

Water Corporations Act 1995

Compare between:

[22 Jun 2023, 04-e0-00] and [01 Jul 2023, 04-f0-01]

Western Australia

Water Corporations Act 1995

An Act to establish, and to provide for the establishment of, corporations with the function of providing water services, and with functions necessary for and related to that purpose, and for connected purposes.

[Long title amended: No. 25 of 2012 s. 111.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Water Corporations Act 1995*. [Section 1 amended: No. 25 of 2012 s. 112.]

2. Commencement

This Act comes into operation on the day on which Part 2 of the *Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995* comes into operation, that is, on the day fixed by proclamation made under section 2(2) of that Act.

3. Terms used

(1) In this Act, unless the contrary intention appears —

board, of a corporation, means the board of directors of the corporation under section 7;

Bunbury Water Corporation means the body established by section 4(2);

Busselton Water Corporation means the body established by section 4(3);

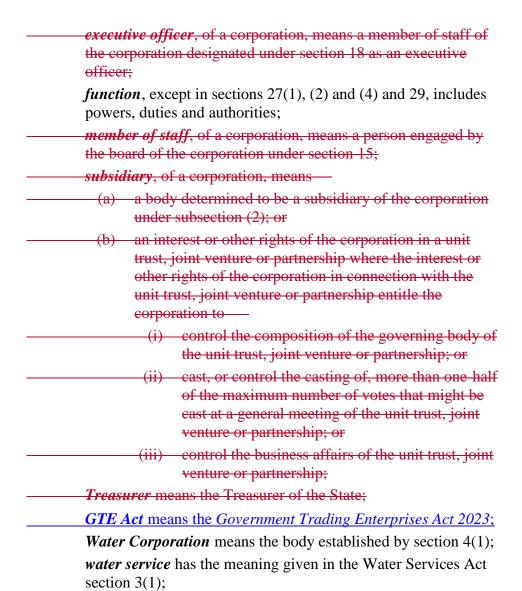
chief executive officer, of a corporation, means the person holding the office of chief executive officer of the corporation under section 13 and, except in section 13, includes an acting chief executive officer under section 13(5);

corporation means —

- (a) a body established by section 4(1), (2) or (3); or
- (b) a body established by the Governor under section 4(4);

Corporations Act means the Corporations Act 2001 of the Commonwealth;

director, of a corporation, means a member of the board of the corporation;



Water Services Act means the *Water Services Act* 2012.

Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the

corporation.

s. 3A

<u>[(2)</u> *deleted*]

[Section 3 amended: No. 10 of 2001 s. 205; No. 74 of 2003 s. 127(2); No. 8 of 2009 s. 132(2) and (3); No. 39 of 2010 s. 87(2); No. 25 of 2012 s. 113; No. 13 of 2023 s. 258.]

3A. Relationship to GTE Act

The GTE Act is to be read with this Act as if they formed a single Act.

[Section 3A inserted: No. 13 of 2023 s. 259.]

Part 2 — Water corporations

[Heading amended: No. 25 of 2012 s. 190.]

Division 1 — Establishment of water corporations

[Heading amended: No. 25 of 2012 s. 190.]

4. Water corporations established

- (1) There is established a body called the Water Corporation.
- (2) There is established a body called the Bunbury Water Corporation.
- (3) There is established a body called the Busselton Water Corporation.
- (4) The Governor may, by order published in the *Gazette*, establish a body with the name specified in the order.
- (5) The Governor cannot establish a body under subsection (4) without the concurrence of the Treasurer.

[Section 4 amended: No. 25 of 2012 s. 114.]

5A. Nature of corporations

- (1) Each corporation is a body corporate with perpetual succession.
- (2) Proceedings may be taken by or against a corporation in its corporate name.
- (3) A corporation may use, and operate under, one or more trading names approved by the Minister being
 - (a) an abbreviation or adaptation of its corporate name; or
 - (b) a name other than its corporate name.

[Section 5A inserted: No. 25 of 2012 s. 115.]

s. 5

5. Corporations not agents of Crown

A corporation is not an agent of the Crown and does not have the status, immunities and privileges of the Crown.

[Section 5 amended: No. 25 of 2012 s. 190.]

6. Corporations and officers not part of public sector

- (1) A corporation is not, and is not to become, a public sector body under the *Public Sector Management Act 1994*.
- (2) Neither the chief executive officer nor any member of staff of a corporation is to be included in the Senior Executive Service provided for by the *Public Sector Management Act 1994*.

[Section 6 amended: No. 25 of 2012 s. 116 and 190.]

7A. Dissolution of bodies established by Governor

- (1) The Governor may, with the concurrence of the Treasurer, by order published in the *Gazette*, dissolve a body established under section 4(4).
- (2) The order may deal with anything to be done, or that occurs, because of the dissolution of the body, including any of the following
 - (a) the assignment or disposal of assets of the body, including assets that are on, in, over or under land that is not the property of the body;
 - (b) the assignment or discharge of liabilities of the body;
 - (c) the substitution of a specified person for the body as a party to specified proceedings;
 - (d) the modification of specified agreements and instruments (other than enactments) referring to the body;

- (e) proceedings and remedies that might have been commenced by, or available to or against, the body being commenced by, or becoming available to or against, a specified person;
- (f) any act, matter or thing done or omitted to be done by, to or in respect of the body before the dissolution;
- (g) the taking possession of books, documents or other records, however compiled or stored, relating to the operations of the body;
- (h) the making and submission of any outstanding reports under the GTE Act Part 47 Division 31 and a final report in respect of the body;
- (i) the continuation of the body with the powers that are necessary or convenient for the purposes of doing anything under the order (including making and submitting the reports referred to in paragraph (h));
- (j) the exemption from any State tax of anything that occurs by operation of, or under, the order.
- (3) In subsection (2) *specified* means specified in the order.
- (4) Anything that occurs by operation of, or under, the order does not give rise to a breach of an existing right or obligation (whether contractual or not) or any remedy that did not already exist.

[Section 7A inserted: No. 25 of 2012 s. 417117; amended: No. 13 of 2023 s. 260.]

Part 2 Water corporations

Division 2 Boards of directors Regional water corporation board

members

s. 7

Division 2 — Boards of directors Regional water corporation board members

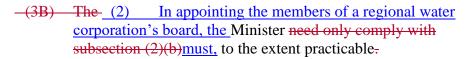
[Heading amendedinserted: No. 25 13 of 2012 2023 s. 190261.]

7. Board of directors

- (1) Each corporation is to have a board of directors comprising 6 or 7 persons appointed by the Governor on the nomination of the Minister.
- -(2A) The chief executive officer of a corporation may be a director of the corporation.
- (2B) A Appointing board member of staff of a corporation cannot to be a director of the corporation.
- (2) In making nominations: special provision for appointment to the board of a corporation the Minister is to ensure that
 - (a) each nomination is made only after consultation with the board; and
 - (ab) each nomination is made only after consultation with the Minister administering the Water Agencies (Powers)
 Act 1984; and
 - (b) in the case of a nomination for appointment to the board of a regional water corporation—the nominee is a person ordinarily resident in an operating area of the corporation so far as is necessary for the majority of the directors of the corporation, at the time of the appointment, to be persons so resident.corporations
- (3A1) In subsection (2)(b)this section —

operating area, of ain relation to a regional water corporation, means an operating area of a licence held by the corporation under the *Water Services Act 2012*;

regional water corporation means the Bunbury Water Corporation <u>orand</u> the Busselton Water Corporation.



- (3) Where a vacancy occurs, ensure that, at the time of the appointment, the number of directors who are not ordinarily resident in the membershipan operating area of the board of a corporation the board may recommend a candidate to the Minister.
- (4) Subsection (2)(a) does not apply
 - (a) to the initial appointments to the board of a corporation; or
- (b) where exceed the nominee was recommended by the board under subsection (3).number of those who are.

[Section-7 amendedinserted: No. 38 13 of 2007 2023 s. 137;261.]

[8-12. Deleted: No. 2513 of 2012 2023 s. 118 and 190261.]

8. Functions of board

The board of a corporation is the governing body of the corporation with authority, subject to this Act, in the name of the corporation, to perform the functions, determine the policies and control the affairs of the corporation.

Section 8 amended: No. 25 of 2012 s. 190.]

9. Board's constitution and proceedings (Sch. 1)

Schedule 1 has effect with respect to the directors and the board of a corporation.

Section 9 amended: No. 25 of 2012 s. 190.1

10. Remuneration of non-executive directors

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- -(1A) This section applies to a director of a corporation who is not the chief executive officer of the corporation.
- (1) The director is to be paid out of the funds of the corporation such remuneration and allowances as are determined in the case of that director by the Minister.
- (2) Remuneration is not to be paid to the director if he or she holds a full-time office or position that is remunerated out of moneys appropriated by Parliament.

11. Conflict of duties

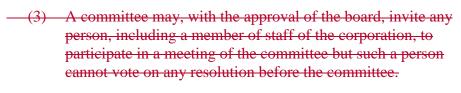
- (1) If a public service officer is a director of a corporation
 - (a) his or her duties as a director are to prevail if a conflict arises between those duties and his or her other duties as a public service officer; and
- (b) he or she does not have any immunity of the Crown in respect of the duties and liabilities imposed on directors by this Act.
- (2) In this section

public service officer means a person who is employed in the Public Service under Part 3 of the Public Sector Management Act 1994.

Section 11 amended: No. 25 of 2012 s. 190.]

12. Committees

- (1) The board of a corporation may—
 - (a) appoint committees of directors or other persons; and
- (b) discharge, alter or reconstitute any committee.
- (2) A committee is to comply with any direction or requirement of the board.



(4) Subject to subsection (2), a committee may determine its own procedures.

Section 12 amended: No. 25 of 2012 s. 190.]

