


Not relevant




821

TF06/091CS

Appointment to the **Position of Research Officer** to
the Hon Sandra Kanck MLC
APPROVED

Not relevant



To The Premier for Cabinet Sub-Committee and Executive Council

Re **APPOINTMENT OF MR DAVID NICHOLAS WINDERLICH TO THE POSITION OF RESEARCH OFFICER TO THE HON SANDRA KANCK MLC**

1 **PROPOSAL**

1.1 To seek Cabinet approval and that of the Governor in Executive Council to appoint Mr David Nicholas Winderlich to the position of Research Officer to the Hon Sandra Kanck MLC for a period expiring on 6 October 2008, on the terms and conditions as set out in the Employment Agreement between Mr Winderlich and the Treasurer, pursuant to Section 68 of the *Constitution Act*.

2 **BACKGROUND**

2.1 On 5 February 1990, Cabinet approved the allocation of a full-time Research Officer for the Australian Democrats.

2.2 Cabinet has previously approved the Hon Sandra Kanck MLC having a staffing entitlement of one Research Officer.

2.3 This submission seeks to appoint Mr David Nicholas Winderlich to the position of Research Officer to the Hon Sandra Kanck MLC for a period expiring on 6 October 2008. Mr Winderlich will replace Ms Kanck's former Research Officer, Mr Greg Charter.

3 **DISCUSSION**

3.1 This submission seeks to appoint Mr Winderlich to the position of Research Officer to the Hon Sandra Kanck MLC for a period expiring on 6 October 2008, on an annual salary equivalent to an ASO6 in the South Australian Public Service, plus an overtime allowance of 15%.

3.2 Based on previous advice from the Office of Public Employment and the Crown Solicitor, it is considered appropriate to have the appointment of Research Officers to Members of Parliament made by the Governor in Executive Council pursuant to Section 68 of the *Constitution Act*. This section vests the appointment and dismissal with the Governor, on the advice and consent of Executive Council.

3.3 The terms and conditions of the appointment can be set out in an agreement between the appointee and the Minister. The Treasurer is appropriate in this instance.

3.4 It is proposed that Mr David Nicholas Winderlich be appointed to the position of Research Officer to the Hon Sandra Kanck MLC upon terms and conditions set out in the attached Employment Agreement between Mr Winderlich and the Treasurer. The appointment is for a term expiring on 6 October 2008.

3.4.1 Economic, financial and budgetary implications

N/A

3.4.2 Required resources

N/A

3.4.3 South Australia's Strategic Plan

N/A

3.4.4 Information and Communication Technology Requirements

N/A

3.4.5 Staffing implications

There are no staffing implications.

3.4.6 Impact on the community and the environment

N/A

3.4.7 Risk Management Strategy

N/A

3.4.8 Consultation

This contract has been developed in consultation with Treasury and Finance, Cabinet Office, the Office of Public Employment and Crown Law.

3.4.9 Implementation Plan

N/A

3.4.10 Communication Strategy

N/A

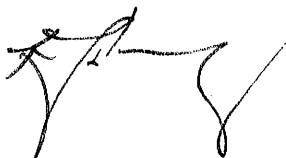
3.4.11 Executive Council

The authority to appoint Research Officers is vested with the Governor upon advice and consent of the Executive Council.

4 RECOMMENDATIONS

It is recommended that Cabinet:


- 4.1 Recommend that Her Excellency the Governor in Executive Council appoint Mr David Nicholas Winderlich to the position of Research Officer to the Hon Sandra Kanck MLC for a period expiring on 6 October 2008 upon the terms and conditions set out in the Employment Agreement between Mr Winderlich and the Treasurer pursuant to Section 68 of the *Constitution Act*.
- 4.2 Note the terms and conditions of the appointment as detailed in the attached Employment Agreement.
- 4.3 Note that the appointment provisions are vested with the Governor upon advice and consent of the Executive Council.
- 4.4 Note that the dismissal provisions are vested with the Minister (Treasurer).

