

**SOUTH AUSTRALIAN EXECUTIVE SERVICE**

**CONTRACT OF EMPLOYMENT**(made pursuant to the *Public Sector Act 2009*)

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SOUTH AUSTRALIAN EXECUTIVE SERVICE CONTRACT

*Public Sector Act 2009*

**BETWEEN**

**[insert name of Chief Executive]**, Chief Executive (“the Chief Executive”) of the **[insert name of agency]** (“the public sector agency”), for and on behalf of the State of South Australia (“the State”)

AND

**[insert name of employee]** of **[insert** **address of employee’s private residence]** South Australia (“the Executive”).

RECITALS

1. The South Australian Executive Service (SAES) is established by section 22 of the *Public Sector Act 2009*.
2. The *Public Sector Act 2009* and SAES Charter set out the purpose and functions of the SAES, which are to provide the public sector with high performing leaders who have a shared sense of purpose and direction, and who together will actively engage the public sector in the pursuit of the objects of the Act and the public sector principles.
3. The SAES will foster exceptional leadership, collaboration, vision and a culture of ongoing development and appropriate mobility. Executives will focus on achieving Government and agency objectives and will demonstrate the values, behaviour and performance required of SAES members in their service to the Government and people of South Australia.
4. The Chief Executive has appointed the Executive to the SAES on the terms and conditions set out in this Contract. This Contract is made under and in accordance with the *Public Sector Act 2009*.

# INTERPRETATION

* 1. In this Contract:
     1. “**Adjusted remuneration**” means the total remuneration provided in Schedule 2 other than an amount equal to the employer contribution required to satisfy the superannuation guarantee legislation of the Commonwealth but will include any superannuation contribution greater than that required under Commonwealth law, whether by way of salary sacrifice or otherwise;
     2. The “**Act**” means the *Public Sector Act 2009*;
     3. “**Chief Executive**” means the Chief Executive (or their delegate and includes a person acting as the Chief Executive) of the agency in which the Executive is employed or performing duties (as applicable);
     4. The “**Commissioner**” means the Commissioner for Public Sector Employment (or delegate) under the Act (and includes a person acting as Commissioner (as applicable));
     5. A “**complying superannuation scheme**” means a complying superannuation scheme within the meaning of the *Superannuation Guarantee (Administration) Act 1992* (Cth);
     6. The “**Duties**” means the duties set out in Item 5 of Schedule 1. If the Executive is transferred or assigned pursuant to section 9 or 47 of the Act, “Duties” means the duties to which the Executive is transferred or assigned to perform.
     7. “**Government requirement**” means a relevant Policy, Guideline or Determination made under the Act from time-to-time;
     8. “**Executive Performance**” means the performance set out in Schedule 3 or such standards as may be set by the Chief Executive from time-to-time consistently with the SAESExecutive Competency Framework after consultation with the Executive;
     9. The “**Regulations**” means the *Public Sector Regulations 2010*;
     10. The “**SAES Charter**” means the Charter approved from time-to-time by the Minister pursuant to section 23 of the Act;
     11. The “**SAES Executive Competency Framework**” means the core set of competencies approved from time-to-time by the relevant Minister, and includes any agency specific competency approved from time-to-time by the Chief Executive;
     12. The **“South Australian Executive Service” (“SAES”)** means the high performing executives who have a SAES classification;
     13. “**Total Remuneration Package**” means the monetary and non-monetary benefits to which the Executive is entitled pursuant to this Contract as set out in Schedule 2;
     14. The “**Triple S scheme**” means the superannuation scheme continued by the *Southern State Superannuation Act 2009;*
     15. A reference to any legislation means that legislation in force from time-to-time and includes any amendment or substituted legislation and also any instrument made under that legislation or made under amended or substituted legislation;
     16. A reference in this Contract to a Schedule or an item in a Schedule means the Schedule or item in force at the relevant time.
  2. Any variation to this Contract must be in writing and signed by the Executive and Chief Executive in a form consistent with any Government requirement.
  3. The Chief Executive and the Executive acknowledge and agree that the Recitals are correct and form part of this Contract.
  4. In this Contract, a document that may be approved from time-to-time as applicable to the employment of the Executive will be taken to have been provided or notified to the Executive if it has been published on the Office of the Commissioner for Public Sector Employment website or the website or intranet of the agency in which the Executive is employed or performing duties.
  5. If any provision of this Contract is invalid or unenforceable for any reason that will not affect the validity and enforceability of any other provision.