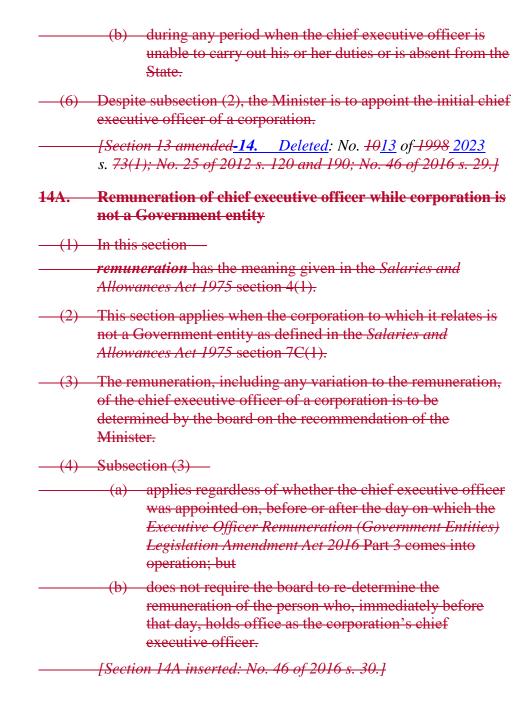
Division 3 — Staff [13. Chief executive officer (1) Each corporation must have a chief executive officer. (2) The powers (a) to appoint and remove the chief executive officer of a corporation; and (b) subject to sections 14A and 14B, to fix and alter his or her terms and conditions of service. are vested in the board of the corporation. (3) The board is to obtain the concurrence of the Minister before it exercises any of the powers conferred by subsection (2). (4A) Subsection (3) does not apply to the exercise by the board of the power to determine or set remuneration to which section 14A or 14B applies. (4) Subject to any provision of his or her terms and conditions of service, the chief executive officer of a corporation may resign his or her office by giving notice in writing to the board of the corporation. (5) The board of a corporation may appoint a person to act in place

of the chief executive officer of the corporation—

(a) during a vacancy in that office; or

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- (1) In this section
- remuneration has the meaning given in the Salaries and Allowances Act 1975 section 4(1).
- (2) This section applies when the corporation to which it relates is a Government entity as defined in the *Salaries and Allowances Act 1975* section 7C(1).
- (3) The remuneration of the chief executive officer of a corporation who is an executive officer, as defined in the *Salaries and Allowances Act 1975* section 7C(1), is to be set by the board within the range determined by the Salaries and Allowances Tribunal under section 7C(2) of that Act.
- (4) Any variation to the remuneration of the chief executive officer of a corporation who, because of the *Salaries and Allowances*Act 1975 section 7C(4) is not an executive officer as defined in section 7C(1) of that Act, is to be determined by the board on the recommendation of the Minister.
 - Section 14B inserted: No. 46 of 2016 s. 30.1

14. Role of chief executive officer

Subject to the control of the board, the chief executive officer of a corporation is responsible for, and has the necessary powers to administer, the day to day operations of the corporation.

[Section 14 amended: No. 25 of 2012 s. 190262.]

15. Staff

(1) The power to engage and manage the staff of a corporation is vested in its board.

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- (2) The power conferred by subsection (1)
 - (a) includes powers to determine remuneration and other terms and conditions of service and to remove, suspend and discipline staff; and
 - (b) does not preclude the delegation of any matter under section 35.
- (3) The remuneration of members of staff of a corporation and other terms and conditions of employment are not to be less favourable than is provided for in
 - (a) an applicable award, order or agreement under the *Industrial Relations Act 1979*; or
 - (b) the Minimum Conditions of Employment Act 1993.
- (4) Nothing in this section affects the operation of Part VID of the *Industrial Relations Act 1979*.

[Section 15 amended: No. 20 of 2002 s. 27; Gazette 15 Aug 2003 p. 3692; No. 25 of 2012 s. 121 and 190.]

16. Minimum standards for staff management

- (1) The board of a corporation must, after consultation with the Public Sector Commissioner, prepare and issue an instrument setting out minimum standards of merit, equity and probity applicable to the management of the staff of the corporation.
- (2) In subsection (1)
 - *management* includes recruitment, selection, appointment, transfer, secondment, performance management, redeployment, discipline and termination of employment.
- (3) In complying with subsection (1) the board is to have regard to the principles set out in section 8 of the *Public Sector Management Act 1994*.
- (4) Section 13(3) is not affected by the requirements of subsection (3).

- (4) An instrument issued under subsection (1) may be expressed to apply to the chief executive officer of the corporation as if the chief executive officer were a member of staff.
- (4A) If an instrument issued under subsection (1) applies to the chief executive officer of the corporation, subsection (3) does not affect the operation of the GTE Act section 37(5).
 - (5) The Public Sector Commissioner may at any time recommend to the board any amendment that he or she thinks should be made to an instrument issued under this section.
 - (6) The board may
 - (a) amend an instrument issued under this section; or
 - (b) revoke it and substitute a new instrument,

but, except where subsection (5) applies, is to do so only after consultation with the Public Sector Commissioner.

[Section 16 amended: No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190; No. 13 of 2023 s. 263.]

17. Reports to Public Sector Commissioner

- (1) The Public Sector Commissioner may in writing require the board of a corporation
 - (a) to report to him or her on the observance of the minimum standards in force under section 16; and
 - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a requirement made under subsection (1).
- (3) The Public Sector Commissioner may at any time report to the Minister on the content or observance of the minimum standards in force under section 16.

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[Section 17 amended: No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190.]

[18. Designation of executive officers

For the purposes of section 22, the board of a corporation may designate a member of the staff of the corporation as an executive officer by resolution—

- (a) passed by the board; and
- (b) notified in writing to the employee,

and may in the same manner revoke such a designation.

<u>[Section 18 amended Deleted</u>: No. <u>2513</u> of <u>2012 2023</u> s. <u>190264.</u>]

19. Superannuation

- (1) A corporation may grant, or make provision for the grant of, retirement benefits to members of staff of the corporation and, for that purpose may
 - (a) establish, manage and control; or
 - (b) enter into an arrangement with any body for the establishment, management and control by such body either alone or jointly with the corporation of,

any fund or scheme for the purpose of providing for such retirement benefits.

- (2) A corporation may make contributions to any fund or scheme referred to in subsection (1).
- (3) In subsection (1) —

members of staff includes —

- (a) dependants of members of staff; and
- (b) former members of staff and their dependants.

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(4) Nothing in this section affects the operation of the *State Superannuation Act 2000* in relation to a corporation or any member of staff of a corporation.

[Section 19 amended: No. 43 of 2000 s. 70; No. 25 of 2012 s. 190.]

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- 20. Directors, duties [Heading inserted: No. 13] of, and relating to (Sch. 2)
- Schedule 2 has effect in relation to
 - (a) the duties of directors of a corporation; and
- (b) the duties of a corporation in respect of directors and related persons; and
 - (c) the other matters provided for in that Schedule.
 - [Section 20 amended: No. 25 of 2012 2023 s. 122265.]

21. Chief executive officer, duties imposed

- (1) Schedule 2 clauses 2 to 11, 15 and 16 apply to the chief executive officer of a corporation as if references to a director were replaced by references to a chief executive officer.
- (2) Schedule 2 clauses 4 and 7 to 11 apply to a former executive officer of a corporation as if references to a former director were replaced by references to a former chief executive officer.
- (3A) The application of the clauses referred to in subsections (1) and (2) to the chief executive officer and a former chief executive officer, respectively, is in addition to any application those clauses have to the person in the capacity of director or former director of the corporation.
- (3) This section and section 20 do not operate so as to make a person liable to be punished twice for the same act or omission.

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<u>[Section 21 amended</u>[**20-23.** <u>Deleted</u>: No. 25<u>13</u> of 2012 2023 s. 123.]

22. Executive officers, duties imposed

- (1) Schedule 2 clauses 2 to 5, 7 to 11, 15 and 16 apply to an executive officer of a corporation as if references to a director were replaced by references to an executive officer.
- (2) Schedule 2 clauses 4 and 7 to 11 apply to a former executive officer of a corporation as if references to a former director were replaced by references to a former executive officer.

[Section 22 amended: No. 25 of 2012 s. 124.]

23. Members of staff, duties imposed

- (1) In this section
 - former member of staff means a former member of staff other than a former executive officer;
- member of staff means a member of staff other than an executive officer.
- (2) Schedule 2 clauses 4, 5 and 7 to 11 apply to a member of staff as if references to a director were replaced by references to a member of staff.
- (3) Schedule 2 clauses 4 and 7 to 11 apply to a former member of staff as if references to a director were replaced by references to a former member of staff.

Section 23 inserted: No. 25 of 2012 s. 125266.]

24. Codes of conduct for staff

(1) The board of a corporation must, after consultation with the Public Sector Commissioner, prepare and issue a code or codes of conduct setting out minimum standards of conduct and integrity to be observed by members of staff of the corporation.

- (2) In complying with subsection (1) the board is to have regard to the principles set out in section 9 of the *Public Sector Management Act 1994*.
- (3) The board may, after consultation with the Public Sector Commissioner, amend any code of conduct in force under subsection (1) or revoke it and substitute a new code of conduct.
- (4) In this section and in sections 25 and 26 *members of staff* includes the chief executive officer.

 [Section 24 amended: No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190.]

25. Reports to Public Sector Commissioner

- (1) The Public Sector Commissioner may in writing require the board of a corporation
 - (a) to report to him or her on the observance by members of staff of any code of conduct in force under section 24; and
 - (b) to make the reports at such times, but not more often than half-yearly,

as the Commissioner may specify.

- (2) The board must comply with a requirement made under subsection (1).
- (3) The Public Sector Commissioner may at any time report to the Minister on any matter relating to the observance by members of staff of a corporation of a code of conduct in force under section 24 that the Commissioner thinks should be brought to the Minister's attention.

[Section 25 amended: No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190.]

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26. Reports to Minister

- (1) The board of a corporation, when it delivers to the Minister its annual report under the GTE Act section 6081, is also to deliver to the Minister a separate report on the observance by members of staff of any code of conduct in force under section 24.
- (2) The board is to give to the Public Sector Commissioner a copy of each report under subsection (1).

[Section 26 amended: No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190; No. 13 of 2023 s. 267.]

Part 3 — Functions and powers of corporations

[Heading amended: No. 25 of 2012 s. 190.]

