individuals, organizations, companies, local communities or all South Australians.

For these reasons, Ministers must accept standards of conduct of the highest order.

Ministers are expected to behave according to the highest standards of constitutional and personal conduct in the performance of their duties.

They must act honestly and diligently and with propriety in the performance of their public functions and duties and ensure that their conduct does not bring discredit upon the Government or the State.

Ministers are personally responsible for deciding how to act and conduct themselves and for justifying their actions and conduct in Parliament. The Premier must take responsibility for his or her Ministers and deal with their conduct in a manner that retains the confidence of the public. The Premier and the Ministry will ultimately be judged by the public at a general election.

1.2 Aim of this Code

Cabinet has approved this Code of Conduct to provide guidance to Ministers on how they should act and arrange their affairs in order to uphold the highest standards and avoid conflicts of interest.

1.3 Status

This Code will take effect from July 1 2002. It is not intended to override the obligations of Ministers to comply with any State or Commonwealth laws.

Ministers should be aware that in addition to laws that apply to South Australians generally, there are some laws that apply specifically to Ministers. These laws (as they exist as at the date of this document) are listed in *Appendix 1*. Ministers should familiarize themselves and at all times comply with these laws.

1.4 Enforcement of Code

If a Minister engages in conduct which prima facie constitutes a breach of this Code, or a Minister is charged with an offence, the Premier shall decide, in his or her discretion, the course or action that should be taken. A Minister may, among other things, be asked to apologize, be reprimanded or be asked to stand aside or resign.

Before making a decision, the Premier may refer the matter to an appropriate independent authority for investigation and/or advice.

2. GENERAL STANDARDS OF CONDUCT

2.1 Compliance with Code, Laws and Orders

In carrying out their duties, Ministers must ensure that their conduct in office is, in fact and in appearance, in accordance with this Code of Conduct.

Ministers must promote the observance of this Code by leadership and example in the public bodies for which they are responsible and must ensure that they comply with and uphold all applicable laws.

In parliamentary proceedings, Ministers must ensure they conduct themselves strictly in accordance with the Standing Orders of Parliament. An outline of the Standing Orders relevant to Ministers is contained in *Appendix 2*.

2.2 Responsibility for Conduct

Ministers must ensure that their personal conduct is consistent with the dignity, reputation and integrity of Parliament. Ministers must not engage in sexual harassment or in other forms of discriminatory behaviour (defined as discrimination based on one of the protected attributes in the Equal Opportunity Act 1984; that is, age, race, disability, sex, gender identity, sexual orientation, or caring responsibilities). Ministers are responsible to Parliament for their actions and the actions of the departments and agencies within their portfolio.

Ministers are required to ensure that their decisions, directions and conduct in office do not encourage or induce other public officials, including public servants, to breach the law, or to fail to comply with the relevant code of ethical conduct applicable to them in their official capacity.

Ministers are also expected to ensure that reasonable measures are put in place in the departments and agencies for which they are responsible, to discourage and prevent corruption by officials.

2.3 Reputation

In the discharge of his or her public duties, a Minister shall not dishonestly or wantonly and recklessly attack the reputation of any other person.

2.4 Honesty

Ministers are expected to act honestly, diligently and with propriety in the performance of their public duties and functions. Ministers must ensure they do not deliberately mislead the public or the Parliament on any matter of significance arising from their functions.

It is a Minister's personal responsibility to ensure that any inadvertent error or misconception in relation to a matter is corrected or clarified, as soon as possible and in a manner appropriate to the issues and interests involved.

2.5 Fairness and Diligence in Decision Making

Ministers should not make an official decision without first giving due consideration to the merits of the matter at hand and the impact the decision is likely to have on the rights and interests of the people involved and the citizens of South Australia.

A Minister must use all reasonable endeavors to obtain all relevant information and facts before making a decision on a particular issue and should consult, as appropriate, in relation to the matter at issue.

Decisions made by Ministers in or in connection with their official capacity, should be made in the interests of advancing the interests of the citizens of South Australia.

2.6 Accountability

Ministers must provide information to the Parliament when requested to do so.

Ministers, their departments and agencies carry out work on behalf of the public. It is, therefore, important for information about portfolios to be made available to the public and to Parliament. A Minister has an obligation to be "open and transparent".

However Ministers are not required to disclose information that they are prevented by law from disclosing or which is not in the interests of the public. They are also not required to disclose information that is *genuinely* confidential in a commercial context.

Ministers must cooperate fully with the Auditor-General in any enquiry made of Ministers generally or of a particular Minister.

2.7 Financial Accountability

Ministers have an obligation to account to Parliament fully and effectively for all monies they have authorized be spent, invested or borrowed. Ministers are obliged to give Parliament full, accurate, and timely accounts of all public money over which Parliament has given them authority.