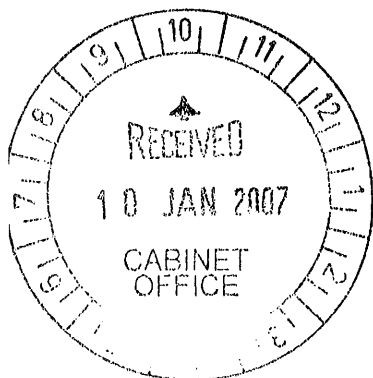


Kevin Foley MP
DEPUTY PREMIER
TREASURER

7/1/2006

**Cabinet in
 Sub-Committee**
 15 JAN 2007

APPROV  For PREMIER



MEMORANDUM OF AGREEMENT

THIS is made the 4th day of January 2007

BETWEEN

KEVIN OWEN FOLEY as Treasurer for and on behalf of the State of South Australia (hereinafter referred to as the "Minister") of the one part

AND

DAVID NICHOLAS WINDERLICH of 6(1) Personal affairs in the State of South Australia the other part (hereinafter referred to as "the Employee")

WHEREBY IT IS AGREED between the parties hereto as follows:

1. This agreement is subject to and will not take effect unless Her Excellency the Governor with the advice and consent of the Executive Council appoints the Employee to the public office of Research Officer.

2. INTERPRETATION

In the construction of this agreement, unless inconsistent with or repugnant to the context, the following words and expressions shall have the meanings set opposite them respectively:

"the Act" means the Constitution Act as amended from time to time;

"the Minister" means the Honourable Kevin Foley, MP;

"the Term" means the term of your appointment established in Clause 4.

3. NATURE OF APPOINTMENT

3.1 Your appointment to a public office in the service of the Crown is made pursuant to section 68 of the Act.

3.2 It is not intended by the parties that the Employee will be a member of the South Australian Public Service while employed under this Agreement.

4. **TERM**

4.1 Your appointment shall be full-time upon the terms and conditions herein contained for a period expiring on 6 October 2008, or the period the Hon Sandra Kanck MLC, retains her position as a Member of the Legislative Council, whichever is the shorter, unless such appointment and employment shall be sooner lawfully terminated.

5. **DUTIES**

5.1 You shall be employed as determined by the Minister.

5.2 Your duties shall be determined by the Hon Sandra Kanck MLC and set out in Attachment A to this Schedule.

5.3 You shall obey and comply with all lawful orders and directions given to you from time to time by the Hon Sandra Kanck MLC or the Minister.

5.4 You shall devote the whole of your time and attention during ordinary hours of business and also at all other times as may be necessary to the duties and responsibilities of the office and shall not enter into any other paid employment or engage for fee or reward in any other profession, trade or business without the prior consent of the Minister.

6. **REMUNERATION**

6.1 You shall be paid by the Government of the State an annual salary equivalent to an ASO6 in the Public Service, plus an overtime allowance of 15% for your services. This salary takes into account time which you spend outside the ordinary hours of business in the performance of your duties pursuant to this appointment. This salary will include increments in line with the Parity Agreement, for the ASO6 classification.

6.2 Your salary shall be paid in arrears by equal fortnightly payments.

6.3 The Government will contribute the current statutory superannuation contribution (currently 9% of your salary) as a minimum amount to fully satisfy the requirements of the Superannuation Guarantee legislation of the Commonwealth of Australia.

6.4 If prior to, upon, or during your appointment, you are accepted as a Contributory Member of the Triple S Scheme, the Government will contribute the statutory percentage of your salary specified in the Southern State Superannuation Act, 1994 (SA).

7. OTHER BENEFITS

You will be entitled to the following additional benefits: «Contract_Conditions»

7.1 None specified.

8. LEAVE

8.1 You shall be entitled to the same recreation leave (including the payment of any leave loading), sick leave and long service leave (hereinafter referred to as "leave rights") as a person appointed to the South Australian Public Service, and may be granted special leave and be paid allowances in circumstances similar to that in which special leave may be granted and allowances be paid to a person appointed to the South Australian Public Service.

8.2 Your entitlement (if any) and the extent to which your leave rights hereunder shall be adjusted to take account of prior employment shall be determined pursuant to the Act as if you were a person appointed to the South Australian Public Service.