Division 1 — Functions, powers and related provisions

27. Functions of corporation

- (1) The functions of a corporation are
 - (a) to acquire, store, treat, distribute, market and otherwise supply water for any purpose;
 - (b) to collect, store, treat, market and dispose of wastewater and surplus water;
 - (c) to undertake, maintain and operate any works, system, facilities, apparatus or equipment required for any purpose referred to in paragraph (a) or (b);
 - (d) to use its expertise and resources to provide consultative, advisory or other services for profit;
 - (e) to develop and turn to account any technology, software or other intellectual property that relates to a function referred to in paragraph (a), (b) or (c);
 - (f) to manufacture and market any product or by-product that relates to a function referred to in paragraph (a), (b), (c) or (e).
- (2) It is also a function of a corporation
 - (a) to use or exploit its fixed assets for profit so long as the proper performance of its functions under paragraphs (a), (b) and (c) of subsection (1) are not affected; or
 - (b) to do anything that the corporation determines to be conducive or incidental to the performance of a function referred to in subsection (1); or
 - (c) to do anything that it is authorised to do by any other written law.

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- (3) If the performance of any of a corporation's functions referred to in subsection (1)(a) or (b) requires that the corporation hold a licence under the Water Services Act, the corporation may only perform that function in accordance with the terms and conditions of such a licence.
- (4) A corporation may perform any of its functions in the State or elsewhere.

[(5), (6) deleted]

(7) In subsection (1) —

surplus water means storm water, surface water or underground water which accumulates or may accumulate to the detriment or disadvantage of any person;

wastewater has the meaning given in the Water Services Act section 3(1).

[Section 27 amended: No. 67 of 2003 Sch. 2 cl. 86; No. 25 of 2012 s. 126 and 190.]

[28A. Corporations may act at their discretion

The fact that a corporation has a function given to it by this Act does not impose a duty on it to do any particular thing and, subject to—

- (a) this Act; and
- (b) any direction given to the corporation under this Act,

it has a discretion as to how and when it performs the function.

<u>[Section 28A inserted, 28. Deleted</u>: No. <u>2513</u> of <u>2012 2023</u> s. 127.]

28. Corporation to act in accordance with policy instruments

A corporation must perform its functions in accordance with its strategic development plan and its statement of corporate intent as existing from time to time.

29. Powers of corporation

- (1) A corporation may do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1) or the other powers conferred on a corporation by this Act or any other Act, a corporation may for the purpose of performing any function
 - (a) acquire, hold, manage, improve, develop and dispose of any real or personal property; and
 - (b) enter into any contract or arrangement including a contract or arrangement with any person for the performance by that person on behalf of the corporation of any of the functions described in section 27(1)(a), (b) and (c); and
 - (c) apply for the grant of any licence or other authority required by the corporation; and
 - (d) acquire, establish and operate
 - (i) any undertaking necessary or convenient for the performance of any of the functions described in section 27(1)(a), (b) and (c); and
 - (ii) any associated undertaking;

and

- (e) produce and deal in
 - (i) any by-product resulting from; or
 - (ii) any equipment, facilities or system associated with,

the performance of any function of the corporation; and

(f) appoint agents or engage persons under contracts for services to provide professional, technical or other assistance to the corporation; and s. 29

- (g) subject to sections 31 and 32, participate in any business arrangement and acquire, hold and dispose of shares, units or other interests in, or relating to, a business arrangement; and
- (h) carry out any investigation, survey, exploration or boring; and
- (i) collaborate in, carry out, or procure the carrying out of, research and publish information that results from the research; and
- (j) for the purposes of section 27(1)(e), apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights; and
- (k) promote and market the corporation and its activities.

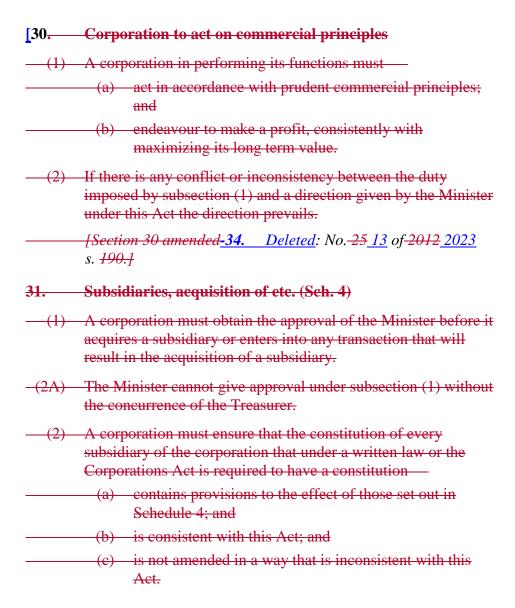
(2A) Subsections (1) and (2) have effect subject to the GTE Act.

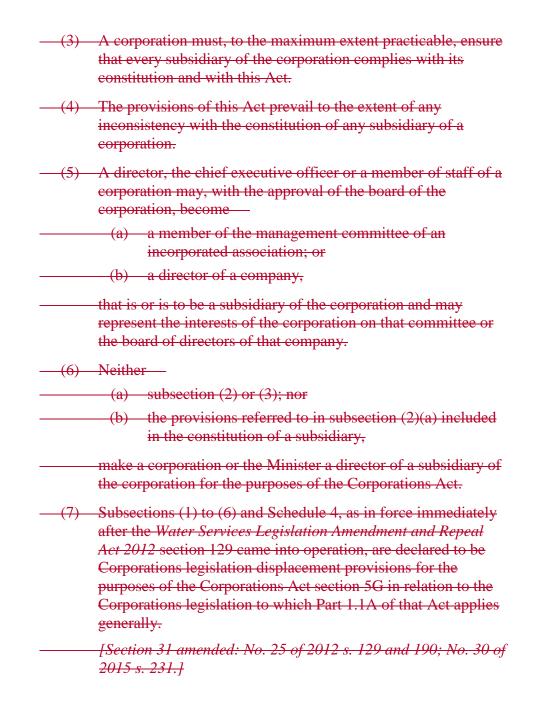
- (3) A corporation may
 - (a) make gifts for charitable purposes or for other purposes of benefit to the community or a section of the community;
 - (b) make any *ex gratia* payment that the board considers to be in the corporation's interest;
 - (c) accept any gift, devise or bequest if it is absolute, or subject to conditions that are within the functions of the corporation.
- (4) If the generality of any power conferred on a corporation by this Act is restricted by any provision of the Water Services Act, that restriction applies, despite this Act.
- (5) In subsection (2) —

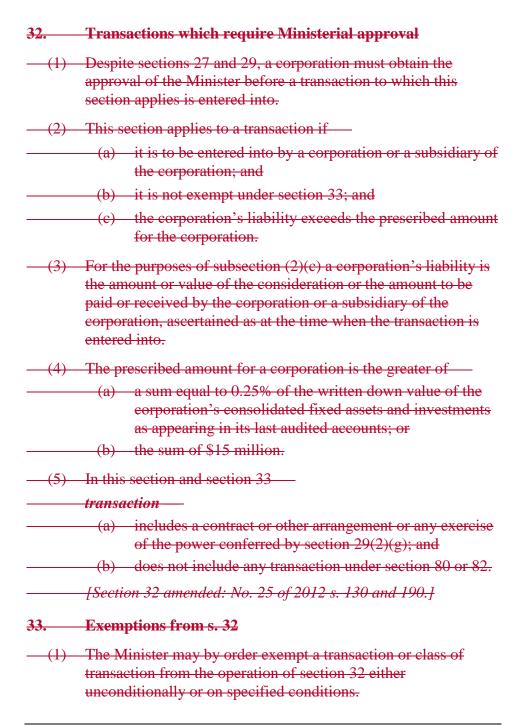
business arrangement means a company, a partnership, a trust, a joint venture, or an arrangement for sharing profits;

participate includes form, promote, establish, enter, manage, dissolve, wind up, and do anything incidental to participating in a business arrangement.

[Section 29 amended: No. 10 of 1998 s. 73(2); No. 25 of 2012 s. 128 and 190; No. 13 of 2023 s. 269.]







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- (2) An order under subsection (1) may be revoked or amended by the Minister.
- (3) An order under subsection (1) or (2) is to show sufficient particulars of the transactions or class of transaction to which it relates to enable the transaction or class to be identified.
- (4) The Minister must, within 14 days after an order under subsection (1) or (2) is made, cause it to be laid before each House of Parliament or dealt with in accordance with section 87.

34. Minister to be consulted on major initiatives

In addition to the requirements under section 32, a corporation must consult the Minister before it enters upon a course of action that in its opinion—

- (a) amounts to a major initiative; or
- (b) is likely to be of significant public interest.

[Section 34 amended: No. 25 of 2012 s. 131270.]

35. Delegation by corporation

- (1) A corporation may, by instrument in writing, delegate the performance of any of its functions, except this power of delegation.
- (2) A delegation under subsection (1) may be made to
 - (a) a director or directors; or
 - (ba) the chief executive officer; or
 - (b) a member or members of staff; or
 - (c) a committee established under the GTE Act section 1226; or
 - (d) any other person.

- (3) A delegate cannot subdelegate the performance of any function unless he or she is expressly authorised by the instrument of delegation to do so.
- (4) A function performed by a delegate of a corporation is to be taken to be performed by the corporation.
- (5) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Nothing in this section is to be read as limiting the ability of a corporation to act through its officers and agents in the normal course of business.
- (7) This section does not apply to the execution of documents.

Note for this subsection:

Authority to execute documents on behalf of a corporation can be given under the GTE Act section 156.

[Section 35 amended: No. 25 of 2012 s. 132 and 190; No. 13 of 2023 s. 271.]

Division 2 — Arrangements authorised or approved by Governor

36. Governor may make certain regulations

- (1) Regulations under section 91 may authorise or approve
 - (a) any arrangement involving or relating to a corporation or any subsidiary of the corporation or the performance by a corporation of any of its functions; or
 - (b) any act or thing proposed to be done in the State by a corporation or any subsidiary of the corporation in the performance of its functions; or
 - (c) any other matter or thing necessary or convenient to facilitate or give effect to the authorisation or approval.
- (2) For the purposes of subsection (1) —

- (a) *arrangement* includes any contract, arrangement or understanding, or any market practice or market or customer restriction, division, allocation or segregation of any nature, or a course of conduct or dealing; and
- (b) a reference to any act or thing done or proposed to be done includes a reference to an omission or proposed omission to do that act or thing.

[Section 36 amended: No. 25 of 2012 s. 133.]

