

South Australia

Statutes Amendment (Honesty and Accountability in Government) Act 2003

An Act to amend the *Criminal Law Consolidation Act 1935*, the *Industrial and Employee Relations Act 1994*, the *Public Corporations Act 1993* and the *Public Sector Management Act 1995*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Honesty and Accountability in Government) Act 2003*.

2—Commencement

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

3—Interpretation

A reference in this Act to the principal Act is a reference to the Act referred to in the heading to the Part in which the reference occurs.

Part 2—Amendment of *Criminal Law Consolidation Act 1935*

4—Amendment of s. 237—Definitions

Section 237 of the principal Act is amended—

- (a) by striking out from paragraph (h) of the definition of *public officer* "body," and substituting "body; or";
- (b) by inserting after paragraph (h) of the definition of *public officer* the following paragraph:
 - (i) a person who personally performs work for the Crown, a State instrumentality or a local government body as a contractor or as an employee of a contractor or otherwise directly or indirectly on behalf of a contractor,.

5—Amendment of s. 251—Abuse of public office

Section 251 of the principal Act is amended by inserting after its present contents (now to be designated as subsection (1)) the following subsection:

- (2) A former public officer who improperly uses information that he or she gained by virtue of his or her public office with the intention of—
 - (a) securing a benefit for himself or herself or for another person; or
 - (b) causing injury or detriment to another person,is guilty of an offence.

Penalty: Imprisonment for 7 years.

Part 3—Amendment of *Industrial and Employee Relations Act 1994*

6—Amendment of s. 4—Interpretation

Section 4 of the principal Act is amended by striking out paragraph (a) of the definition of *public employee* in subsection (1) and substituting the following paragraph:

- (a) a public sector employee, within the meaning of the *Public Sector Management Act 1995*, employed under, or subject to, that Act; or

7—Amendment of s. 36—Remuneration and conditions of office

Section 36 of the principal Act is amended by striking out from subsection (1)(b) "Part 3 of the *Government Management and Employment Act 1985*" and substituting "the *Public Sector Management Act 1995*".

Part 4—Amendment of *Public Corporations Act 1993*

8—Amendment of s. 3—Interpretation

Section 3 of the principal Act is amended—

- (a) by striking out from the definition of *debenture* in subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth";
- (b) by inserting after the definition of *liability* in subsection (1) the following definition:

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

- (c) by striking out from subsection (1) the definition of *prescribed interest*;
- (d) by striking out from the definition of *relevant interest* in subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth";
- (e) by inserting after the definition of *remuneration* in subsection (1) the following definition:

senior executive in relation to a public corporation or a subsidiary of a public corporation, means an employee of the corporation or subsidiary holding or acting in—

- (a) the position of chief executive of the corporation or subsidiary; or
- (b) an executive position declared to be a senior executive's position by the corporation's Minister by notice in the Gazette (which notice may be varied or revoked by subsequent notice in the Gazette);

- (f) by striking out from the definition of *subsidiary* in subsection (1) "*Corporations Law*" and substituting "*Corporations Act 2001* of the Commonwealth".

9—Amendment of s. 5—Application of Act

Section 5 of the principal Act is amended—

- (a) by inserting after subsection (1) the following subsection:
 - (1a) If a provision of this Act is declared to apply to a statutory corporation (other than a corporation sole), Part 4 and sections 36A to 38A (inclusive) apply to the corporation subject to any modifications prescribed by or under the corporation's incorporating Act or this Act.;
- (b) by striking out from subsection (3) "is declared to apply in pursuance of this section" and substituting "applies".

10—Amendment of s. 16—Director's duty to act honestly

Section 16 of the principal Act is amended by striking out subsections (2) and (3) and substituting the following subsection:

- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

11—Amendment of s. 17—Transactions with directors or associates of directors

Section 17 of the principal Act is amended by inserting after paragraph (a) of subsection (3) the following paragraph:

- (ab) to the employment of a person under a contract of service with the corporation or a subsidiary of the corporation or to a transaction that is ancillary or incidental to such employment; or.