9. CONFIDENTIALITY

9.1 You will not at any time during your appointment hereunder or at any time thereafter otherwise than in the discharge of your duties hereunder or with prior written consent, or to the extent that you are required by law to do so, divulge to any other person any information confidential to the Hon Sandra Kanck MLC which you may acquire or have acquired in the course of your appointment.

10. TERMINATION

10.1 Without prejudice to any other lawful powers, privileges and rights which the Minister may have the Minister may terminate your appointment if you:

- (i) are guilty of any breach or continued neglect of any of the terms of your appointment or any of the duties which you may from time to time be lawfully required to carry out in the course of your employment hereunder;
- (ii) are negligent or indolent or inefficient or incompetent in the discharge of your duties.;
- (iii) are absent from duty without reasonable excuse (proof of which will lie with you);

- (iv) are guilty of disgraceful or improper conduct in an official capacity or are guilty in a private capacity of disgraceful or improper conduct that reflects seriously and adversely on the Government of South Australia;
- (v) make improper use of property of the Crown;
- (vi) except as authorised by the Minister, engage in any other remunerative employment, occupation, trade or business;
- (vii) shall, in the opinion of the Minister, consistent with advice from an appropriate and independent medical practitioner become mentally or physically incapable of effectively performing your duties, provided that this power shall not apply with respect to any temporary disability through sickness, injury or mental or physical incapacity, none of which conditions are likely to endure or recur;
- (viii) shall be charged with any criminal offence relating to fraud or dishonesty.
- (ix) are guilty of any gross misconduct or wilful misconduct such as would justify dismissal without notice at common law;
- (x) are convicted of any criminal offence relating to fraud, dishonesty, assault or of any offence in respect of the safety of any person.

10.2 If the Minister considers that your employment hereunder may be liable to termination pursuant to the provisions of sub-clause 10.1 the Minister may, pending determination of the matter, suspend you with or without pay. Except, in relation to matters of the kind referred to in sub-clause 10.1.1(viii) hereof the maximum period of suspension without pay that shall be imposed by the Minister in respect of a matter is a period of fourteen (14) days.

10.3 If you have been suspended without pay and it is subsequently determined by the Minister that a termination of your appointment is not warranted, you shall be paid any remuneration withheld in consequence of the suspension.

11. EARLY TERMINATION

11.1 Notwithstanding any other conditions of your appointment, but subject to the provisions of clause 11, either you or the Minister may terminate this appointment after the giving of prior notice in writing to each other as follows:

11.1.1 Between 13 and 26 weeks of service – three weeks;

11.1.2 After 26 weeks of service -

(i) with less than 18 months continuous service - 8 weeks;

(ii) with more than 18 months continuous service - 8 weeks plus 2 weeks for each completed year of service pursuant to this agreement up to a maximum of sixteen (16) weeks notice.

11.2 If the Minister terminates your appointment prior to the date of its expiration pursuant to this clause 11 he may in lieu of notice pay to you an amount equal to your salary for the appropriate number of weeks notice of termination determined by reference to sub-clause 11.1 together with any amount payable on account of accrued recreation leave, which amount will be accepted by you in full satisfaction of all your entitlements and remuneration pursuant to this appointment.

12. TERMINATION PAY

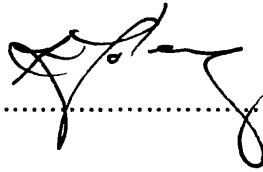
12.1 If you receive or are entitled to receive any payment in lieu of notice as a result of your employment and appointment hereunder either expiring or being terminated pursuant to clause 11 and if during the period in respect of which such payment is calculated you are in receipt of remuneration arising either from election to the Parliament of the State or arising from either your appointment to or employment in any office of profit under the Crown (whether in the Public Service or otherwise) then you shall forfeit any entitlement to such payment or to such part thereof as relates to a period during which you are either a member of the Parliament of the State or hold such office of profit under the Crown and in the event of such payment having been made to you, you shall within thirty (30) days after your election, appointment or employment as aforesaid repay to the Government of the State the amount so forfeited.