It follows that Ministers must keep appropriate records and ensure that the officers of their departments and agencies regularly account for the expenditure and allocation of resources under their control.

The public has a right to know that monies provided to government by way of taxes and charges are being spent in accordance with the law and for the purposes for which they have been appropriated; and that the standard of community services reflects value for money from the level of taxes and charges imposed.

2.8 Cabinet Collective Responsibility

Ministers are responsible, with all other Ministers, for the decisions of Cabinet.

The ethical and effective working of Executive Government in South Australia depends on Ministers having the trust and confidence of all ministerial colleagues in their official dealings and in the manner in which they discharge their official responsibilities.

The collective decisions of Cabinet are binding on all Ministers individually. If a Minister is unable to support a Cabinet decision publicly, the Minister should resign from Cabinet. This convention is based on the proceedings of Cabinet ordinarily being secret and Ministers providing to their colleagues adequate notice of matters to be raised in Cabinet.

2.9 Cabinet Confidentiality

A Minister must maintain the confidence of Cabinet decisions, documents and deliberations.

The principle of collective responsibility for the decisions that are taken in Cabinet is fundamental to effective Cabinet government. From this principle flows the convention that what is discussed in Cabinet and in particular, the views of individual Ministers on issues before the Cabinet, are to remain entirely within the confidence of the members of Cabinet.

Similarly, the papers considered by Cabinet and any record of the outcome of Cabinet's deliberations are confidential to the government of the day. Separate procedures apply to the handling of Cabinet documents. The convention has been adopted by successive governments that the Cabinet papers (and deliberative documents generally) of a government are not available to its successors.

It follows that Ministers and their ministerial staff may not disclose to anyone else what is discussed in Cabinet, the views of individual Ministers expressed in Cabinet, votes taken in Cabinet, or anything about material provided to Cabinet in Cabinet submissions.

A Minister who deliberately or recklessly breaches Cabinet confidentiality, should resign from the Ministry. The Premier may ask a Minister to resign in any case.

3. CONFLICTS OF INTEREST

3.1 Obligation

Ministers should avoid situations in which their private interests conflict, have the potential to conflict or *appear* to conflict with their public duty.

3.2 Nature of Conflicts of Interest

A conflict of interest may exist when a Minister is influenced or appears to be influenced by private interests. Private interests include not only a Minister's financial or other interests but the financial or other interests of the Minister's spouse, domestic partner or children.

There are many circumstances in the context of the Minister's position in which conflicts of interest may arise. For example, a conflict may arise where a Minister:

- has a significant financial interest in a company with whom the Government is contracting;
- has a personal interest in the outcome of a process; or
- receives a right or commission in return for the provision of a benefit.

A conflict of interest does not only encompass actual or direct conflicts of interest between a Minister's public duty and private interests. A potential or perceived conflict of interest may also constitute a conflict of interest.

3.3 Disclosure of Actual, Potential or Apparent Conflicts of Interest

Ministers are under an obligation to advise the Premier (or in the case of the Premier, Cabinet) in writing as soon as possible after becoming aware of any conflict of interest between their public duty and private interests.

The advice to the Premier (or in the case of the Premier, Cabinet) should contain sufficient detail of the conflict of interest in order to enable the Premier (or Cabinet) to consider and determine the most appropriate course of action to be taken in the circumstances.

Where circumstances change after an initial disclosure has been made, so that new or additional facts become material, the Minister must promptly disclose the further information.

This obligation is additional to a Minister's obligations to notify the Cabinet Office of their private interests under the *Members of Parliament (Register of Interests) Act 1983*.

The fact that the Minister has raised an actual, potential or perceived conflict of interest with the Premier will be recorded on the Cabinet Register. This record is available for scrutiny by the Auditor-General.

If a Minister has any doubt as to whether or not an interest is likely to constitute a conflict of interest, the Minister should promptly consult the Premier (or in the case of the Premier, Cabinet).

3.4 Cabinet Register for Declaration by Ministers

Ministers must, within 14 days of the commencement of this Code (or following commencement of this Code, within 14 days of taking up office), notify the Cabinet Office of all private interests disclosed to Parliament pursuant to the *Member of Parliament (Register of Interests) Act 1983*.

In addition, Ministers must, within 14 days of the commencement of this Code (or, following the Commencement of this Code, within 14 days of taking up office), disclose to the Cabinet Office any private interests of their spouse, domestic partner, children or business associates that might conflict with their duty as a Minister, as explained in this Code. This includes details of the individual components of any family trusts in which Ministers have an interest.

These details, and any information provided by Ministers under their ongoing obligation of disclosure or information amending it in the statements tabled after the receipt of annual ordinary returns in accordance with the *Member of Parliament (Register of Interests) Act*, will be recorded in the Cabinet Register maintained by Cabinet Office.