[Division-3—Protection of persons dealing with a corporation

[Heading amended (s. 37-40) deleted: No. 2513 of 2012 s. 134.]

37. Person dealing with corporation may make assumptions

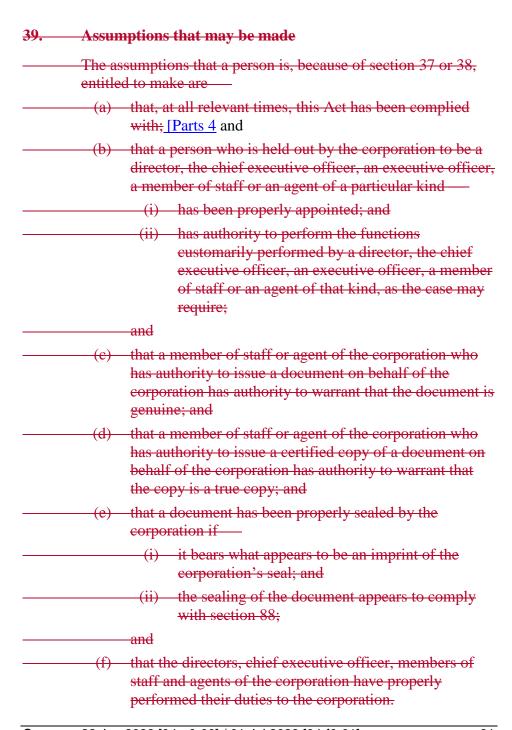
- (1) A person having dealings with a corporation is entitled to make the assumptions mentioned in section 39.
- (2) In any proceedings in relation to the dealings, any assertion by the corporation that the matters that the person is entitled to assume were not correct must be disregarded.

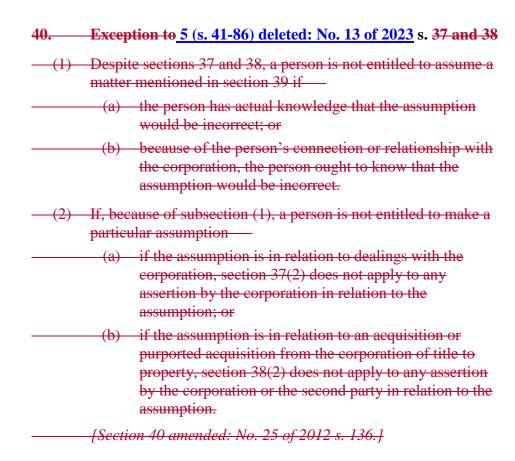
[Section 37 amended: No. 25 of 2012 2023 s. 190272.]

38. Third party may make assumptions

- (1) A person (the *third party*) having dealings with a person (the *second party*) who has acquired, or purports to have acquired, title to property from a corporation (whether directly or indirectly) is entitled to make the assumptions mentioned in section 39.
- (2) In any proceedings in relation to the dealings, any assertion by the corporation or the second party that the matters that the third party is entitled to assume were not correct must be disregarded.

Section 38 amended: No. 25 of 2012 s. 135.]

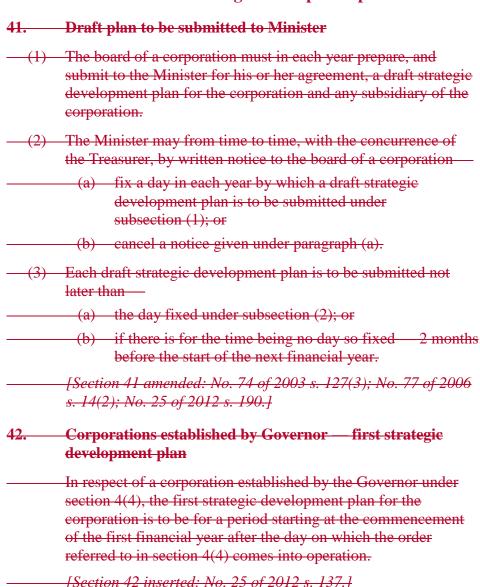




Division 1

Part 4 — Provisions as to accountability

Division 1 Strategic development plans





- (1) The strategic development plan for a corporation and any subsidiary of the corporation must set out economic and financial objectives and operational targets and how those objectives and targets will be achieved.
- (2) The matters which are to be considered in the preparation of the strategic development plan include competitive strategies, pricing of products, productivity levels, financial requirements, capital expenditure, customer service arrangements, relevant government policy and personnel requirements.
- (3) A strategic development plan is to cover a forecast period of 5 years or a lesser period agreed with the Minister.

[Section 43 amended: No. 25 of 2012 s. 138.]

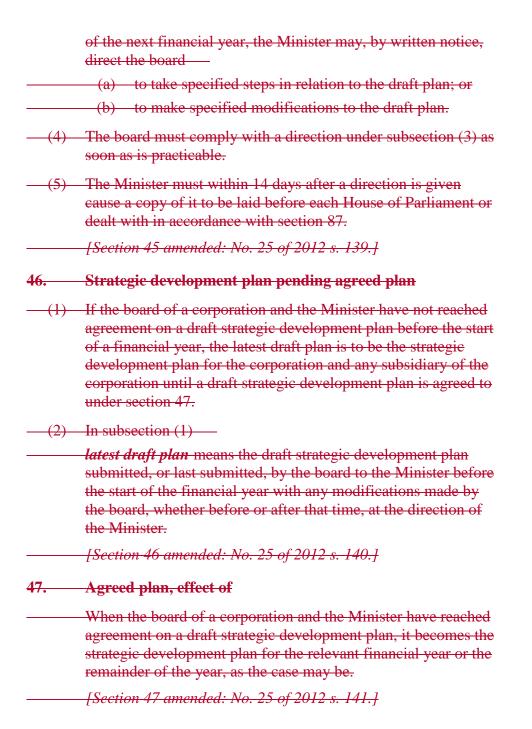
44. Board and Minister to agree on plan if possible

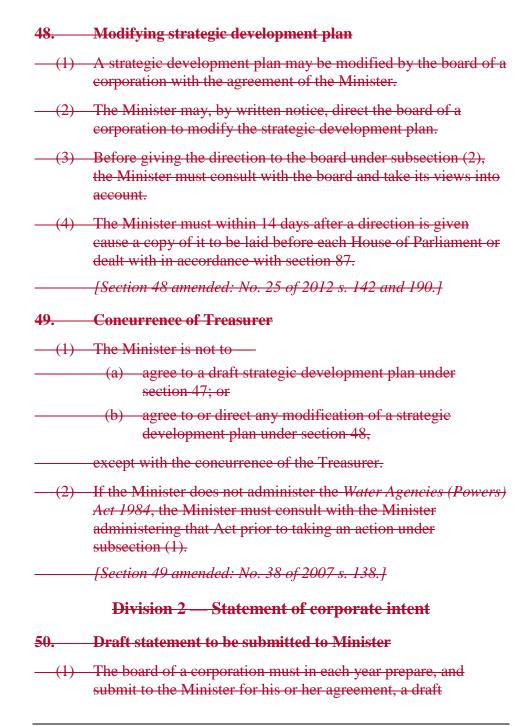
The board of a corporation and the Minister must endeavour to reach agreement on the draft strategic development plan as soon as possible, and in any event not later than one month before the start of the next financial year.

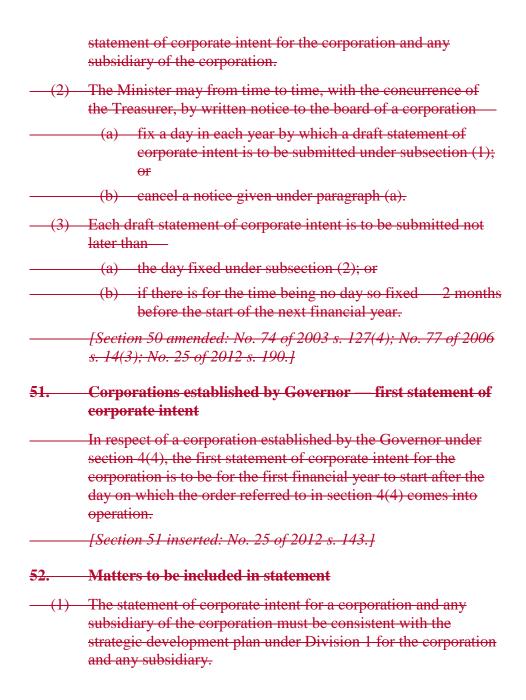
Section 44 amended: No. 25 of 2012 s. 190.]

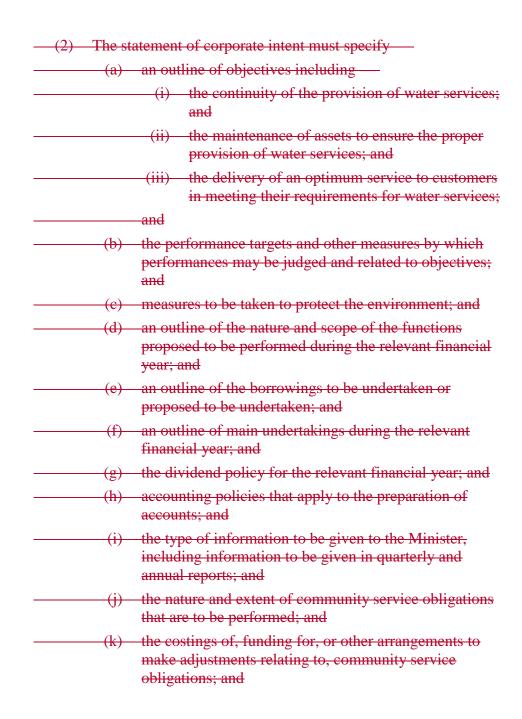
45. Minister's powers in relation to draft plan