13. NOTICES

Any notice which you may give to the Minister shall be delivered or sent by prepaid post to the Minister at his office for the time being, and any notice given by the Minister to you shall be delivered or sent by prepaid post to your last known residential address.

EXECUTED by the parties as an agreement:


SIGNED by the said **KEVIN OWEN**)
FOLEY)
in the presence of:)
6(1) Personal affairs)
.....)
Witness)
[Print Name:]



.....

SIGNED by the said **DAVID NICHOLAS WINDERLICH**)
in the presence of:)
6(1) Personal affairs)
.....)
Witness)
[Print Name:]

6(1) Personal affairs



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ATTACHMENT A

SCHEDULE OF DUTIES

RESEARCH OFFICER TO SANDRA KANCK MLC

The Research Officer will

1. Liaise with Members and Officers of Parliament, Parliamentary Counsel, journalists, electorate staff and other persons as required;
2. Prepare media releases, articles, speech notes and position papers for the Member;
3. Carry out letter and report writing and research work as required;
4. Provide general policy advice to the member;
5. Receive community enquires and delegations;
6. Accompany and/or represent the Member when required, including country trips with the Member;
7. Other duties as required or requested by the Member.


.....

SANDRA MYRTHO KANCK

18 / 12 / 2006

**AGREEMENT TO CONFIDENTIALITY,
AND DECLARATION OF INTERESTS
BY A PERSON APPOINTED TO A PUBLIC OFFICE IN THE SERVICE OF THE CROWN**

(to be completed within 90 days of appointment and
at the end of each financial year during the term of appointment)

I, **David Nicholas Winderlich** of **6(1) Personal affairs**, South Australia,
Research Officer to the Hon Sandra Kanck MLC hereby:

1. CONFIDENTIALITY

- 1.1 Acknowledge and agree that I shall not, during the term of my appointment and at all times thereafter, disclose any confidential information acquired by me during the course of my appointment, to any person without the prior written consent of the Minister (as defined in my Employment Schedule) or unless required by law to disclose.
- 1.2 In this section, “confidential information” means any information whether in oral, written or electronic form, which is marked “confidential” or may be considered by its nature as confidential to Government.

2. DECLARATION AND DISCLOSURE OF INTERESTS

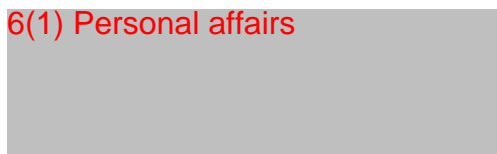
- 2.1 Declare that I have no interests which would constitute a conflict of interest or potential conflict of interest other than those described in Annexure A.
- 2.2 Confirm that the interests described in Annexure A are a complete and accurate description of all interests held by me and that I have made full disclosure of all material facts and circumstances concerning such interests.
- 2.3 Undertake to advise the Minister in writing within 14 days of becoming aware of any interests which arise after the date of this Declaration.
- 2.4 In this section “interests” means:
 - (a) any benefit, reward or income received by me;
 - (b) any benefit, reward or income received by my spouse or children, any trustee of my family trust, or my family company;
 - (c) any position, office or membership held or occupied by me; and

- (d) any position, office or membership held or occupied by my spouse, a trustee of my family trust or my family company;

which is derived from or arises from:

- (e) employment and business, (including partnerships and joint ventures) where income exceeds \$1,000.00 pa;
- (f) directorships of Corporations, including non profit corporations and unincorporated associations;
- (g) gifts or donations (from other than my spouse or children) which value exceeds \$750.00;
- (h) legal or beneficial interests in land;
- (i) legal or beneficial interests in securities investments which value exceeds \$10,000.00;
- (j) political, trade and professional associations;
- (k) trusts;
- (l) creditors where the amount owed by me or my spouse exceeds \$7,500.00;
- (m) debtors where the debt owed to me or my spouse exceeds \$10,000.00; and
- (n) any other substantial interest which may appear to raise a material conflict of interest between my private interests and my public duty.

6(1) Personal affairs



David Nicholas Winderlich

ANNEXURE A

DECLARED INTERESTS

*[provide an accurate and full listing and description of Interests
or insert "nil Interests"]*