The Register will be available for scrutiny by the Auditor-General.

3.5 Cabinet Deliberations

It is the responsibility of all Ministers to bring conflicts of interest to the attention of Cabinet, even if the conflict arises out of an interest already recorded in the Cabinet Register.

All proposals intended to go before Cabinet must contain a written statement by submitting Ministers as to whether they have an actual or potential conflict of interest in relation to the proposal under consideration. This statement must be included on all Cabinet submission Cover Sheets. If a Minister indicates the existence of a conflict, details of the conflict must be disclosed in the Appendix to the Cabinet submission using the form set out in *Appendix 3* to this Code.

Ministers should also use the form set out in Appendix 3 to declare their interest in any matters brought to Cabinet. The form should be tendered to the Premier or acting Cabinet Chair for consideration before Cabinet's deliberation on the relevant matter. The form should be used to record the attitude of Cabinet to the issues and the action taken in response to them. The Premier will sign all forms and copies will be filed in the Cabinet Register.

A Minister must not participate in any deliberations on a matter in respect of which a conflict of interest has validly been disclosed by that Minister and must withdraw from the Cabinet room during those deliberations.

3.6 Consideration of Disclosures

In considering how to deal with a conflict of interest, the Premier (or in the case of the Premier, Cabinet) must consider how the conflicting interest will interfere with or affect the performance of the Minister's public duty (if at all) and how the public will perceive the propriety of the Minister's continued participation in a matter.

Conflicts of interest relating to portfolio matters will generally be dealt with by the Premier. Conflicts that are very serious or which involve the Premier or which relate to Cabinet matters, will be referred to Cabinet for discussion and determination as to what action should be taken.

Following the disclosure of a conflict, the Premier (or in the case of the Premier, Cabinet) may in his or her discretion take a number of different courses of action, including, for example:

- approving the conduct and allowing the Minister to continue his or her involvement in the matter;
- requiring the Minister to divest him or herself of the relevant private interest;
- asking the Minister to publicly apologise, stand aside or resign. (If a Minister refuses to resign, the Premier can require a Minister's commission to be withdrawn);
- requiring that the Minister not take part in the determinations relating to the conflict. This may involve requiring the Minister to leave the Cabinet room or to delegate certain powers and duties to another Minister.

The nature of some conflicts may be so serious that Ministers should not wait until the Premier or Cabinet has considered the matter. In appropriate cases Ministers should immediately relinquish their private interests or offer their resignation.

3.7 Consequences of Failure to Disclose a Conflict

If a Minister does not disclose a conflict of interest that is later found to exist, the Premier (or in the case of the Premier, Cabinet) may, among other things, in his or her discretion:

- require the Minister to apologise publicly;
- require the Minister to stand aside or resign;
- refer the matter to an appropriate authority for investigation and require the Minister to stand down during the investigation;
- discuss the matter with the Minister and then seek the view of Cabinet before making a determination as to how the conduct of the Minister should be dealt with.

4. DEALING WITH DIFFERENT TYPES OF CONFLICTS OF INTEREST

The following paragraphs set out in more detail particular measures that should be taken based on experience obtained from observing the actions of previous governments.

4.1 Business Interests

Ministers should not act as consultants to any company, business, association or other organization or provide assistance to any such body, except as may be appropriate in their official capacity as Minister. (This requirement does not apply where a Minister has the Premier's permission to continue an involvement in a family company).

Ministers are expected to devote the whole of their time and talent to carrying out their official business, both as members of the executive and as Members of Parliament. Holding office is regarded as a full-time occupation and is remunerated as such. Ministers must not accept retainers or income from personal exertion other than their remuneration as Ministers and Parliamentarians.

Ministers must cease to be actively involved in the day to day conduct of any professional practice or in any business in which they were engaged before assuming office.

4.2 Public Appointments

When taking up office Ministers should give up public appointments that give rise to a conflict of interest with their Ministerial duties and portfolio responsibilities.

In the case of any doubt, Ministers should consult the Premier (or, in the case of the Premier, Cabinet).

4.3 Non-public Bodies

Ministers should declare their involvement in pressure groups and other non-public organizations whose objectives may conflict with Government policy (other than local community, charitable, voluntary and sporting organizations).

4.4 Trade Unions and Professional Associations

Ministers should arrange their affairs so as to avoid any suggestion that a union or professional association of which they are a member has any undue influence.

Ministers should give up any paid office they may hold in a union or professional association and receive no remuneration from a union or professional association.

Nothing in this section precludes a Minister from retaining a right to vote as a member of a union or professional association.

4.5 Product Endorsement

Ministers must not endorse any products or services or associate themselves with the marketing of any products or services for any personal financial reward or benefit.