12—Amendment of s. 18—Directors' and associates' interests in corporation or subsidiary

Section 18 of the principal Act is amended—

- (a) by striking out from subsection (1)(a) "prescribed interests made available by" and substituting "managed investment schemes of";
- (b) by striking out from subsection (1)(b) "prescribed interests made available by" and substituting "interests in managed investment schemes of";
- (c) by striking out from subsection (1)(c) "prescribed interests made available by" and substituting "interests in managed investment schemes of".

13—Amendment of s. 19—Conflict of interest

Section 19 of the principal Act is amended—

- (a) by inserting in subsection (1)(a) "in writing" after "disclose";

- (b) by striking out from subsection (5) "full and accurate details of the interest or office to the board of the corporation" and substituting "in writing to the board of the corporation full and accurate details of the interest or office".

14—Insertion of ss. 36A and 36B

The following sections are inserted after section 36 of the principal Act:

36A—Duty of employees to act honestly

- (1) An employee of a public corporation must at all times act honestly in the performance of his or her duties, whether within or outside the State.
- Penalty: Division 4 fine or division 4 imprisonment, or both.
- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.
- (3) If a person is convicted of an offence against this section in relation to a public corporation, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the corporation—
- (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that the corporation or a subsidiary of the corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (4) If a person contravenes this section in relation to a public corporation, the corporation or the corporation's Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the corporation or a subsidiary of the corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.

36B—Duty of senior executives with respect to conflict of interest

- (1) A senior executive of a public corporation must—
- (a) on appointment as a senior executive, disclose his or her pecuniary interests to the board of the corporation in writing in accordance with the regulations; and

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

Penalty: Division 4 fine.

- (2) Subsection (1)(a) applies to a person who is a senior executive of a public corporation on the commencement of this section as if the requirement to disclose interests on appointment as a senior executive were a requirement to disclose the interests within one month after that commencement.
- (3) A senior executive of a public corporation must comply with any written directions given by the corporation's Minister to resolve a conflict between the executive's duties and a pecuniary or other personal interest.
Penalty: Division 4 fine.
- (4) Without limiting the effect of this section, a senior executive of a public corporation will be taken to have an interest in a matter for the purposes of this section if an associate of the executive has an interest in the matter.
- (5) A disclosure under subsection (1)(c) must be reported to the corporation's Minister.
- (6) If a senior executive of a public corporation makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the corporation; and
 - (b) the executive is not liable to account to the corporation for profits derived from the contract.
- (7) If a senior executive of a public corporation fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the corporation or the corporation's Minister.

- (8) A contract may not be avoided under subsection (7) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (9) If a person is convicted of an offence against this section in relation to a public corporation, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the corporation—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that the corporation or a subsidiary of the corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (10) If a person contravenes this section in relation to a public corporation, the corporation or the corporation's Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the corporation or a subsidiary of the corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (11) This section does not apply in relation to a conflict or potential conflict between a senior executive's duties and a pecuniary or other personal interest while the executive remains unaware of the conflict or potential conflict, but in any proceedings against the executive the burden will lie on the executive to prove that he or she was not, at the material time, aware of the conflict or potential conflict.

15—Amendment of s. 38—Executives' and associates' interests in corporation or subsidiary

Section 38 of the principal Act is amended—

- (a) by striking out from subsection (1)(a) "prescribed interests made available by" and substituting "managed investment schemes of";
- (b) by striking out from subsection (1)(b) "prescribed interests made available by" and substituting "interests in managed investment schemes of";
- (c) by striking out from subsection (1)(c) "prescribed interests made available by" and substituting "interests in managed investment schemes of".

16—Insertion of s. 38A

The following section is inserted after section 38 of the principal Act:

38A—Duty of employees with respect to conflict of interest

- (1) If an employee of a public corporation has a pecuniary or other personal interest that conflicts or may conflict with the employee's duties, the employee must disclose in writing to the chief executive of the corporation the nature of the interest and the conflict or potential conflict.
- (2) An employee of a public corporation must comply with any written directions given by the chief executive of the corporation to resolve a conflict between the employee's duties and a pecuniary or other personal interest.
- (3) Without limiting the effect of this section, an employee of a public corporation will be taken to have an interest in a matter for the purposes of this section if an associate of the employee has an interest in the matter.
- (4) A disclosure under subsection (1) must be reported to the board of the corporation and to the corporation's Minister.
- (5) Failure by an employee to comply with this section constitutes grounds for termination of the employee's employment (but this does not derogate from any statutory provisions or other law governing the process for discipline or termination of employment of an employee).
- (6) If an employee of a public corporation makes a disclosure of interest under subsection (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the corporation; and
 - (b) the employee is not liable to account to the corporation for profits derived from the contract.
- (7) If an employee of a public corporation fails to make a disclosure of interest under subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the corporation or the corporation's Minister.
- (8) A contract may not be avoided under subsection (7) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (9) If a person contravenes this section in relation to a public corporation, the corporation or the corporation's Minister may recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and

- (b) if the corporation or a subsidiary of the corporation suffered loss or damage as a result of the contravention—
compensation for the loss or damage.
- (10) This section does not apply in relation to a conflict or potential conflict between an employee's duties and a pecuniary or other personal interest while the employee remains unaware of the conflict or potential conflict, but in any proceedings against the employee the burden will lie on the employee to prove that he or she was not, at the material time, aware of the conflict or potential conflict.
- (11) This section does not apply to a senior executive of a public corporation.

17—Amendment of Sched.—Provisions applicable to subsidiaries

The Schedule of the principal Act is amended—

- (a) by striking out subclauses (2) and (3) of clause 5 and substituting the following subclause:
 - (2) Subclause (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.
- (b) by inserting after paragraph (a) of clause 6(3) the following paragraph:
 - (ab) to the employment of a person under a contract of service with the subsidiary, its parent corporation or any other subsidiary of the corporation or to a transaction that is ancillary or incidental to such employment; or
- (c) by striking out from clause 7(1)(a) "prescribed interests made available by" and substituting "managed investment schemes of";
- (d) by striking out from clause 7(1)(b) "prescribed interests made available by" and substituting "interests in managed investment schemes of";
- (e) by striking out from clause 7(1)(c) "prescribed interests made available by" and substituting "interests in managed investment schemes of";
- (f) by inserting in clause 8(1)(a) "in writing" after "disclose";
- (g) by striking out from clause 8(5) "full and accurate details of the interest or office to the board of the subsidiary" and substituting "in writing to the board of the subsidiary full and accurate details of the interest or office";
- (h) by inserting after clause 14 the following clauses:

14A—Duty of employees to act honestly

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

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

14B—Duty of senior executives with respect to conflict of interest

- (1) A senior executive of a subsidiary must—
 - (a) on appointment as a senior executive, disclose his or her pecuniary interests to the board of the subsidiary in writing in accordance with the regulations; and
 - (b) on acquiring any further pecuniary interest of a kind specified in the regulations, disclose the pecuniary interest to the board of the subsidiary in writing in accordance with the regulations; and
 - (c) if a pecuniary interest (whether or not required to be disclosed under paragraph (a) or (b)) or other personal interest of the senior executive conflicts or may conflict with his or her duties—
 - (i) disclose in writing to the board of the subsidiary the nature of the interest and the conflict or potential conflict; and

- (ii) not take action or further action in relation to the matter except as authorised in writing by the subsidiary's parent corporation's Minister.

Penalty: Division 4 fine.

- (2) Subclause (1)(a) applies to a person who is a senior executive of a subsidiary on the commencement of this clause as if the requirement to disclose interests on appointment as a senior executive were a requirement to disclose the interests within one month after that commencement.
- (3) A senior executive of a subsidiary must comply with any written directions given by the subsidiary's parent corporation's Minister to resolve a conflict between the executive's duties and a pecuniary or other personal interest.
Penalty: Division 4 fine.
- (4) Without limiting the effect of this clause, a senior executive of a subsidiary will be taken to have an interest in a matter for the purposes of this clause if an associate of the executive has an interest in the matter.
- (5) A disclosure under subclause (1)(c) must be reported to the board of the parent corporation and the parent corporation's Minister.
- (6) If a senior executive of a subsidiary makes a disclosure of interest and complies with the other requirements of subclause (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the subsidiary; and
 - (b) the executive is not liable to account to the subsidiary for profits derived from the contract.
- (7) If a senior executive of a subsidiary fails to make a disclosure of interest or fails to comply with any other requirement of subclause (1) in respect of a proposed contract, the contract is liable to be avoided by the subsidiary or by its parent corporation or its parent corporation's Minister.
- (8) A contract may not be avoided under subclause (7) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.