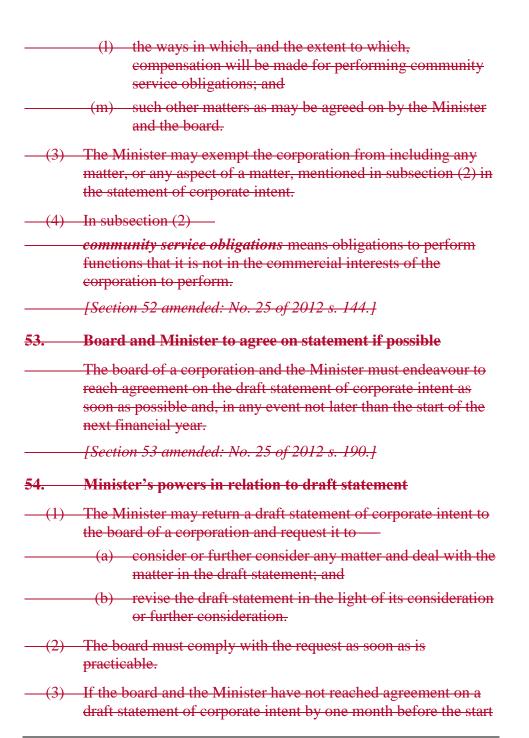
- (1) The Minister may return a draft strategic development plan to the board of a corporation and request it to
- (a) consider or further consider any matter and deal with the matter in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.
- (2) The board must comply with the request as soon as is practicable.
- (3) If the board and the Minister have not reached agreement on a draft strategic development plan by one month before the start

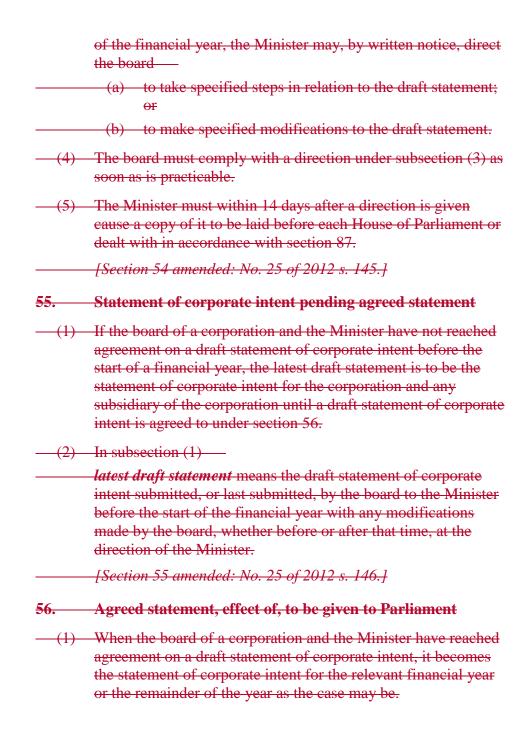


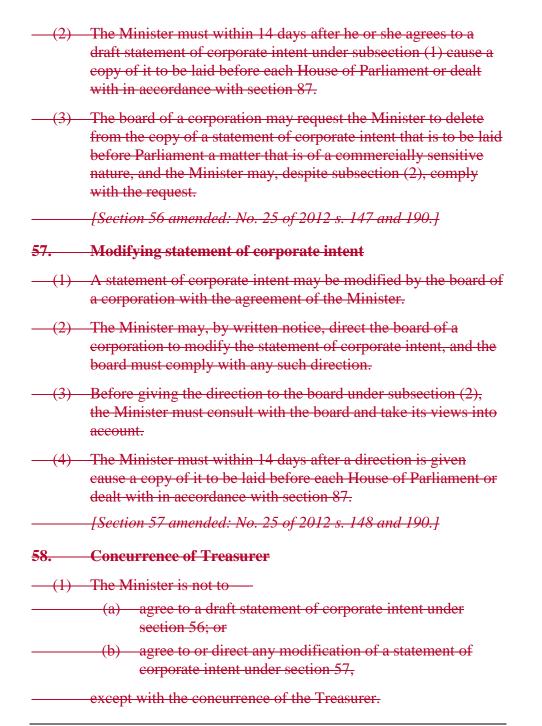


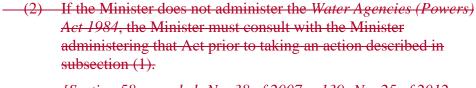












Section 58 amended: No. 38 of 2007 s. 139; No. 25 of 2012 s. 149.]

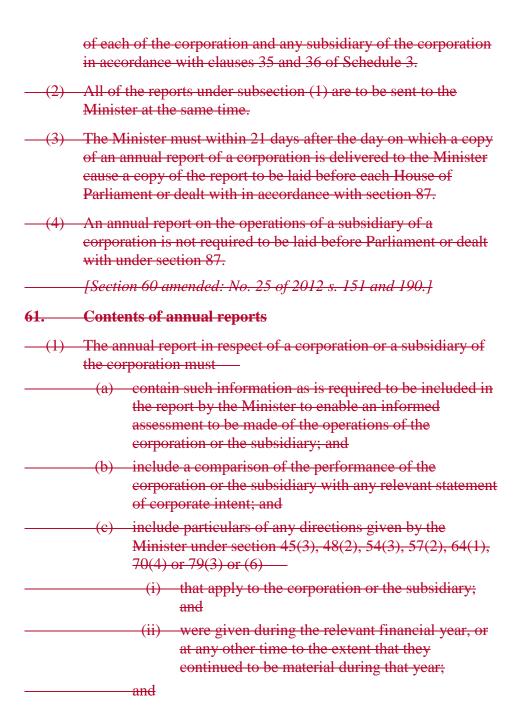
Division 3 Quarterly and annual reports

59. Quarterly reports

- (1) The board of a corporation must, for each of the first 3 quarters of a financial year, give to the Minister a separate report on the operations of the corporation and of each subsidiary of the corporation.
- (2) A quarterly report is to be prepared on a consolidated basis.
- (3) A quarterly report must be given to the Minister
 - (a) within one month after the end of the quarter; or
- (b) if another period after the end of the quarter is agreed between the board and the Minister, within the agreed period.
- (4) The board must give a copy of each quarterly report to the Treasurer.
- (5) A quarterly report must include the information required to be given in the report by a relevant statement of corporate intent under Division 2.
- (6) Subject to section 62, the Minister shall, after consultation with the board, make a quarterly report available to the public.
- Section 59 amended: No. 25 of 2012 s. 150.]

60. Annual reports

(1) The board of a corporation must prepare and deliver to the Minister in each year a separate annual report on the operations



Water Corporations Act 1995
Part 4 Provisions as to accountability
Division 4 Ministerial directions, general provisions
s. 62

(d) include particulars of the impact on the financial position, profits and losses and prospects of the corporation or the subsidiary of any modifications to

(i) the statement of corporate intent; and

(ii) any directions given by the Minister under section 64(1),

that were given during the relevant financial year.

(2) The annual report in respect of a corporation must also include a summary of the report referred to in section 25.

62. Deletion of commercially sensitive matters from reports

ISection 61 amended: No. 25 of 2012 s. 190.1

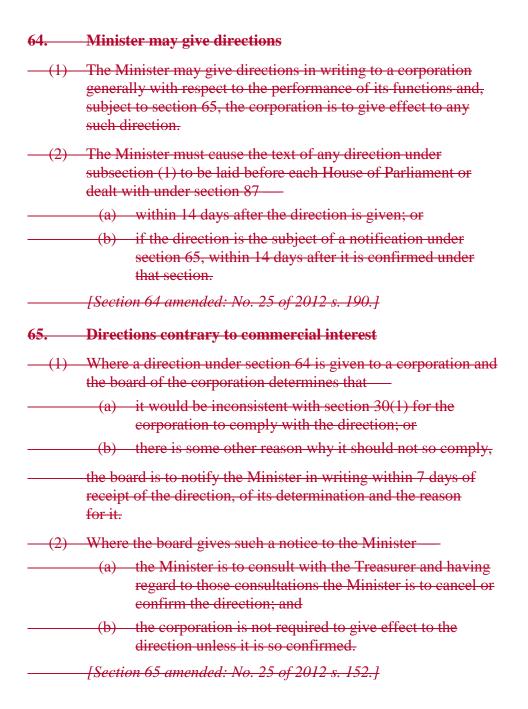
(3) The requirements of this section are in addition to

clauses 35 and 36 of Schedule 3.

- (1) The board of a corporation may request the Minister to delete from the copies of a quarterly or annual report (and accompanying documents) that are to be made public, a matter that is of a commercially sensitive nature.
- (2) The Minister may, despite section 61, comply with a request under subsection (1).
- [Section 62 amended: No. 25 of 2012 s. 190.]

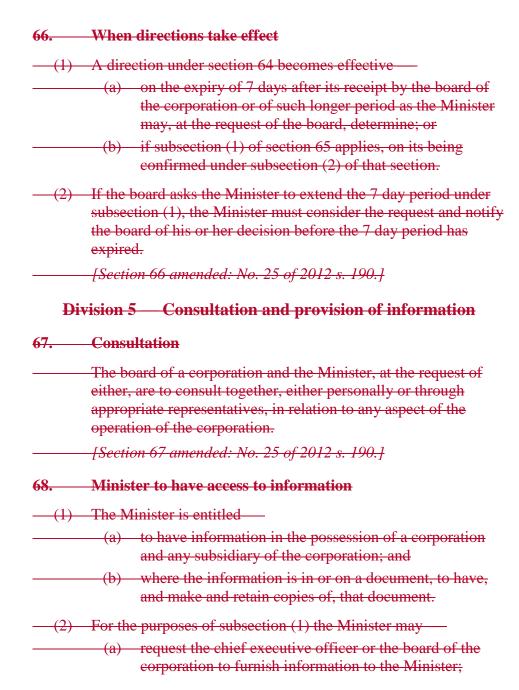
Division 4 Ministerial directions, general provisions

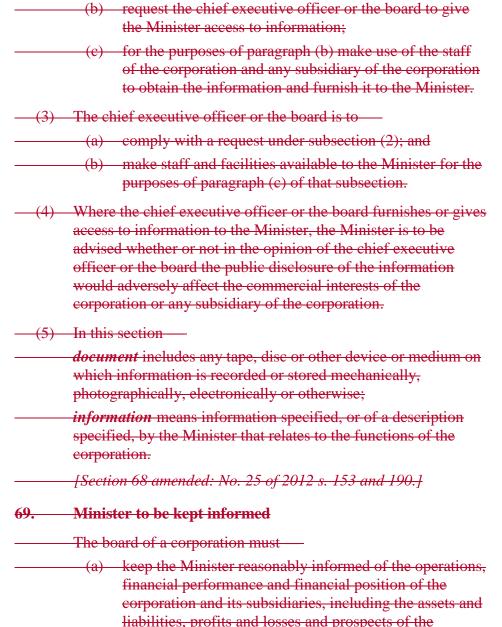
- 63. Directions to corporation
- Except as provided by this Act or any other written law, a corporation is not required to comply with any direction or administrative request given or made by or on behalf of the Government.
- [Section 63 amended: No. 25 of 2012 s. 190.]