By lending their name to the marketing of a product or service Ministers may give an appearance of partisanship that is at odds with their role as a member of government serving the interests of the public.

This obligation does not prevent Ministers from endorsing any product or service promoting economic development or local employment or when appearing in party political advertisements or political public service type advertisements or announcements (for example, advertisements promoting the conservation of water) where no fee would be expected.

4.6 Shares and Financial Interests

Within 14 days of the commencement of this Code (or after commencement of this Code, within 14 days of taking up office), Ministers must actively take steps to divest themselves completely of all shareholdings and other forms of equitable interest held in their private capacity in companies (both public and private) that may create a conflict of interest as a result of their portfolio responsibilities, other than those allowed by this Code or approved by the Premier in accordance with this Code.

Subject to this Code, Ministers must not in their private capacity acquire shareholdings or other financial interests in any public or private companies during their term as Minister.

Ministers are entitled to retain any shares or interests held before the commencement of this Code or their appointment as a Minister, provided this does not conflict with their portfolio responsibilities and provided they do not trade (ie, buy or sell) those shares during the term of their appointment. These shareholdings and interests are required to be disclosed in the Cabinet Register.

These requirements arise from the practical consideration that it is likely that the private business interests of any individual member of Cabinet could otherwise give rise to a real or perceived conflict of interests affecting the Cabinet as a whole.

Members of a Minister's immediate family (in this context, a Minister's spouse, domestic partner, and/or dependent children) are not required to divest themselves of any interests and are not prevented from acquiring any shares or other financial interests in their own name. However, Ministers have an obligation to report immediate family members' investments on the Members' Register of Interests and their interests will be disclosed on the Cabinet Register.

The transfer of shares and interests to an immediate family member is not an acceptable form of divestment of shares or financial interests for the purposes of this Code.

Ministers may transfer control of their interests to an outside professional nominee or trust provided the Minister or family member exercises no control over the operation of the nominee or trust. Ministers should obtain professional advice in relation to the divestment of their interests in order to comply with this Code.

The Premier may approve, on a case-by-case basis:

- investment by Ministers in managed funds or managed trust arrangements (provided that the portfolio of investment is broadly diversified and at "arm's length" from the Ministers' control);
- investment by Ministers in superannuation investment funds;
- the receipt and divestment by Ministers of shares and interests pursuant to a will or as a result of the demutualisation of a company or other exceptional circumstances.

In each such case, the Premier shall first consider and be satisfied there is no reasonable basis for a conflict of interest to arise and the Minister must disclose the investment.

Nothing in this Code prevents Ministers from holding a share in a credit union where the holding of a share is a condition of membership of the union.

4.7 Directorships

Ministers must resign from and decline directorships of public companies upon taking up office as a Minister (or upon commencement of this Code). Ministers must not provide advice or assistance to such companies other than as may be required in their official capacity as a Minister.

Ministers may retain directorships in private companies or associations only with the express approval of the Premier, and only in cases where the Premier considers them unlikely to give rise to a conflict of interest with a Minister's portfolio responsibilities. The offer of any directorships must be disclosed to the Premier before being accepted so that an immediate assessment of their impact on a Minister's portfolio can be made.

4.8 Employment of Relatives

Ministers should not appoint close business associates or relatives to positions in their own offices.

A Minister's spouse, domestic partner and/or children should not be appointed to any position in an agency within the Minister's own portfolio unless the appointment is first approved by the Premier or Cabinet.

Ministers should not exercise the influence obtained from their public office, or use official information, to gain any improper benefit for themselves or another.

4.9 Gifts and Benefits

Gifts and benefits received by Ministers are covered by the Premier's Guideline on Gifts Received by Ministers and Their Staff and Families. The guideline is available from the Department of the Premier and Cabinet website, www.dpc.sa.gov.au.

5. USE OF INFORMATION OBTAINED IN THE COURSE OF OFFICIAL DUTIES

Ministers must not use information obtained in the course of official duties to gain a direct or indirect financial advantage for themselves or any other person.

In particular, Ministers shall scrupulously avoid investments and transactions about which they have obtained confidential information as a Minister that may result in an advantage that is unreasonable or improper.

Some of the information that comes to Ministers may be commercially sensitive or sensitive in some other way. Its wrongful disclosure may have an adverse impact on individuals, private commercial entities, or the State, but its use to benefit Ministers' private interests may place them in an untenable position of conflict. Even the appearance of benefit or of avoidance of loss to a Minister's private interests, without any actual effect, may bring accusations of conflict and bring individual Ministers and the Government into disrepute.

It is very important for Ministers not only to maintain strict confidentiality about this information, but to take care not to use the special knowledge they have gained in such a way as to give even the appearance of benefiting or avoiding loss to their private financial interests.