- (9) If a person is convicted of an offence against this clause in relation to a subsidiary, the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the parent corporation of the subsidiary—
- (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that the subsidiary, the parent corporation or any other subsidiary of the parent corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (10) If a person contravenes this clause in relation to a subsidiary, the parent corporation or the parent corporation's Minister may (whether or not proceedings have been brought for the offence) recover from the person by action in a court of competent jurisdiction—
- (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the subsidiary, the parent corporation or any other subsidiary of the parent corporation suffered loss or damage as a result of the contravention—compensation for the loss or damage.
- (11) This clause does not apply in relation to a conflict or potential conflict between a senior executive's duties and a pecuniary or other personal interest while the executive remains unaware of the conflict or potential conflict, but in any proceedings against the executive the burden will lie on the executive to prove that he or she was not, at the material time, aware of the conflict or potential conflict.;
- (i) by striking out from clause 16(1)(a) "prescribed interests made available by" and substituting "managed investment schemes of";
 - (j) by striking out from clause 16(1)(b) "prescribed interests made available by" and substituting "interests in managed investment schemes of";
 - (k) by striking out from clause 16(1)(c) "prescribed interests made available by" and substituting "interests in managed investment schemes of";
 - (l) by inserting after clause 16 the following clause:

16A—Duty of employees with respect to conflict of interest

- (1) If an employee of a subsidiary has a pecuniary or other personal interest that conflicts or may conflict with the employee's duties, the employee must disclose in writing to the chief executive of the subsidiary the nature of the interest and the conflict or potential conflict.
- (2) An employee of a subsidiary must comply with any written directions given by the chief executive of the subsidiary to resolve a conflict between the employee's duties and a pecuniary or other personal interest.
- (3) Without limiting the effect of this clause, an employee of a subsidiary will be taken to have an interest in a matter for the purposes of this clause if an associate of the employee has an interest in the matter.
- (4) A disclosure under subclause (1) must be reported to the board of the subsidiary, the board of the parent corporation and the parent corporation's Minister.
- (5) Failure by an employee to comply with this clause constitutes grounds for termination of the employee's employment (but this does not derogate from any statutory provisions or other law governing the process for discipline or termination of employment of an employee).
- (6) If an employee of a subsidiary makes a disclosure of interest under subclause (1) in respect of a proposed contract—
 - (a) the contract is not liable to be avoided by the subsidiary; and
 - (b) the employee is not liable to account to the subsidiary for profits derived from the contract.
- (7) If an employee of a subsidiary fails to make a disclosure of interest under subclause (1) in respect of a proposed contract, the contract is liable to be avoided by the subsidiary or by its parent corporation or its parent corporation's Minister.
- (8) A contract may not be avoided under subclause (7) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (9) If a person contravenes this clause in relation to a subsidiary, the parent corporation or the parent corporation's Minister may recover from the person by action in a court of competent jurisdiction—
 - (a) if the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and

- (b) if the subsidiary, the parent corporation or any other subsidiary of the parent corporation suffered loss or damage as a result of the contravention—
compensation for the loss or damage.
- (10) This clause does not apply in relation to a conflict or potential conflict between an employee's duties and a pecuniary or other personal interest while the employee remains unaware of the conflict or potential conflict, but in any proceedings against the employee the burden will lie on the employee to prove that he or she was not, at the material time, aware of the conflict or potential conflict.
- (11) This clause does not apply to a senior executive of a subsidiary.