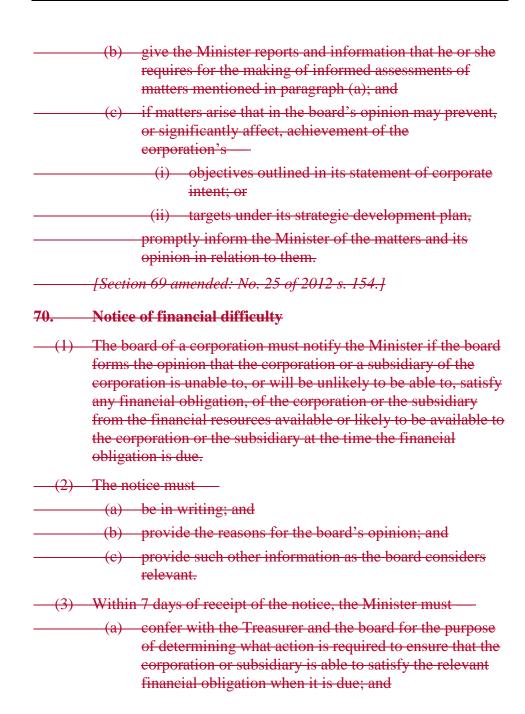
Part 4 Provisions as to accountability

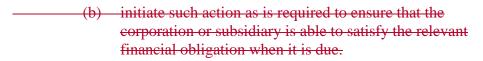
Division 5 Consultation and provision of information





corporation and its subsidiaries; and





- (4) For the purposes of subsection (3) the Minister may give directions to the corporation including a direction requiring the corporation or any subsidiary of the corporation to cease or limit the performance of any function.
- (5) The board must give effect to any such direction and must ensure that it is complied with in relation to any relevant subsidiary.
- (6) The Minister must within 14 days after a direction has been given under subsection (4) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 87.

Section 70 amended: No. 25 of 2012 s. 190.]

Division 6 General

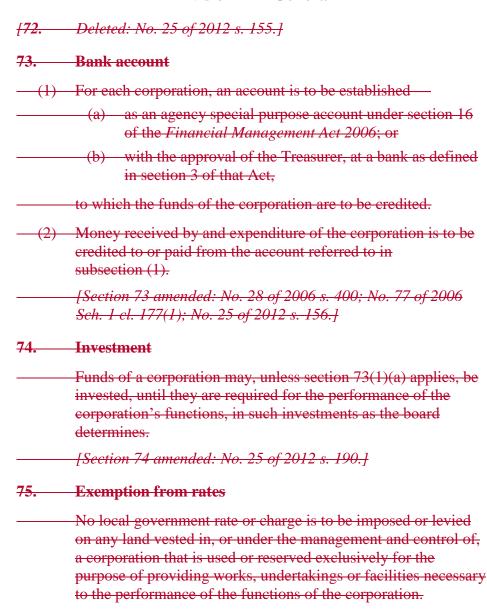
71. Protection from liability

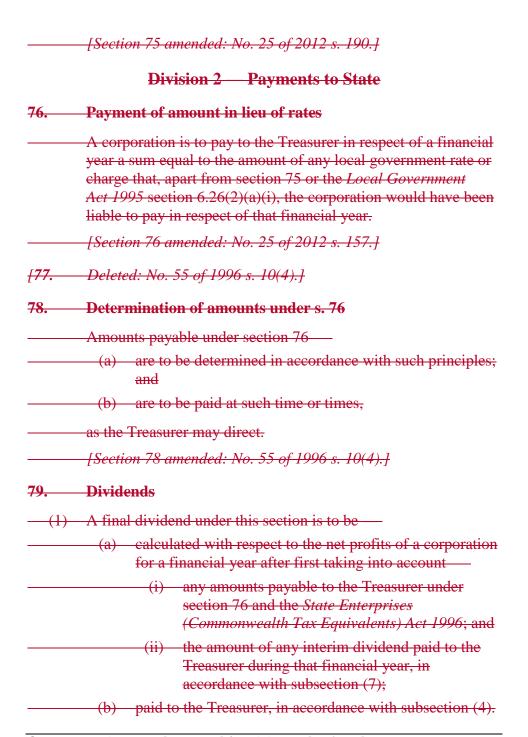
- (1) A corporation, a subsidiary of a corporation or a person performing functions under this Act is not liable —
- (a) in respect of any claim arising as a consequence of the disclosure of information or documents under section 59, 60, 67, 68, 69 or 70; or
- (b) for the fact of having done or omitted any thing that is required to be done or omitted by a direction given under section 45(3), 48(2), 54(3), 57(2), 64(1), 70(4) or 79(3) or (6).
- (2) Subsection (1) does not extend to the manner in which any thing is done or omitted if it is done or omitted contrary to clause 2 or 3 of Schedule 2.

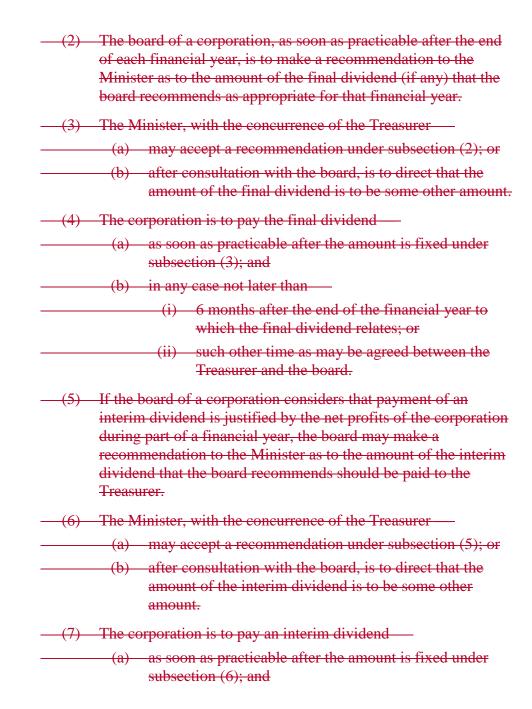
[Section 71 amended: No. 25 of 2012 s. 190.]

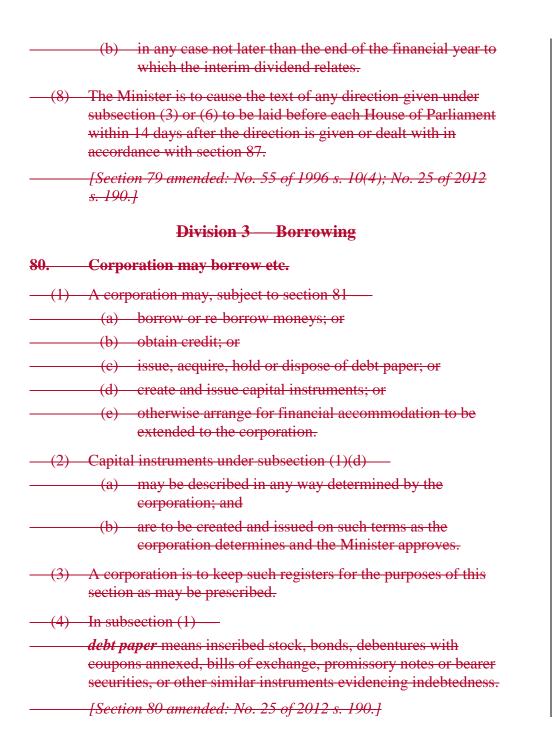
Part 5 — Financial provisions

Division 1 General









81. Borrowing limits

- (1) The Minister may, with the concurrence of the Treasurer and in accordance with subsections (2), (3A), (3B), (3) and (4), by notice to a corporation, impose monetary limits on the exercise by the corporation of the powers conferred by section 80.
- (2) The monetary limit for the Water Corporation is to be determined for the exercise of those powers in the financial year following the commencement of this Part.
- (3A) The monetary limit for the Bunbury Water Corporation and the Busselton Water Corporation is to be determined for the exercise of those powers in the financial year following the day on which the *Water Services Legislation Amendment and Repeal Act 2012* section 158 comes into operation.
- (3B) The monetary limit for a corporation established by the Governor under section 4(4) is to be determined for the exercise of those powers in the financial year following the day on which the order referred to in section 4(4) comes into operation.
- (3) A limit referred to in subsection (2), (3A) or (3B) may be varied for any subsequent financial year and any limit for the time being in force may also be varied for a subsequent financial year.
- (4) A limit for the time being in force for a corporation continues to apply until it is so varied.
- (5) A corporation must comply with any limit for the time being in force for the corporation.
- (6) A liability of a corporation is not unenforceable or in any way affected by a failure of the corporation to comply with this section.
- (7) No person dealing with a corporation is bound or concerned to enquire whether the corporation has complied or is complying with this section.