6. USE OF PUBLIC PROPERTY

Ministers and their staff are provided with resources and facilities at public expense for the effective conduct of public business. These resources must not be wasted or used extravagantly. Rather, they should be used economically at all times.

Ministers must be scrupulous in their use of public property, services and facilities, and must use reasonable endeavors to prevent misuse by other persons .

Ministers and ministerial staff must use all reasonable endeavors to avoid, and to avoid giving any public appearance of, using government departmental offices for private purposes or party political purposes. Party political lunches or functions or events should not be paid for out of departmental funds, and neither should anything connected with an election campaign.

Careful use and oversight of ministerial credit cards is essential. (*Treasurer's Instruction 13*, issued under the authority of the *Public Finance and Audit Act* contains detailed rules in relation to expenditure incurred by Ministers and Ministerial staff, including the use of credit cards).

7 . CONTINUING OBLIGATIONS

7.1 Employment

Ministers shall, within 14 days of the commencement of this Code (or within 14 days of taking up office) provide a written undertaking to the Premier (or in the case of the Premier, Cabinet) that they will not, for a two year period after ceasing to be a Minister, take employment with, accept a directorship of or act as a consultant to any company, business or organization:

- a) with which they had official dealings as Minister in their last 12 months in office; and
- b) which:
 - is in or in the process of negotiating a contractual relationship with the Government; or
 - is in receipt of subsidies or benefits from the Government not received by a section of the community or the public; or
 - has a government entity as a shareholder; or
 - is in receipt of government loans, guarantees or other forms of capital assistance; or
 - engages in conduct directly inconsistent with the policies and activities of the Minister,

without the prior written consent of the Commissioner for Public Employment in consultation with the Premier of the day.

This restriction does not apply to an unpaid appointment in a non-commercial organization or appointment in the gift of the Government.

If the Commissioner for Public Employment decides following consultation with the Premier, that an appointment could lead to public concern that the statements and decisions of the Minister, when in Government, have been influenced by the hope or expectation of future employment with the company or organization concerned, or that an employer could make improper use of official information to which a former Minister has had access, the Commissioner may withhold his or her consent or recommend that the former Minister stand aside from participating in certain activities of the employer for a two year period.

7.2 Use of Information

Ministers must within 14 days of the commencement of this Code (or within 14 days of taking up office) provide a written undertaking to the Premier (or in the case of the Premier, Cabinet) that after leaving office, they will not disclose to any person any information to which they had access as a Minister, where that information is not generally available to the public (“Confidential Information”). Ministers must further undertake that they will not use any Confidential Information after leaving office in order to obtain a personal advantage or benefit that is not enjoyed by the general public.

Ministers shall not be required to keep confidential any information to the extent that it is required to be disclosed by law or is in the public domain, other than as a result of a breach of the Minister's undertaking. In addition, Ministers shall not be prevented from using general skills and knowledge acquired by them in the course of and during the period of their office.

8. RELATIONS WITH THE PUBLIC SERVICE

Ministers must regard the skills and abilities of public servants as a public resource. Ministers are expected to ensure that public servants are deployed for the maximum benefit of the people of South Australia and that their abilities are made available for the purposes of good government and public administration. Ministers must disregard the political and other personal interests of career public servants unless those interests pose a conflict of interests or give rise to a breach of established conventions of Public Service neutrality.

Public servants should not be asked to work on party political matters. They should not be asked to specifically prepare material for Ministers to use in the election when the government is in caretaker mode after an election has been called.

Ministers have broad responsibility for the operations and performance of their departments and agencies. Ministers should exercise leadership in their Ministerial portfolios by:

- setting broad priorities
- setting and endorsing basic directions
- outlining the major requirements of budget programs
- setting key performance targets
- taking key strategic decisions
- ensuring a continuing assessment of performance by their departments and agencies.

Ministers should establish, with their senior departmental and agency managers, a mutual understanding of their respective roles and relationships, agree on priorities, directions, targets and expected levels of performance and evaluation of performance.

The conditions of appointment of a Chief Executive shall be made in accordance with the Public Sector Management Act 1995. A Chief Executive of an administrative unit shall be responsible to a Minister in accordance with that Act.

Ministers should encourage Chief Executive Officers to delegate responsibilities to appropriate levels of management within their departments and agencies.

9. CARETAKER CONVENTIONS

All Ministers are required to accept certain caretaker conventions during the period leading up to an election.

[Separate Guidelines on the Caretaker Conventions are available from the Premier
***Note: Separate Guidelines are being developed]*

APPENDIX 1

RELEVANT LEGISLATION

This appendix contains legislation applying to the conduct of

- all Members of Parliament, including Ministers (in Part A); and
- Ministers only (in Part B).