Part 5—Amendment of *Public Sector Management Act 1995*

18—Amendment of s. 3

Section 3 of the principal Act is amended—

- (a) by inserting after paragraph (f) of the definition of *administrative decision* in subsection (1) the following paragraph:

- (g) the Director of Public Prosecutions when acting under section 79A;

- (b) by inserting after the definition of *administrative unit* in subsection (1) the following definition:

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

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

- (c) by inserting after the definition of *the Commissioner* in subsection (1) the following definition:

contractor does not include a public sector agency;

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

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

corporate agency member means—

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

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

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

- (d) by inserting after the definition of **executive** in subsection (1) the following definition:

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

- (e) by striking out from paragraph (c)(iii) of the definition of **public sector agency** in subsection (1) "agency," and substituting "agency; or";

- (f) by inserting after paragraph (c) of the definition of **public sector agency** in subsection (1) the following paragraph:

- (d) a subsidiary of a person or body referred to in paragraph (b) or (c);;

- (g) by inserting after the definition of **recognised organisation** in subsection (1) the following definitions:

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

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

relevant Minister means—

- (a) in relation to a public sector agency—
 - (i) in the case of an agency that is a Minister—that Minister; or
 - (ii) in the case of an agency (other than an incorporated Minister) established under an Act other than this Act—the Minister responsible for the administration of the Act; or
 - (iii) in any other case—the Minister responsible for the agency; or
- (b) in relation to a corporate agency member or corporate agency executive—the relevant Minister in relation to the agency; or
- (c) in relation to an advisory body member—the relevant Minister in relation to a public sector agency to which the body provides advice; or
- (d) in relation to a senior official or employee—
 - (i) in the case of the Commissioner or the Deputy Commissioner for Public Employment—the Minister responsible for the administration of this Act; or

- (ii) in the case of a senior official or employee appointed under an Act other than this Act—the Minister responsible for the administration of the Act; or
 - (iii) in any other case—the relevant Minister in relation to the agency by or in which the senior official or employee is employed; or
- (e) in relation to a person performing contract work—
 - (i) for a public sector agency—the relevant Minister in relation to the agency; or
 - (ii) for the Crown—the Minister responsible for the administration of this Act;;
- (h) by inserting after the definition of *selection processes* in subsection (1) the following definitions:

senior official means—

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

spouse includes a putative spouse (whether or not a declaration of the relationship has been made under the *Family Relationships Act 1975*);

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

- (i) by inserting after subsection (1) the following subsection:
 - (1a) For the purposes of this Act—
 - (a) a person is an *associate* of another person if—
 - (i) the other person is a relative of the person or of the person's spouse; or
 - (ii) the other person—
 - (A) is a body corporate; and

- (B) the person or a relative of the person or of the person's spouse has, or two or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10 per cent of the nominal value of the issued share capital of the body corporate; or
- (iii) the other person is a trustee of a trust of which the person, a relative of the person or of the person's spouse or a body corporate referred to in subparagraph (ii) is a beneficiary; or
- (iv) the person is declared by the regulations to be an associate of the other person;
- (b) in determining whether a company is a *subsidiary* of a public sector agency, any shares held, or powers exercisable by, the agency or any other body are not to be taken to be held or exercisable in a fiduciary capacity by reason of the fact that the agency is an instrumentality of the Crown or holds its property on behalf of the Crown.;
- (j) by inserting after paragraph (a) of subsection (2) the following paragraph:
 - (ab) declare that a person holding or acting in a specified position (being a position established by an Act or an executive position) is a senior official; or.

19—Substitution of heading to Part 2

The heading to Part 2 of the principal Act is repealed and the following headings are substituted:

Part 2—General public sector aims, standards and duties

Division 1—Aims and standards

20—Amendment of s. 6—Employee conduct standards

Section 6 of the principal Act is amended by inserting after paragraph (e) the following paragraph:

- (ea) observe the requirements of any code of conduct for employees issued from time to time by the Commissioner and published in the Gazette; and.

21—Insertion of Divisions

The following Divisions are inserted after section 6 of the principal Act:

Division 2—Duty of agencies to report

6A—Duty of agencies to report

- (1) Each public sector agency must, once in each year, present a report on the agency's operations to the relevant Minister in accordance with this Division.
- (2) Subject to this section, the report must be related to a financial year and must be presented within three months after the end of the financial year to which it relates.
- (3) If a public sector agency is under some other statutory obligation to make an annual report to the relevant Minister—
 - (a) the report required by this section may be incorporated with that other report; and
 - (b) the period to which the report relates must be the same as for that other report; and
 - (c) the report must be presented within three months after the end of the reporting period referred to above.
- (4) A Minister must, within 12 sitting days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.
- (5) The copy of the report to be laid before Parliament must set out in a prominent position the date on which it was presented to the relevant Minister and if a report is presented to the relevant Minister after the end of the period allowed under this section, the report must be accompanied by a written statement of the reasons for the delay and the statement must be laid before each House of Parliament together with the report.