OPERATIVE PART

# SOUTH AUSTRALIAN EXECUTIVE SERVICE

On the commencement of the term of this Contract, the Executive will become a member of the SAES and will strive to give effect to the SAES vision and purposes set out in Recitals A, B and C of this Contract.

# THE ACT

This Contract is subject to the provisions of the Act that apply to executive employees employed under Part 7 of the Act and records all those contractual terms and conditions of the Executive’s employment which are required to be specified by section 42(2) of the Act.

# APPOINTMENT

* 1. The Chief Executive appoints the Executive to perform the Duties for the period commencing on the date shown at Item 2 of Schedule 1 and expiring on the date shown at Item 3 of Schedule 1 unless the appointment is lawfully terminated sooner.
  2. The Executive’s classification level is shown at Item 4 of Schedule 1.

# DUTIES

* 1. The Executive will undertake the Duties in accordance with the Executive Performance, the SAES Charter, the SAES Executive Competency Framework and all relevant legislative requirements. If the Executive is transferred or assigned to different duties under section 9 or 47 of the Act, the Duties will be deemed to be amended consistent with the duties to which the Executive has been transferred or assigned.
  2. The Executive will obey all lawful and reasonable directions of the Chief Executive and any person authorised by the Chief Executive to give directions to the Executive.
  3. The Executive will attend to the Duties during ordinary working hours and at such other times as may reasonably be required. No monetary entitlement arises from any time worked outside of ordinary working hours.
  4. The Executive will not engage in any other remunerative employment, occupation or business without prior authorisation in writing by the Chief Executive.

# PERFORMANCE MANAGEMENT

## Performance Review

* 1. At least bi-annually and more often as required, the Chief Executive will review and assess the Executive’s performance against the SAES Executive Competency Framework, the Duties and Executive Performance requirements in Schedule 3 to this Contract.
  2. The Executive will actively participate in, and apply the outcome of, each performance review. If the Executive is assessed as underperforming or performing unsatisfactorily, the Executive may request a review of the assessment by either a delegate of the Chief Executive or another Chief Executive nominated by the Commissioner.

## Performance Development

* 1. During the period of this Contract, the Chief Executive will provide the Executive with at least one[[1]](#footnote-1) significant development or learning opportunities during the term of this Contract, provided that an absence of any such opportunity/ies will not give rise to any liability whatsoever. A development or learning opportunity may include an appropriate work placement in the public or private sector; an opportunity directed to the strategic development of the Executive’s capabilities or potential to meet organisational or across government objectives; SAES Workshop/s; internal or external course/s or placement/s; or access to on-line learning facilities. In deciding the opportunities to be provided the Chief Executive will have regard to Recitals A, B and C of this Contract and any needs or aspirations identified in the Executive’s performance review. The Executive will actively take up any opportunities identified and, if required by the Chief Executive, will participate in other development activities made available at an agency or across-Government level.

# REMUNERATION

* 1. Subject to the Executive being at all times willing, ready and able to perform the Duties, save for temporary incapacity, the Executive will receive remuneration comprising monetary and non-monetary benefits in the form of the Total Remuneration Package set out in Schedule 2.
  2. The Executive will be entitled to structure the Total Remuneration Package in accordance with any Government requirement.
  3. The monetary benefits component of the Total Remuneration Package will be paid in arrears in equal fortnightly payments.
  4. If at any time during the term of this Contract there is a change in the cost or value of any of the non-monetary benefits components of the Total Remuneration Package, the Chief Executive may determine the reasonable cost to be attributed to that change and will give written notice to the Executive. The parties agree that upon notice having been given a new Schedule 2 incorporating the cost or value determined by the Chief Executive and any consequential change will be deemed to be substituted for the existing Schedule 2.
  5. The Executive will be entitled to receive any annual minimum remuneration adjustment that may be approved for SAES members by the Government. That adjustment will apply from the Executive’s first full pay period commencing on or after 1 July each year.
  6. The Executive may request the Chief Executive to review at intervals of not less than one year the remuneration level fixed for the duties being performed by the Executive in accordance with the procedures and policies in force from time-to-time in the public sector agency and the SAES remuneration principles in operation from time-to-time.