Part A

Legislation applying to the conduct of all Members of Parliament

CRIMINAL LAW CONSOLIDATION ACT 1935

General offences

Members of Parliament are subject to the general criminal law and so can be guilty of offences such as dishonesty, fraud and theft etc. These are the kinds of offences used to investigate/prosecute allegations of travel rorts and other misuses of public funds.

Offences of a public nature - *Part 7 Divisions 1 and 4*

Certain kinds of conduct, if undertaken by people who hold public office ('public officers'), constitute criminal offences. A Member of Parliament is a public officer (s237). The offences are:

Acting improperly (s 238) (interpretation)

A public officer acts improperly, or a person acts improperly in relation to a public officer or public office, if the officer or person knowingly or recklessly acts contrary to the standards of propriety generally and reasonably expected by ordinary decent members of the community to be observed by public officers of the relevant kind, or by others in relation to public officers or public offices of the relevant kind. A person will not be taken to have acted improperly unless the person's act was such that in the circumstances of the case the imposition of a criminal sanction is warranted.

Bribery or corruption of public officers (s 249)

A public officer who improperly seeks, accepts or agrees to accept a benefit from another person as a reward or inducement for-

- an act done, or omission made in his or her official capacity; or
- the exercise of power or influence that the public officer has or had is guilty of an offence.

Abuse of public office (s251)

A public officer who improperly:

- exercises power or influence;
- refuses or fails to discharge or perform duty; or
- uses information gained by virtue of his or her office
- with intention of securing benefit or causing injury or detriment to another
- is guilty of an offence

Offences relating to appointment of public office (s 253)

A person who improperly

- gives, offers or agrees to give a benefit to another in connection with the appointment or possible appointment of a person to a public office or
- seeks accepts or agrees to accept a benefit on account of an act done with regard to the appointment

is guilty of an offence.

SECRET COMMISSIONS PROHIBITION ACT 1920

The Act prohibits the offering or taking of secret commissions and prevents fraud. The offences are particularly relevant to people in positions of power or authority, like Members of Parliament. They relate to:

- the receipt or solicitation of secret commission by an agent
- secret gifts received by a parent, wife, child or partner of an agent
- false or misleading receipts or account
- secret commissions or offers of secret commissions for advice given or offered.

CONSTITUTION ACT 1934

Section 45 prohibits Members of Parliament from accepting paid employment or other benefit from the Crown.

Disqualification of Members holding offices of profit

45. (1) If any Member of the Parliament accepts any office of profit or pension from the Crown, during pleasure, excepting those offices which are required by or under this Act or any other Act to be held by Members of Parliament, his seat shall be thereupon and is hereby declared to be vacant.

(1a) Subsection (1) does not prevent a Member of Parliament from accepting office as a Minister of the Crown or as Parliamentary Secretary to the Premier, or a Minister of the Crown from accepting an appointment to act in the office of another Minister.

(2) If a candidate for election as a Member of Parliament holds an office of profit from the Crown he shall, unless he resigns that office before the date of the declaration of poll, be incapable of being elected.

ELECTORAL ACT 1985

Part 13 of the *Electoral Act* creates offences for certain kinds of conduct which affect the fairness and integrity of elections. It applies to anyone standing for election, new candidates as well as sitting Members.

The offences concern

- bribery, undue influence, interference with political liberty (Division 1)
- electoral advertisements, commentaries and other material (Division 2)
- offences related to the conduct of an election (Division 3)

EQUAL OPPORTUNITY ACT 1984

Among other things, the *Equal Opportunity Act* prohibits sexual harassment by employers, and in doing so makes special reference to Members of Parliament in s87(6c) and (6d). Section 87(11) defines sexual harassment.

87. (6c) It is unlawful for a Member of Parliament to subject to sexual harassment-

- (a) a member of his or her staff; or
- (b) a member of the staff of another Member of Parliament; or
- (c) an officer or member of the staff of the Parliament; or
- (d) any other person who in the course of employment performs duties at Parliament House.

(6d) Subsection (6c) does not apply in relation to anything said or done by a Member of Parliament in the course of parliamentary proceedings.

(11) For the purposes of this section, a person subjects another person to sexual harassment if he or she does any of the following acts in such a manner or in such circumstances that the other person feels offended, humiliated or intimidated:

- (a) he or she subjects the other to an unsolicited and intentional act of physical intimacy;
- (b) he or she demands or requests (directly or by implication) sexual favours from the other;

- (c) he or she makes, on more than one occasion, a remark with sexual connotations relating to the other,
- and it is reasonable in all the circumstances that the other person should feel offended, humiliated or intimidated by that conduct.

MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) ACT 1983

The Act establishes a Register of certain interests of Members of Parliament. Members are required to lodge a primary return within 30 days of taking the oath of office, and within 60 days of 30 June each year, to lodge an ordinary return. Key parts of the Act are reproduced below.