6B—Contents of report

- (1) The public sector agency must ensure that the report is accurate, comprehensive, deals with all significant issues affecting the agency and written and presented in a manner that aids ready comprehension.
- (2) The report must contain the information required by the regulations.

Division 3—Duties of corporate agency members

6C—Application of Division

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

6D—Duty of corporate agency members to exercise care and diligence

- (1) A corporate agency member must at all times exercise a reasonable degree of care and diligence in the performance of his or her functions.
- (2) If a corporate agency member is culpably negligent in the performance of his or her functions, the member is guilty of an offence.
Penalty: Division 4 fine.
- (3) A corporate agency member is not culpably negligent for the purposes of subsection (2) unless the court is satisfied the member's conduct fell sufficiently short of the standards required under this Act of the member to warrant the imposition of a criminal sanction.
- (4) A corporate agency member does not commit any breach of duty under this section by acting in accordance with a direction or requirement of the relevant Minister.

6E—Duty of corporate agency members to act honestly

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

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

- (1) Neither a corporate agency member nor an associate of a corporate agency member may, without the approval of the relevant Minister, be directly or indirectly involved in a transaction with the agency or any subsidiary of the agency.
- (2) A person will be treated as being indirectly involved in a transaction for the purposes of subsection (1)—
 - (a) if the person initiates, promotes or takes any part in negotiations or steps leading to the making of the transaction with a view to that person or an associate of that person gaining some financial or other benefit (whether immediately or at a time after the making of the transaction); and
 - (b) despite the fact that neither that person nor an agent, nominee or trustee of that person becomes a party to the transaction.

- (3) Subsection (1) does not apply—
- (a) to the provision of services by the agency or any subsidiary of the agency in the ordinary course of its ordinary business and on ordinary terms; or
 - (b) to the employment of a person under a contract of service with the agency or a subsidiary of the agency or to a transaction that is ancillary or incidental to such employment; or
 - (c) to transactions of a prescribed class.
- (4) If a transaction is made with an agency or any subsidiary of the agency in contravention of subsection (1), the transaction is liable to be avoided by the agency or by the relevant Minister.
- (5) A transaction may not be avoided under subsection (4) if a person has acquired an interest in property the subject of the transaction in good faith for valuable consideration and without notice of the contravention.
- (6) A corporate agency member must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

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

In any other case—Division 6 fine.

6G—Duty of corporate agency members not to have unauthorised interest in agency or subsidiary

- (1) Neither a corporate agency member nor an associate of a corporate agency member may, without the approval of the relevant Minister—
- (a) have or acquire a beneficial interest in shares in, debentures of or managed investment schemes of the agency or any subsidiary of the agency; or
 - (b) have or hold or acquire (whether alone or with another person or persons) a right or option in respect of the acquisition or disposal of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency; or
 - (c) be a party to, or entitled to a benefit under, a contract under which a person has a right to call for or make delivery of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency.

- (2) A corporate agency member must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

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

In any other case—Division 6 fine.

6H—Duty of corporate agency members with respect to conflict of interest

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

Penalty: Division 4 fine.

- (2) If a corporate agency member makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
- (a) the contract is not liable to be avoided by the agency; and
 - (b) the corporate agency member is not liable to account to the agency for profits derived from the contract.
- (3) If a corporate agency member fails to make a disclosure of interest or fails to comply with any other requirement of subsection (1) in respect of a proposed contract, the contract is liable to be avoided by the agency or by the relevant Minister.
- (4) A contract may not be avoided under subsection (3) if a person has acquired an interest in property the subject of the contract in good faith for valuable consideration and without notice of the contravention.
- (5) Where a corporate agency member has or acquires a personal or pecuniary interest, or is or becomes the holder of an office, such that it is reasonably foreseeable that a conflict might arise with his or her duties as a corporate agency member of the agency, the corporate agency member must, as soon as reasonably practicable, disclose in writing to the agency or the governing body of the agency full and accurate details of the interest or office.

