

COMMISSIONER FOR PUBLIC SECTOR EMPLOYMENT GUIDELINE: EXTENT OF OBLIGATION ON EMPLOYEES TO REPORT THEY HAVE BEEN CHARGED WITH A CRIMINAL OFFENCE

Public Sector Act 2009

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INTRODUCTION

The Commissioner for Public Sector Employment is empowered to issue guidelines relating to public sector employment matters pursuant to section 14(d) of the *Public Sector Act 2009* (the PS Act).

The Code of Ethics for the South Australian Public Sector (the Code) was issued in February 2010. This Guideline is intended to assist public sector employees and management in agencies to interpret the extent of the obligation on employees to report they have been charged with a criminal offence.

The Code imposes an obligation upon public sector employees in the following terms:

Criminal Offences

- *Public sector employees will at the earliest possible opportunity advise their manager if they are charged with a criminal offence.*

The Code applies to all public sector employees. In accordance with Section 15 of the PS Act, the Code contains both aspirational and directive content. The directive content is the 'Professional Conduct Standards' of the Code. A proven breach of these standards constitutes misconduct and renders an employee liable to disciplinary action/sanction.

Public sector employees are subject to far higher expectations in terms of their conduct than are members of the public and there is far greater prospect that conduct will be connected with their role as a public sector employee than is the case in most private sector employment.

There is a large range of possible conduct, criminal or otherwise, that despite occurring outside of working hours will inevitably be connected to a person's duties or role as a public sector employee and which amounts to misconduct. This includes criminal conduct punishable by imprisonment but also conduct that is fundamentally inconsistent with the concept of integrity and other values inherent to the public sector and which has the potential to undermine public confidence in the public sector and Government.

Inevitably there will also be matters pertaining to an employee's conduct, which by their nature, should not be subject to disclosure (ie. they have no direct impact or relevance to the nature of the employee's duties). However, employees must consider whether they have behaved in a manner which a reasonable person would view as bringing them, the agency in which they work, the public sector or Government into disrepute or that is otherwise improper or disgraceful. In such instances the employee should disclose the matter to their manager or other relevant delegate.

Public sector employees must, at the earliest possible opportunity, report to their manager or other relevant delegate if they have been charged with a criminal offence where the employee, if convicted for the alleged breach is liable to be:

- imprisoned (including a suspended period of imprisonment); or

- fined and;
 - the alleged conduct that gave rise to the charge was or might be viewed by a reasonable person as connected to their employment or status as a public sector employee or as an officer of the Crown or to the performance of their duties; and/or
 - if the alleged conduct would or might be viewed by a reasonable person as amounting to misconduct as defined in the PS Act and the Code (noting that conduct that is the basis of criminal allegations may amount to misconduct regardless of whether it is proved beyond a reasonable doubt in a criminal court and/or whether a sentence is imposed after a plea of finding of guilt by way of sentencing legislation.).

The application of the above provisions will clearly require the exercise of judgement and discretion by individual employees taking into account the particular nature of the offence they are charged with and other relevant considerations. It is important to keep in mind the employment context and the prevailing question of whether alleged conduct may, on the balance of probabilities, amount to misconduct.

When in doubt as to whether they are under an obligation to report a criminal offence or not, employees should seek guidance from their manager or agency human resource area.

References:

1. *Public Sector Act 2009* -
<http://www.legislation.sa.gov.au/LZ/C/A/PUBLIC%20SECTOR%20ACT%202009.aspx>
2. *Public Sector (Honesty and Accountability) Act 1994*-
[http://www.oper.sa.gov.au/files/PublicSector\(HonestyandAccountability\)Act1995.mht](http://www.oper.sa.gov.au/files/PublicSector(HonestyandAccountability)Act1995.mht)
3. *Code of Ethics for the South Australian Public Sector*.
<http://www.oper.sa.gov.au/page.php?id=351>