## Superannuation

* 1. During the term of this Contract the Executive must be a member of a complying superannuation scheme.
  2. If the Executive is not a member of a superannuation scheme established under a South Australian Act, payment of the employer superannuation contribution shown in Schedule 2 will be made to a complying superannuation scheme nominated by the Executive. In that event the employer superannuation contribution will be calculated in accordance with the explanatory material relating to superannuation appearing in Part B of Schedule 2.
  3. If the Executive is a member of the Triple S scheme the employer superannuation contribution must be calculated in accordance with the explanatory material relating to superannuation appearing in Part B of Schedule 2.
  4. The following will apply if the Executive is a contributor to either of the superannuation schemes under the *Superannuation Act 1988*:
     1. The proportion of the Total Remuneration Package value specified as salary in determining superannuation contributions and superannuation benefits shall be determined in accordance with the *Superannuation Act 1988*.
     2. The amount appearing in Schedule 2 as the employer superannuation contribution may be set from time-to-time (including any variation in consequence of a review of the Executive’s Total Remuneration Package value) by the Department of Treasury and Finance based on an actuarial assessment of the average cost to the State of the superannuation benefits provided to members of the relevant scheme and may not necessarily represent the precise cost to the State of the benefits accruing to the Executive.
     3. The Executive may elect by notice in writing to the Superannuation Board to become a member of the Triple S scheme in accordance with Regulation 12 of the *Southern State Superannuation Regulations 2009* and in that event the Executive may nominate an additional employer superannuation contribution to be paid to the Treasurer by way of salary sacrifice. Any such additional contribution shall be separately recorded in Schedule 2 as a component of the Total Remuneration Package value.

# LEAVE

* 1. The Executive will be entitled to recreation leave, maternity/parental leave, personal leave (including sick and carer’s leave), long service leave and special leave in accordance with the Act and any applicable Government requirements.
  2. The Executive will not be entitled to any leave loading.
  3. Prior service and accrued leave entitlements will be recognised on the same basis as the entitlements of persons employed other than as executive employees under the Act are recognised as at the time this Contract is made.

# FLEXIBLE WORKING

The Executive may seek the approval of the Chief Executive for a flexible working arrangement on the same basis and to the same extent as may ordinarily be available from time-to-time to a person employed other than as an executive employee under the Act.

# REAPPOINTMENT

* 1. Prior to the expiry of this Contract:
     1. The Chief Executive will decide whether or not to make a further appointment of the Executive to perform the Duties.
     2. If a further appointment is to be made to perform the Duties at the same classification, the Chief Executive may offer a further appointment to the Executive but is not obliged to do so. If the Chief Executive decides to conduct a selection process the Executive may apply for the vacancy.
     3. Pursuant to section 42 of the Act, the Chief Executive must advise the Executive at least six months prior to the end of this Contract if the Executive is to be re-appointed to perform the Duties and if not to be re-appointed, give six months’ notice or make payment in lieu (or a combination of both). The period of notice the Chief Executive is required to give and/or payment in lieu will be on a *pro rata* basis if the contract is for less than 5 years, pursuant to section 42(5) of the Act.
  2. The term of any re-appointment to perform the Duties will be subject to a new Contract with the Chief Executive and will be for a term not exceeding five years.
  3. If the Executive:
* Is not re-appointed at the expiry of this Contract to perform the Duties;

or

* The employment of the Executive is terminated under clause 12 of this Contract or under the Act,

the employment of the Executive in the public sector agency will end.

# RESIGNATION

* 1. The Executive may resign by giving notice in writing to the Chief Executive in accordance with section 43 of the Act.
  2. In accordance with section 43, the Chief Executive may accept a shorter period of notice.
  3. In relation to a period of notice, the Chief Executive may elect at their sole discretion to instead make a payment in lieu of notice in which case, notwithstanding the expiry date in Schedule 1, the Executive’s employment will end at the close of business on the date notice is provided to the Chief Executive, or such later date nominated by the Chief Executive.

# TERMINATION

* 1. The Chief Executive may terminate the employment of the Executive by giving notice in writing, or by payment in lieu of notice, to the Executive in accordance with section 44 of the Act.
     1. If the employment of the Executive is terminated by the Chief Executive under this clause the Executive will be entitled to a termination payment of four (4) months’ “adjusted remuneration” for each uncompleted year of the term of appointment (with a *pro rata* adjustment in relation to part of a year) subject to a maximum payment of twelve (12)[[2]](#footnote-2) months’ adjusted remuneration, pursuant to section 44(2) and (3) of the Act.
  2. The Executive shall not be entitled to any termination payment if either the appointment of the Executive to perform the Duties is terminated to enable the Executive to be appointed to perform other duties or to another position in the service of the State or if the employment of the Executive is terminated by the Chief Executive on any of the grounds in section 54 of the Act: for mental or physical incapacity, unsatisfactory performance, misconduct or the lack of an essential qualification for the performance of the Duties.
  3. The Executive shall not be entitled to any termination payment if the Executive is taken as having abandoned their employment.
  4. If the employment of the Executive is terminated pursuant to clause 12.1
     1. Following the effective date of such termination of employment, the Executive will be prohibited from entering into a contract of service or contract for services with the Crown/State of South Australia for a period coinciding with the number of months (including part of a month i.e. relative to any pro rata element of the termination payment) of adjusted remuneration paid to the Executive by way of a termination payment, unless:
     2. The Executive agrees to and does pay to the Crown an amount calculated by reference to the termination payment received by the Executive and the period of time remaining in the number of months and/or part of a month that coincides with the number of months, including part of a month, of adjusted remuneration paid to the Executive.