Penalty: Division 4 fine.

- (6) A disclosure under this section must be recorded in the minutes of the agency or the governing body of the agency and reported to the relevant Minister.
- (7) If, in the opinion of the relevant Minister, a particular interest or office of a corporate agency member is of such significance that the holding of the interest or office is not consistent with the proper discharge of the duties of the corporate agency member, the Minister may require the corporate agency member either to divest himself or herself of the interest or office or to resign from the agency or governing body of the agency (and non-compliance with the requirement constitutes misconduct and hence a ground for removal of the corporate agency member from the agency or governing body of the agency).
- (8) Without limiting the effect of this section, a corporate agency member will be taken to have an interest in a matter for the purposes of this section if an associate of the corporate agency member has an interest in the matter.
- (9) This section does not apply in relation to a matter in which a corporate agency member has an interest while the corporate agency member remains unaware that he or she has an interest in the matter, but in any proceedings against the corporate agency member the burden will lie on the corporate agency member to prove that he or she was not, at the material time, aware of his or her interest.

6I—Removal of corporate agency members

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

6J—Civil liability for contravention of Division

- (1) If a person who is a corporate agency member or former corporate agency member is convicted of an offence for a contravention of this Division (other than an offence consisting of culpable negligence), the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay to the agency—
 - (a) if the court is satisfied that the person or any other person made a profit as a result of the contravention—an amount equal to the profit; and
 - (b) if the court is satisfied that the agency or a subsidiary of the agency suffered loss or damage as a result of the contravention—compensation for the loss or damage.

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

Division 4—Duties of advisory body members

6K—Duty of advisory body members to act honestly

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

6L—Duty of advisory body members with respect to conflict of interest

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

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

6M—Removal of advisory body members

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

6N—Civil liability for contravention of Division

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

Division 5—Duties of senior officials

6O—Application of Division

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

6P—Duty of senior officials to act honestly

- (1) A senior official must at all times act honestly in the performance of his or her duties, whether within or outside the State.

Penalty: Division 4 fine or division 4 imprisonment, or both.

- (2) Subsection (1) does not apply to conduct that is merely of a trivial character and does not result in significant detriment to the public interest.

6Q—Duty of senior officials with respect to conflict of interest

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

Penalty: Division 4 fine.

- (2) Subsection (1)(a) applies to a person who is a senior official on the commencement of this section as if the requirement to disclose interests on appointment as a senior official were a requirement to disclose the interests within one month after that commencement.
- (3) A senior official must comply with any written directions given by the relevant Minister to resolve a conflict between the senior official's duties and a pecuniary or other personal interest.
- Penalty: Division 4 fine.
- (4) Without limiting the effect of this section, a senior official will be taken to have an interest in a matter for the purposes of this section if an associate of the senior official has an interest in the matter.
- (5) If a senior official makes a disclosure of interest and complies with the other requirements of subsection (1) in respect of a proposed contract—
- (a) the contract is not liable to be avoided; and
 - (b) the senior official is not liable to account for profits derived from the contract.

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

6R—Civil liability for contravention of Division

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

Division 6—Duties of corporate agency executives

6S—Application of Division

- (1) This Division does not apply to a corporate agency executive if provisions of the *Public Corporations Act 1993* apply to the public sector agency.
- (2) Sections 6T and 6W do not apply to a corporate agency executive who is a senior official.

6T—Duty of corporate agency executives to act honestly

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

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

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

- (6) A corporate agency executive must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

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

In any other case—Division 6 fine.

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

- (1) Neither a corporate agency executive nor an associate of a corporate agency executive may, without the approval of the relevant Minister—
- (a) have or acquire a beneficial interest in shares in, debentures of or managed investment schemes of the agency or any subsidiary of the agency; or
 - (b) have or hold or acquire (whether alone or with another person or persons) a right or option in respect of the acquisition or disposal of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency; or
 - (c) be a party to, or entitled to a benefit under, a contract under which a person has a right to call for or make delivery of shares in, debentures of or interests in managed investment schemes of the agency or any subsidiary of the agency.