Interests which must be disclosed

A **primary return** must contain the following information (section 4(1)) -

- (a) a statement of any income source that the Member required to submit the return or a person related to the Member has or expects to have in the period of twelve months after the date of the primary return; and
- (b) the name of any company or other body, corporate or unincorporated, in which the Member or a member of his family holds any office whether as director or otherwise, and
- (c) the information required by subsection 4(3).

An **ordinary return** must contain the following information (section 4(2)):

- (a) where the Member required to submit the return or a person related to the Member received, or was entitled to receive, a financial benefit during any part of the return period-the income source of the financial benefit; and
- (b) where the Member or a member of his family held an office whether as director or otherwise in any company or other body, corporate or unincorporated, during the return period-the name of the company or other body; and
- (c) the source of any contribution made in cash or in kind of or above the amount or value of \$750 (other than any contribution by the State or any public statutory corporation constituted under the law of the State, by an employer or by a person related by blood or marriage) for or towards the cost of any travel beyond the limits of South Australia undertaken by the Member or a member of his family during the return period and for the purposes of this paragraph "cost of travel" includes accommodation costs and other costs and expenses associated with the travel; and
- (d) particulars (including the name of the donor) of any gift of or above the amount or value of \$750 received by the Member or a person related to the Member during the return period from a person other than a person related by blood or marriage to the Member or to a member of the Member's family; and

- (e) where the Member or a person related to the Member has been a party to a transaction under which the Member or person related to the Member has had the use of property of the other person during the return period and-
 - (i) the use of the property was not acquired for adequate consideration or through an ordinary commercial transaction or in the ordinary course of business; and
 - (ii) the market price for acquiring a right to such use of the property would be \$750 or more; and
 - (iii) the person granting the use of the property was not related by blood or marriage to the Member or to a member of the Member's family -
the name and address of that person
- (ea) particulars of any contract made during the return period between the Member or a person related to the Member and the Crown in right of the State where any monetary consideration payable by a party to the contract equals or exceeds \$7500; and
- (f) the information required by subsection 4(3).

A primary and ordinary return must contain the following information (section 4(3)) -

- (a) the name or description of any company, partnership, association or other body in which the Member required to submit the return or a person related to the Member is an investor; and
- (b) the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which the Member is a member; and
- (c) a concise description of any trust (other than a testamentary trust) of which the Member or a person related to the Member is a beneficiary or trustee (including the name and address of each trustee); and
- (d) the address or description of any land in which the Member or a person related to the Member has any beneficial interest other than by way of security for any debt; and
- (e) any fund in which the Member or a person related to the member has an actual or prospective interest to which contributions are made by a person other than the Member or a person related to the Member; and
- (f) where the Member or a person related to the Member is indebted to another person (not being related by blood or marriage to the Member or to a member of the Member's family) in an amount of or exceeding \$7,500 - the name and address of that other person; and
- (fa) where the Member or a person related to the Member is owed money by a natural person (not being related to the Member or a member of the Member's family by blood or marriage) in an amount of or exceeding \$10,000-the name and address of that person; and

- (g) any other substantial interest whether of a pecuniary nature or not of the Member or of a person related to the Member of which the Member is aware and which he considers might appear to raise a material conflict between his private interest and the public duty that he has or may subsequently have as a Member.

Failure to comply with the Act

Any person who wilfully contravenes or fails to comply with any provisions of this Act (other than s6) is guilty of an offence (section 7).

WHISTLEBLOWERS PROTECTION ACT 1993

This Act facilitates the disclosure, in the public interest, of maladministration and waste in the public sector and of corrupt or illegal conduct generally, and protects those who make such disclosures. It concerns all Members of Parliament as public officers whose activities may be the subject of such disclosures, and also designates Ministers as an 'appropriate authority' to whom the disclosure of public interest information may be made (s5(4)).

Part B

Legislation applying to Ministers, as distinct from ordinary Members

OATHS ACT

Section 6 of the Oaths Act sets out the oaths to be taken by Cabinet Ministers immediately after accepting office as a member of Executive Council. Section 6A sets out the oaths to be taken by Ministers who are not members of the Executive Council.

PUBLIC SECTOR MANAGEMENT ACT 1995

Section 69 of the *Public Sector Management Act* regulates the appointment of ministerial staff, who are not regarded as employees in the public service.

