

## **HONESTY AND ACCOUNTABILITY PAPER NO. 3: DUTIES OF MEMBERS OF BODIES BROUGHT UNDER THE *PUBLIC CORPORATIONS ACT 1993***

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

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### **Impact of the honesty and accountability reforms on public corporations**

Generally, the intention of the honesty and accountability reforms was to apply consistent standards to all persons undertaking work on behalf of the government. The *Public Corporations Act 1993* was taken as the general model for these standards, and as a result there have been few changes to the Act. However, there are a number of small amendments to the Act of which you should be aware.

### **When is a body brought under the *Public Corporations Act*?**

A body can be brought under the *Public Corporations Act* in one of three ways. Firstly, the legislation that establishes a board might include a clause that explicitly states that the board is subject to part or all of the Act. An example of this is section 6 of the *South Australian Water Corporation Act 1993*.

Secondly, a body set up under its own legislation may be brought under the Act by separate regulations. An example of this is the Adelaide Festival Centre Trust, which is established by the *Adelaide Festival Centre Trust Act 1971* but brought under the *Public Corporations Act* by the *Public Corporations (Adelaide Festival Centre Trust) Regulations 1998*.

Lastly, a body can be established as a subsidiary of another public corporation, usually a minister, by regulation under the Act. An example of this is Bio Innovation SA, established as a subsidiary of the Minister for Science and Information Economy by the *Public Corporations (Bio Innovation SA) Regulations 2001*. In these cases, the provisions applicable to the subsidiary are set out in the schedule to the *Public Corporations Act*.

How your board is brought under the *Public Corporations Act* will affect how much and which sections of the Act apply to your board.

### **Duties of members of public corporations**

As a member of a public corporation or of a subsidiary of a public corporation, you should already be aware of your duties under the *Public Corporations Act 1993*. For both public corporations and their subsidiaries, the Act broadly provides for:

- a duty of care for directors;
- a duty of honesty for directors;
- a prohibition on unauthorised transactions with the corporation;
- a prohibition on unauthorised interests in the corporation;
- a duty with respect to conflict of interest for directors;
- removal of directors who contravene the Act; and

- civil liability for directors contravening the Act.

### **Amendments to the Act**

Only minor amendments were made to the *Public Corporations Act 1993* as a result of the government's honesty and accountability legislation. The three of these relating to your duties as a director are outlined below.

#### **1. Amendment to duty to act honestly**

Under the Act, you were previously required to act honestly at all times in the performance of your duties. This has now been amended such that the duty to act honestly does not apply to conduct which is of a trivial nature and does not result in a significant detriment to the public interest.

#### **2. Amendment to duty with regard to conflict of interest**

Under the Act, you were previously required to disclose to the board any real or potential conflict of interest you may have had in a matter being considered by the board. The amended Act specifically requires that any such disclosure be provided in writing.

#### **3. Amendments to the schedule to the Act**

The schedule to the *Public Corporations Act* sets out the duties applicable to directors of subsidiaries of public corporations. These duties mirror those applicable to directors of public corporations imposed under the main body of the Act. Accordingly, the schedule has been amended to reflect the two amendments detailed above.

### **Your general immunity from liability under the *Public Corporations Act***

Under section 22 of the *Public Corporations Act* or section 11 of the schedule to the Act, no civil liability attaches to you as a member of the board of a public corporation for an honest act or omission in the exercise or purported exercise of your functions or duties. Any action that would lie against you will instead lie against the corporation.

### **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](mailto:brougham.michael@saugov.sa.gov.au) or by post at Level 16, 200 Victoria Square, Adelaide, 5000.

A copy of the *Public Corporations Act* can be viewed at <http://www.parliament.sa.gov.au/Catalog/legislation/Acts/p/1993.36.un.htm>.