- (2) A corporate agency executive must not counsel, procure, induce or be in any way (whether by act or omission or directly or indirectly) knowingly concerned in, or party to, a contravention of subsection (1).

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

In any other case—Division 6 fine.

6W—Duty of corporate agency executives with respect to conflict of interest

- (1) If a corporate agency executive has a pecuniary or other personal interest that conflicts or may conflict with the executive's duties, the executive must disclose in writing to the agency the nature of the interest and the conflict or potential conflict.
- (2) A corporate agency executive must comply with any written directions given by the agency to resolve a conflict between the executive's duties and a pecuniary or other personal interest.
- (3) Without limiting the effect of this section, a corporate agency executive will be taken to have an interest in a matter for the purposes of this section if an associate of the executive has an interest in the matter.

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

6X—Civil liability for contravention of Division

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

Division 7—Duties of employees

6Y—Application of Division

This Division does not apply to an employee if Division 5, Division 6 or provisions of the *Public Corporations Act 1993* apply to the employee.

6Z—Duty of employees to act honestly

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

6ZA—Duty of employees with respect to conflict of interest

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

- (8) This section does not apply in relation to a conflict or potential conflict between an employee's duties and a pecuniary or other personal interest while the employee remains unaware of the conflict or potential conflict, but in any proceedings against the employee the burden will lie on the employee to prove that he or she was not, at the material time, aware of the conflict or potential conflict.
- (9) In this section—
relevant authority means—
- (a) in relation to an employee employed by or in a public sector agency with a chief executive (or acting chief executive)—the chief executive (or acting chief executive) of the agency; or
 - (b) in any other case—the relevant Minister or the nominee of the relevant Minister.

6ZB—Civil liability for contravention of Division

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

Division 8—Duties of persons performing contract work

6ZC—Duty of persons performing contract work to act honestly

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

6ZD—Duty of persons performing contract work with respect to conflict of interest

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

Penalty: Division 4 fine.

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

- (b) in any other case—the relevant Minister or the nominee of the relevant Minister.

6ZE—Civil liability for contravention of Division

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

Division 9—Exemptions

6ZF—Exemptions

The Governor may, by regulation, exempt a person or class of persons, conditionally or unconditionally, from the application of a provision of this Part other than a provision of Division 1 or 2.

22—Amendment of s. 12—Termination of Chief Executive's appointment

Section 12 of the principal Act is amended by inserting in subsection (1)(a)(ii) "an offence against this Act or" after "convicted of".

23—Repeal of s. 18

Section 18 of the principal Act is repealed.

24—Amendment of s. 21—Termination of Commissioner's appointment

Section 21 of the principal Act is amended by inserting in subsection (1)(b) "an offence against this Act or" after "convicted of".

25—Repeal of s. 27

Section 27 of the principal Act is repealed.

26—Repeal of s. 56

Section 56 of the principal Act is repealed.

27—Repeal of s. 66

Section 66 of the principal Act is repealed.

28—Amendment of s. 74—Immunity of public sector employees, office holders and advisory body members

Section 74 of the principal Act is amended—

- (a) by striking out from subsection (1) "subsection (3)" and substituting "this Act";
- (b) by striking out from subsection (1) "an employee or other person holding an office or position under this Act" and substituting "a public sector employee, a person holding an office or position under this Act, a corporate agency member or an advisory body member";
- (c) by striking out from subsection (2) "an employee or other person" and substituting "a person";
- (d) by inserting in subsection (2) ", except in the case of a corporate agency member or an employee of a body corporate, in which case it lies instead against the body corporate" after "Crown";
- (e) by striking out from subsection (3) "itself" and substituting "or the body corporate or employer";
- (f) by inserting after subsection (3) the following subsection:
 - (4) This section does not apply to a corporate agency member if provisions of the *Public Corporations Act 1993* apply to the body corporate.

29—Insertion of s. 79A

The following section is inserted after section 79 of the principal Act:

79A—Proceedings for offences

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