

HONESTY AND ACCOUNTABILITY PAPER NO. 2: DUTIES OF ADVISORY BODY MEMBERS

Prepared by the Boards and Committees Unit of the Department of the Premier and Cabinet, June 2005

What is an “advisory body”?

The *Public Sector Management Act 1995* defines an advisory body as being 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.

The Boards and Committees Unit of the Department of the Premier and Cabinet has undertaken an assessment of government boards and committees and determined that, for the purposes of the *PSM Act*, the body of which you are a member is an advisory body. If you consider this assessment to be incorrect, you should advise your executive officer and request that they contact the Boards and Committees Unit as soon as possible.

Duties of advisory body members under Division 4 of Part 2 of the *PSM Act*

The government’s honesty and accountability reforms have amended the *PSM Act* to impose a number of duties on members of advisory bodies (cf. Division 4 of Part 2 of the Act). Failure to carry out these duties may attract penalties under the Act.

1. *Duty to act honestly (section 6K)*

You must act honestly at all times in the performance of your functions whether within or outside of South Australia. The penalty for failure to comply with this duty is a \$15,000 fine, four years’ jail or both. However, the duty to act honestly does not apply to conduct that is merely of a trivial nature and does not result in significant detriment to the public interest.

2. *Duty with respect to conflict of interest (section 6L)*

If you have a direct or indirect personal or pecuniary interest in a matter before your body, you must:

- as soon as reasonably practicable, disclose the interest in writing to the responsible minister;
- not take part in any discussion by the body concerning that matter;
- not take part in any vote concerning that matter; and
- be absent from the meeting room while any such discussion or voting is taking place.

You are also taken to have an interest in a matter if an associate of yours has an interest in that matter. Your associates are:

- your relatives;
- your spouse’s relatives;

- any body corporate in which you, your relatives or your spouse's relatives hold 10 percent or more of the nominal value of the shares; or
- the trustees of any trust of which you or your associates are a beneficiary.

Interests held by your associates must be declared to the minister in the same way as interests held by you personally. Failure to disclose a conflict of interest renders you liable to a \$4,000 fine. You are not taken to have an interest where you are unaware that the interest exists, but if proceedings are brought against you, the burden of proof is on you to show that you were unaware of the interest at the relevant time.

3. Removal of advisory body members (section 6M)

Failure to comply with any of the duties imposed upon you as an advisory body member will be considered grounds for termination of your appointment to the advisory body.

4. Civil liability for contravention of Division 4

If you are convicted of an offence under Division 4 of Part 2 of the *PSM Act* you may, in addition to being penalised, be required to pay to the responsible minister:

- any profit you derived as a result of the offence; and
- compensation for any damage suffered by the agency as a result of the offence.

Where you are guilty of an offence under Division 4 of Part 2 but proceedings are not brought against you in a court of law, the minister responsible for your body may recover through the court system any profit you derived or compensation for damage you caused as a result of your offence.

Your general immunity from liability under the *PSM Act*

Under section 74 of the *PSM Act*, no civil liability attaches to you as a member of an advisory body for an act or omission in the exercise or purported exercise of your official powers or functions. Any action that would lie against you will instead lie against the Crown. However, section 74 does not prevent the Crown from bringing proceedings against you for an act or omission not in good faith.

Further information

If you have any questions in regard to this information, speak to your executive officer in the first instance. Should further advice be required, please contact Michael Brougham, Team Leader, Boards and Committees at the Department of the Premier and Cabinet. Michael can be contacted by phone on 8226 2052, by email at brougham.michael@saugov.sa.gov.au or by post at Level 16, 200 Victoria Square, Adelaide, 5000.

A copy of the *PSM Act* can be viewed at <http://www.parliament.sa.gov.au/Catalog/legislation/Acts/p/1995.39.un.htm>.