Appointment of Ministerial staff

69. (1) The Premier may appoint a person as a member of a Minister's personal staff on conditions determined by the Premier.
- (2) A person appointed under this section is not an employee in the Public Service.
- (3) Appointments may not be made under this section so that at any time the number of persons so employed exceeds one per cent of all employees in the Public Service.
- (4) An appointment to a Minister's personal staff continues while the Minister continues to be a Minister (whether or not in the same Ministerial office) unless it sooner expires or is terminated under the conditions of appointment.
- (5) The Premier must cause a report to be prepared not less frequently than once every 12 months setting out with respect to each Minister-
- (a) details of all appointments made to the Minister's personal staff under this section (other than those described in previous reports under this section); and
 - (b) the number of persons for the time being employed on the Minister's personal staff under this section; and
 - (c) the remuneration and other conditions of appointment of each person for the time being employed on the Minister's personal staff under this section.
- (6) A report under subsection (5) must-
- (a) be published in the Gazette next issued after preparation of the report; and
 - (b) be laid before each House of Parliament within six sitting days after preparation of the report.

APPENDIX 2

STANDING ORDERS RELEVANT TO CONDUCT

Relevant standing orders are reproduced below.

Legislative Council orders are prefixed by the letters **LC**, and House of Assembly orders by the letters **HA**, followed by the number of the order.

Pecuniary interests

LC: No Member shall be entitled to vote upon any question in which he or she has a direct pecuniary interest and the vote may, on motion, be disallowed (225)

HA: A Member may not vote in any division in which the Member has a direct pecuniary interest and the vote of the Member who has such an interest is disallowed (170)

Pecuniarily interested Member not to sit on Committee

LC: No Member shall sit on a Committee who has a direct pecuniary interest in the inquiry before the Committee (379)

HA: A Member may not sit on a committee if that Member has a direct pecuniary interest in the inquiry before that Committee (321)

Noise when others speaking

LC: Loud conversation and repeated interjections not allowed No Member shall converse aloud or make repeated interjections whilst any other Member is orderly debating (181)

HA: While a Member is speaking, no other Member may make a noise or disturbance or converse aloud or speak so as to interrupt the Member (142)

Member not to be interrupted

LC: No Member shall interrupt another Member whilst speaking (except as set out in the Order) (182)

HA: A Member may not interrupt another Member who is speaking (except as set out in the Order (131)

Objectionable words etc

LC: The use of objectionable or offensive words shall be considered highly disorderly and no injurious reflections shall be permitted upon the Governor or the Parliament of the State or Commonwealth nor judges or courts (193)

HA: These orders provide that Members may not use offensive words against either House, use unparliamentary language, use offensive words against a Member or reflect on other Members (122, 124,125,127)

Obstruction/Disorderly conduct

LC: If any Member persistently and wilfully obstructs the business of the Council; or refuses to conform to any Standing or other order or to regard the authority of the chair or if any Member having used objectionable words refuses to either explain them or withdraw them and apologise for their use; the President shall name the Member and report his offence to the Council (128)

HA: If any Member persistently or wilfully obstructs the business of the House; or persistently or wilfully refuses to conform to any Standing Order of the House, or refuses to accept the authority of the Chair or having used unparliamentary language refuses to either explain them or withdraw them and if necessary apologise for their use; the Speaker names the Member and reports the Member's offence to the House (137)

If any Member misbehaves in the House or interrupts the orderly conduct of business, the House may direct the Serjeant- at Arms to take the Member into custody (74)

Orders disobeyed

LC: If any Member shall wilfully disobey any Order of the Council, he or she may be ordered to attend in his or her place or if he or she be under suspension, at the Bar, to answer for his or her conduct and in default or if the excuses be deemed unsatisfactory, the Member may be suspended or otherwise dealt with at the pleasure of the Council (215)

HA: If any Member wilfully disobeys any lawful order of the House, the Member may be ordered to attend in his/her place to answer for the conduct. Unless the excuses are deemed unsatisfactory, the House may direct the Serjeant-at-Arms to take the Member into custody (74)

Quarrels

LC: The Council shall interfere to prevent the prosecution of any quarrel between Members arising out of Debates or proceedings of the Council or a Committee thereof (218)

HA: The House interferes to prevent quarrels between Members that arise out of debates or proceedings of the House or of any committee of the House (141)

Order to be maintained

LC: Order shall be maintained in the Council by the President (199)

HA: The Speaker is responsible for the orderly conduct of proceedings of the House and for maintaining its decorum and dignity (144)

APPENDIX 3

DECLARATION OF INTEREST BY MINISTERS

I, ...[name].....,

Minister for ...[Ministerial title].....,

declare the following interest with regard to the Cabinet submission dealing with the matter of ...[Purpose of submission: from Cover Sheet]....:

.....
.....
.....
.....
.....

Cabinet resolved on this matter that:

.....
.....
.....
.....

The Minister took the following action:

.....
.....
.....
.....

The Agenda item was considered with / without the participation of the Minister

PREMIER

Date:

This submission was Item Number * of the Cabinet Agenda of */*/0* .

[*details to be inserted by Cabinet Office and a completed copy filed on the Cabinet Register]