# CONFIDENTIAL INFORMATION

The Executive will not, while employed under this Contract or at any subsequent time, disclose any confidential Government information obtained during the course of the employment of the Executive except as required in performing the Duties or as authorised by the Chief Executive or as required by law.

# DISCLOSURE OF INTERESTS

* 1. If at any time, the Executive has a pecuniary or other personal interest that conflicts or may conflict with the Duties of the Executive, the Executive acknowledges that the Executive must disclose in writing to the Chief Executive the nature of the interest and the conflict or potential conflict.
  2. The Executive must comply with any written directions given by the Chief Executive to resolve a conflict between the Executive’s Duties and a pecuniary or other personal interest.
  3. In this clause a reference to a pecuniary interest or to a personal interest includes any interest held by a person who is an associate of the Executive within the meaning of the *Public Sector (Honesty and Accountability) Act 1995*.

# DISCLOSURE OF CONTRACT

It is acknowledged and agreed that the policy of the South Australian Government requires a copy of this Contract (with Schedule 2 and the private address of the Executive having been deleted) to be provided for inspection to any person who makes a written request.

# GOVERNMENT PROPERTY

* 1. If the Executive is to cease to be employed by the State of South Australia, by the last working day the Executive must return all property owned by the State to the Chief Executive or a nominee of the Chief Executive.
  2. Any intellectual property invented or created by the Executive as a result of the employment of the Executive will remain the property of the State unless otherwise agreed in writing between the Chief Executive and the Executive.

# NOTICES

Any notices to be given by the Executive to the Chief Executive pursuant to this contract shall be posted, delivered or sent by email to the Chief Executive’s business email address or to the Chief Executive’s business address as appropriate. Any notices to be given by the Chief Executive to the Executive pursuant to this Contract shall be posted, delivered or sent by email to the Executive’s business email address; last known residential address; or private email address as is appropriate in the circumstances.

**EXECUTED** as a Contract on the …………… day of .. 20

………………………………………………………………………………………..

**SIGNED** by **[insert name of CE or agency head]**

**Chief Executive [agency head]**

in the presence of:

(Print Name of Witness) (Witness signature)

…………………………………………………………………………………………

**SIGNED** by [**insert name of Executive]**

in the presence of:

(Print Name of Witness) (Witness signature)

# SCHEDULE 1 – PARTICULARS

Item 1 Title of the Executive:

Item 2 Commencement date:

Item 3 Expiry date:

Item 4 Classification level of the Executive: SAES Level

Item 5 The Duties of the Executive:

Refer to the Job and Person Specification

Note: the Job and Person Specification is not exhaustive and indicates the type and nature of duties the Executive may be required to perform. The Executive may be required to perform any duties commensurate with their classification level, skills, experience and qualifications and may be transferred or assigned to other duties pursuant to section 9 or 47 of the Act.

|  |  |
| --- | --- |
| FOR OFFICE USE ONLY | |
| Employee No: |  |
| Account No: |  |
| Pay Point No: |  |
| Review Date: |  |

# SCHEDULE 2 – TOTAL REMUNERATION PACKAGE VALUE (per annum)

### Part A

**Monetary benefits component (per annum)**

Salary and allowances $

**Non-monetary benefits components (per annum)**

Motor Vehicle () $

Employer superannuation contribution $

(based on % of ‘salary’ for superannuation as set out in Part B of this Schedule)

**Total Remuneration Package Value (per annum) $**

### Part B: Explanation Re: Superannuation

**[DRAFTING NOTE: delete the schemes that are not applicable and insert the relevant information pertaining to the Executive’s superannuation arrangements]**

**Member of old “Pension” under *Superannuation Act 1988***

* ‘salary’ for superannuation = 78.5% of Total Remuneration Package Value = $…………
* Employer superannuation contribution = % (based on a member contribution of % multiplied by 10/3)