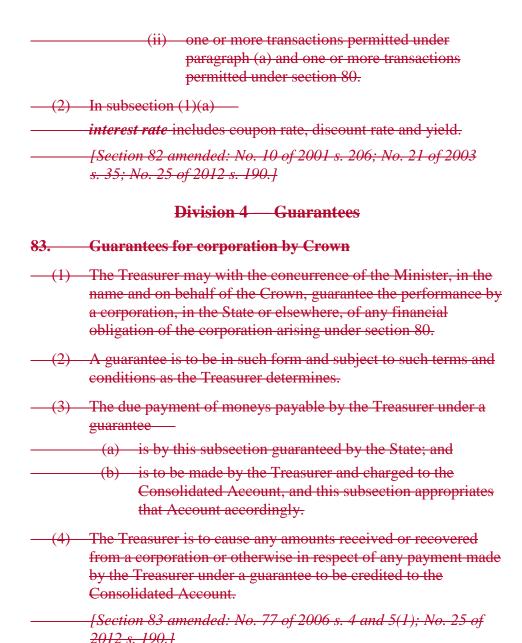
[Section 81 amended: No. 25 of 2012 s. 158 and 190.] 82. Hedging transactions (1) A corporation may in connection with the exercise of any power conferred by section 80 (a) enter into an agreement or arrangement to effect any of the following transactions (i) a foreign exchange transaction; or (ii) a forward foreign exchange transaction; or (iii) a currency swap; or (iv) a forward currency swap; or (v) a foreign currency cap, a foreign currency collar or a foreign currency floor; or (vi) a forward interest rate agreement; or (vii) an interest rate swap; or (viii) a forward interest rate swap; or (ix) an interest rate cap, an interest rate collar or an interest rate floor; or (x) an option for interest rate or currency management purposes; or (xi) a futures contract or a futures option; or (xii) a transaction of such other class as is approved in writing by the Minister, with the concurrence of the Treasurer, as a class of transactions to which this paragraph applies;

(b) enter into an agreement or arrangement to effect any

(i) 2 or more transactions permitted under

transaction which is a combination of

paragraph (a); or



84. Charges for guarantee

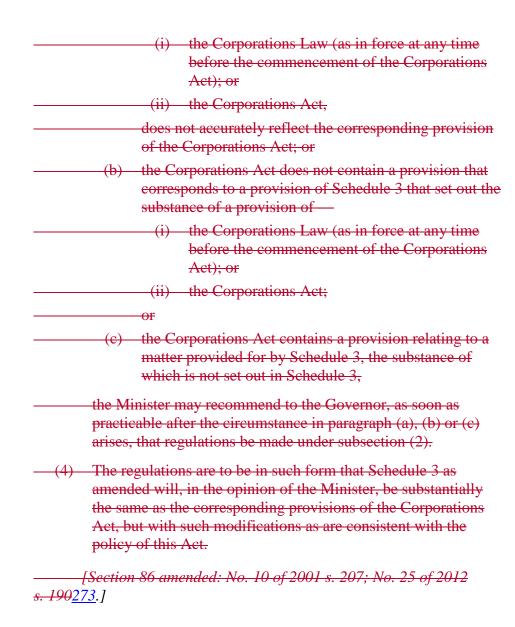
- (1) The Treasurer may, after consultation with the board of a corporation, fix charges to be paid by the corporation to the Treasurer for the benefit of the Consolidated Account in respect of a guarantee given under section 83.
- (2) Payments by a corporation to the Treasurer in respect of any such charges are required to be made at such times, and in such instalments, as the Treasurer determines.

Division 5 Financial administration and audit

- 85. Limited application of Financial Management Act 2006 and Auditor General Act 2006
- Despite anything in the *Financial Management Act* 2006 or the *Auditor General Act* 2006, those Acts, other than the provisions referred to in clauses 38(2) and 45(4) of Schedule 3 of this Act, do not apply to a corporation or any person performing functions under this Act.
- [Section 85 amended: No. 77 of 2006 Sch. 1 cl. 177(2); No. 25 of 2012 s. 159.]
- 86. Financial administration and audit (Sch. 3)
- (1) Schedule 3 has effect in relation to the financial administration and audit of a corporation.
- (2) That schedule may be amended by regulations made by the Governor in accordance with subsections (3) and (4).
- (3) If
- (a) a provision of Schedule 3 that set out the substance of a provision of

Part 5 Financial provisions

Division 5 Financial administration and audit



Part 6 — Miscellaneous

87. Laying documents before Parliament not sitting (1)If-(a) at the commencement provision of a period referred to in section 33(4), 45(5), 48(4), 54(5), 56(2), 57(4), 60(3), 64(2), 70(6), 79(8) or clause 13(7) of Schedule 2 in respect of this Act requires the Minister to cause a document to be laid before a House of Parliament and the House is not sitting; and the Minister is of, the opinion GTE Act section 159 applies as if the reference in that that House will not sit during that period, the Minister is section to transmit a copyprovision of the documentGTE Act were a reference to the Clerkprovision of that Housethis Act. (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House. The laying of a copy of a document that is taken to have occurred under subsection (2) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the receipt of the copy by the Clerk. [Section 87 amended inserted: No. 8 13 of 2009 2023 s. 132(4) and (5).]274.] [88. Execution of documents by corporation (1) Each corporation is to have a common seal. (2) A document is duly executed by a corporation if (a) the common seal of the corporation is affixed to it in the

(i) 2 directors; or

presence of

- (i) during any period for which it is conferred; or (ii) if subparagraph (i) does not apply, until notice of
 - termination of the authority is given to the person so dealing.
- A document purporting to be executed in accordance with this section is to be taken to be duly executed until the contrary is shown.

[Section 88 amended-89. Deleted: No. 2513 of 2012 2023 s. 160 and 190.]

89. Contract formalities

- (1) In so far as the formalities of making, varying or discharging a contract are concerned, a person acting under the authority of a corporation may make, vary or discharge a contract in the name of or on behalf of the corporation in the same manner as if that contract were made, varied or discharged by a natural person.
- (2) The making, variation or discharge of a contract in accordance with subsection (1) is effectual in law and binds the corporation and other parties to the contract.
- (3) Subsection (1) does not prevent a corporation from making, varying or discharging a contract under its common seal.

Section 89 amended: No. 25 of 2012 s. 161 and 190274.]

90. Delegation by Treasurer

- (1) The Treasurer may, either generally or as otherwise provided by the instrument of delegation, delegate to an officer of the Treasury the performance of any function vested in the Treasurer by this Act.
- (2) A function performed by a delegate is to be taken to be performed by the Treasurer.
- (3) A delegate performing a function under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

91. Regulations

- (1) The Governor may make any regulations prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) If there is any conflict or inconsistency between a provision made by regulations under this Act and a provision made by regulations or by-laws under the *Water Agencies (Powers)*

Act 1984, a relevant Act within the meaning of that Act or the Water Services Act, the latter provision prevails.

- (3) Regulations under this Act may be expressed to prevail over regulations made under the GTE Act.
- (4) Regulations in reliance on subsection (3) must not be made except on the recommendation of
 - (a) the Minister; and
 - (b) the Minister to whom the administration of the GTE Act is committed.
- (5) If and to the extent that regulations under this Act are so
 expressed, in the event of a conflict or inconsistency between a
 provision of those regulations and a provision of regulations
 made under the GTE Act, the former provision prevails.

[Section 91 amended: No. 67 of 2003 Sch. 2 cl. 87; No. 25 of 2012 s. 162; No. 13 of 2023 s. 275.]

92. Minister may vest certain land in Water Corporation and make orders in respect of certain reserves

(1) In this section —

former water authority means —

- (a) a Minister of the State; or
- (b) an agency, authority or instrumentality of the State; or
- (c) a body, whether incorporated or not, established or continued for a public purpose by or under a written law,

who or that, at any time before the commencement of section 4(1) of this Act, performed functions relating to the provision of water services;

order means an order made under subsection (2) or (3), as the case requires;

relevant official, in relation to an estate or interest in land, or a reserve, specified in an order, means —

- (a) the Registrar of Titles; or
- (b) the Registrar of Deeds and Transfers; or
- (c) any other person authorised by a written law to register or otherwise act on dealings affecting land,

according to which of them, if any, is responsible for registering or otherwise acting on dealings affecting the estate or interest or the reserve.

- (2) The Minister may, by order published in the *Gazette*, direct that an estate or interest in land specified in the order be vested in the Water Corporation if
 - (a) the estate or interest was previously vested in a former water authority or the State; and
 - (b) the estate or interest is, or is to be, used by the Water Corporation for the purposes of this Act or the Water Services Act.
- (3) The Minister may, by order published in the *Gazette*, direct that the care, control and management of a reserve (as defined in the *Land Administration Act 1997* section 3(1)) specified in the order is to be placed with the Water Corporation under the *Land Administration Act 1997* section 46, if
 - (a) the care, control and management of the reserve was previously placed with a former water authority under that section; and
 - (b) the reserve is, or is to be, used by the Water Corporation for the purposes of this Act or the Water Services Act.
- (4) An order takes effect
 - (a) at the beginning of the day after the day on which the order is published in the *Gazette*; or
 - (b) if a later day is specified in the order at the beginning of that day.
- (5) When an order takes effect —

Miscellaneous

- in the case of an order under subsection (2) each (a) estate or interest in land specified in the order vests in the Water Corporation by force of this paragraph; or
- in the case of an order under subsection (3) the care. (b) control and management of each reserve specified in the order is, by force of this paragraph, placed with the Water Corporation as if it were so placed under the Land Administration Act 1997 section 46.
- (6) The Minister must give a copy of the order to each relevant official who must do all things necessary to show the effect of subsection (5)(a) or (b), as the case requires.

[Section 92 inserted: No. 25 of 2012 s. 163.]

93. **Review of Act**

- The Minister must carry out a review of the operation and (1) effectiveness of this Act as soon as practicable after every fifth anniversary of the commencement of the Water Services Legislation Amendment and Repeal Act 2012 section 163, and in the course of that review the Minister must consider and have regard to —
 - (a) the adequacy of the penalties imposed under this Act;
 - (b) any other matter that appears to the Minister to be relevant to the operation and effectiveness of this Act.
- (2) The Minister must prepare a report based on the review carried out under subsection (1) and, as soon as practicable after the preparation of the report, cause it to be laid before each House of Parliament.

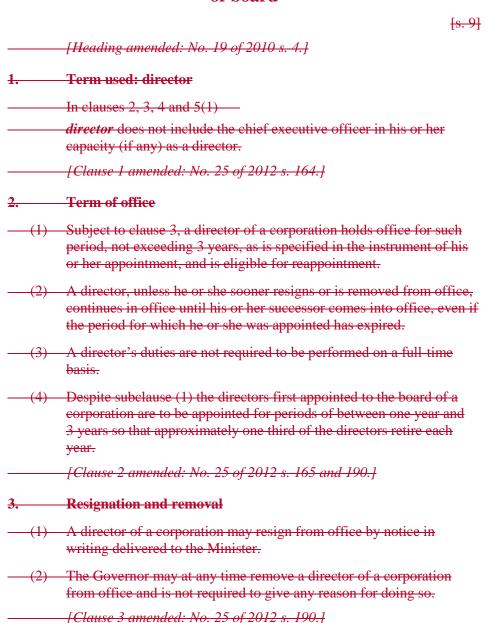
[Section 93 inserted: No. 25 of 2012 s. 163.]