**Member of new “Lump Sum” under *Superannuation Act 1988***

* ‘salary’ for superannuation = 82.5% of Total Remuneration Package Value = $…………
* Employer superannuation contribution = % (based on a member contribution of % multiplied by 2)

**Member of Triple S scheme under *Southern State* *Superannuation Act 2009***

* ‘salary’ for superannuation = Total Remuneration Package Value divided by 1.105 = $
* Current Employer superannuation contribution = 10.5%. This will be determined by the Executive but must be at least 10.5% of ‘salary’ for superannuation. NB A salary sacrifice will occur if the contribution is greater than 10.5%.

|  |  |  |
| --- | --- | --- |
| **………………………………………..**  **[CE or agency head]**  **Chief Executive**  **[agency name]** |  | **…………………………………………….**  **[Executive]** |

# SCHEDULE 3 – EXECUTIVE PERFORMANCE

The Executive is responsible to the Chief Executive for meeting the following general and specific performance criteria.

### General Performance Criteria

* Giving effect to the SAES Charter and requirements set out in Recitals A, B and C of this Contract and to the Executive Competency Framework.
* Contributing to the Government's overall objectives consistent with legislative requirements.
* The efficient and effective management of the resources under the control of the Executive.
* Within the areas under the control of the Executive, ensuring the observance of Government requirements and the objectives, values, principles and standards in, or made under, the Act.

### Specific Performance Criteria

| **OBJECTIVES** | **KEY ACCOUNTABILITIES** |
| --- | --- |
| **1. Resource Management**  **Competency Framework:**  Develops People  Manages Resources and Risk  **Workplace Health and Safety Obligations** | 1.1 Expenditure authority not exceeded; sound use of resources.  1.2 Funds used as approved by Chief Executive, with proper monitoring and program evaluation.  1.3 Cost-effectiveness of service delivery.  1.4 Timeliness and transparency of decision-making.  1.5 Implementation of Performance Management strategies.  1.6 Demonstrated commitment to ensuring a safe, productive and fair work environment by actively contributing to -   * The sustainability and evaluation of safe work systems and practices. * Identification and management of risks.   1.7 Contribution towards the recruitment of more Indigenous Australians into the public sector.  1.8 Contribution towards the advancement of women into leadership positions.  1.9 Contribution towards access and equity for culturally & linguistically diverse South Australians.  1.10 Contributes, including by meeting any legislative obligations, to safe and healthy public sector workplaces. |
| **2. Leadership Competency Framework:**  Creates Vision and Gives Direction  Promotes and Achieves Quality Outcomes  Understands Relationships  Manages and Develops Self | 2.1 Evidence of ability to create vision and give direction both internally and through external communication strategies.  2.2 Demonstrated self-knowledge and understanding of relationships.  2.3 Undertake training and development in performance management to provide appropriate staff feedback/upwards appraisal.  2.4 Demonstrated integrity and adherence to Public Service rules and requirements concerning personal conduct.  2.5 Lead and advance the [i.e. interests of the agency and public sector]. **[amend as appropriate]** |
| **3. Whole-of- Government Objectives** | **[insert as relevant]** |
| **4. Program delivery/client service** | 4.1 Keep the Executive Director, **[insert]** Division informed in a timely way of all relevant matters and issues that impact on the public sector agency. **[amend as necessary]** |
| **5. Legislative requirements** | 5.1 Obligations under the *Work Health and Safety Act 2012* and WorkCover Standards, *Public Finance and Audit Act 1987*, *Public Sector Act 2009* and *Public Sector (Honesty and Accountability) Act 1995* satisfied. **[amend to include any other applicable legislation as relevant]** |
| **6. Other Outputs** | **[insert as relevant]** |

Signed:

…………………………………….

[CE name] Chief Executive [or other agency head] [Executive]

/ / / /

1. **Drafting Note:** Pursuant to the Premier’s Direction dated 10 April 2018, executive contracts must typically be for a period of no greater than three years. However, if a contract is for a period of more than three years, amend this clause to refer to two (2) development or learning opportunity opportunities during the term of the contract. [↑](#footnote-ref-1)
2. **Drafting Note:** Pursuant to the Premier’s Direction dated 10 April 2018, executive contracts must typically be for a period of no greater than three years. However, if a contract is for a period of more than three years, amend this clause to refer to sixteen (16) months’ adjusted remuneration. [↑](#footnote-ref-2)