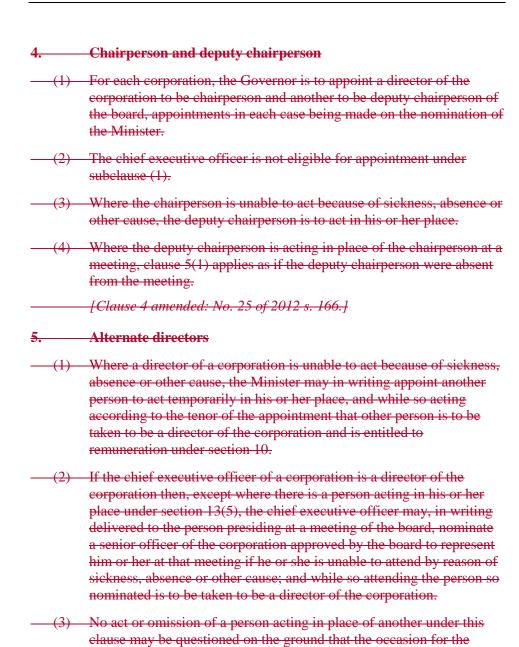
94. **Transitional provisions**

Schedule 5 sets out transitional provisions.

[Section 94 inserted: No. 25 of 2012 s. 163.]

Schedule 1 — Provisions as to constitution and proceedings of board





appointment or acting had not arisen or had ceased.

[Clause 5 amended: No. 25 of 2012 s. 167.]

6. Meetings

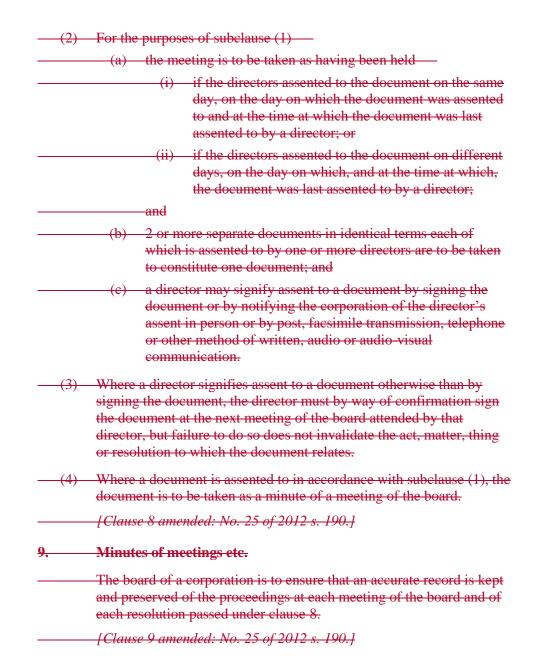
- (1) The first meeting of the board of a corporation is to be convened by the chairperson and, subject to subclause (2), subsequent meetings are to be held at such times and places as the board determines.
- (2) A special meeting of the board of a corporation may at any time be convened by the chairperson or any 2 directors.
- (3) The chairperson, or the deputy chairperson acting under clause 4(3), is to preside at all meetings of the board at or in which he or she is present, or participating under clause 7.
- (4) If both the chairperson and the deputy chairperson are not present or participating, the directors present or participating are to appoint a director to preside.
- (5) At any meeting of the board of a corporation—
 - (a) 3 directors constitute a quorum; and
 - (b) in the case of an equality of votes the person presiding has a casting vote in addition to his or her deliberative vote.
 - [Clause 6 amended: No. 25 of 2012 s. 190.]

7. Telephone and video meetings

Despite anything in this Schedule, a communication between directors constituting a quorum under clause 6(5)(a) by telephone or audio visual means is a valid meeting of directors, but only if each participating director is capable of communicating with every other participating director instantaneously at all times during the proceedings.

8. Resolution may be passed without meeting

(1) If a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed is sent or given to all directors of a corporation and is assented to by not less than 3 directors that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the board of the corporation.



10.	Leave of absence
	The board of a corporation may, on such terms and conditions as it thinks fit, grant to a director leave of absence from a meeting, including the meeting at which it is intended to grant the leave.
	[Clause 10 amended: No. 25 of 2012 s. 190.]
11.	Board to determine own procedures
	Subject to this Act, the board of a corporation may determine its own procedures.
	[Clause 11 amended: No. 25 of 2012 s. 190.]

Schedule 2 — Provisions as to duties of directors and related provisions

[s. 20, 21, 22 and 23]

[Heading amended: No. 19 of 2010 s. 4.]

Division 1 — Preliminary

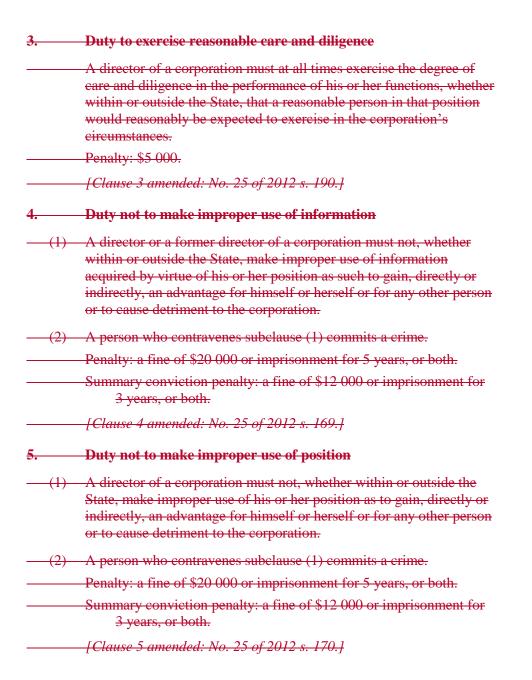
1. Interpretation

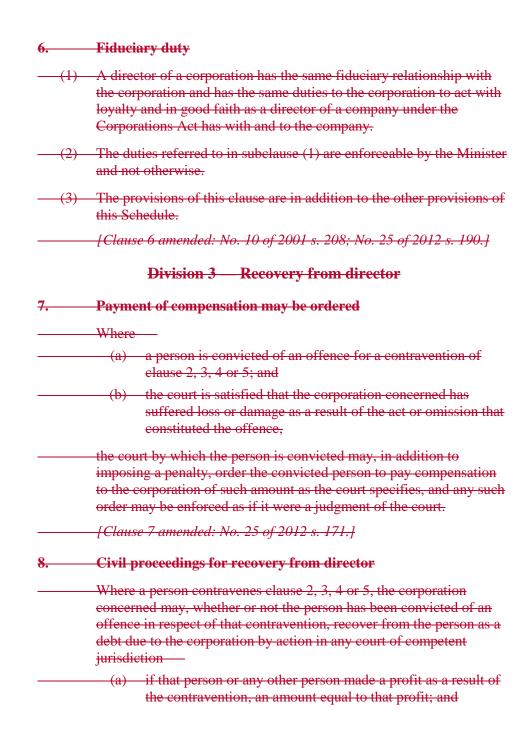
A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Schedule is guilty of that offence.

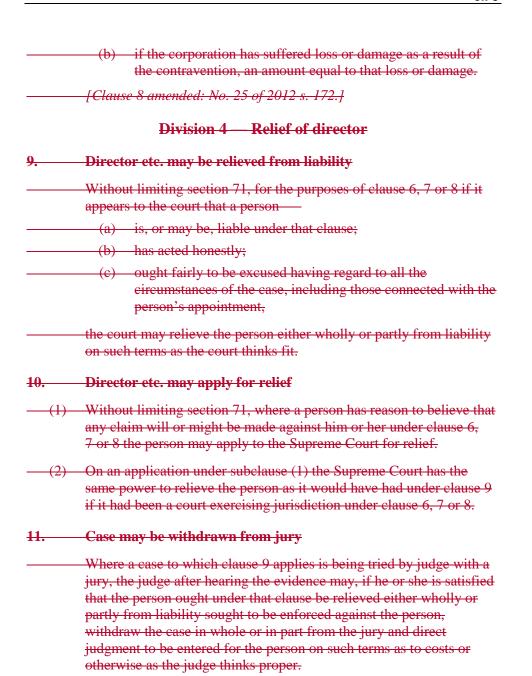
Division 2 — Certain duties stated

2. Duty to act honestly

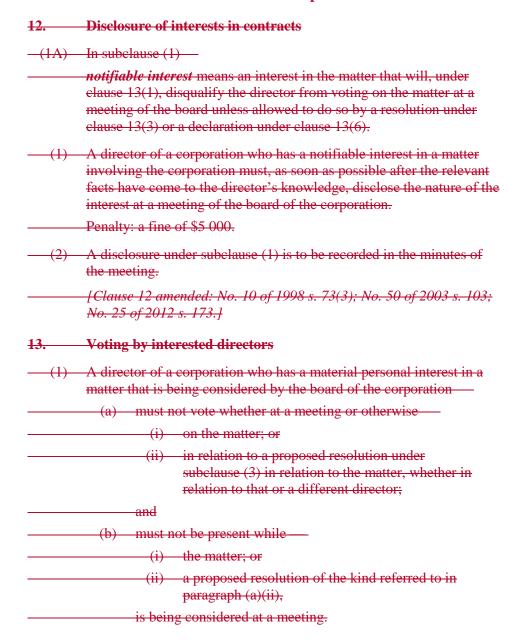
- (1) A director of a corporation must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.
- (2) A person who contravenes subclause (1)
- (a) with intent to deceive or defraud
 - (i) the corporation; or
- (ii) creditors of the corporation or of any other person;
- (b) for any other fraudulent purpose,
- commits a crime.
- Penalty: a fine of \$20 000 or imprisonment for 5 years, or both.
- Summary conviction penalty: a fine of \$12 000 or imprisonment for 3 years, or both.
- (3) If subclause (2) does not apply, a person who contravenes subclause (1) commits an offence.
- Penalty: a fine of \$5 000.
- [Clause 2 amended: No. 25 of 2012 s. 168.]

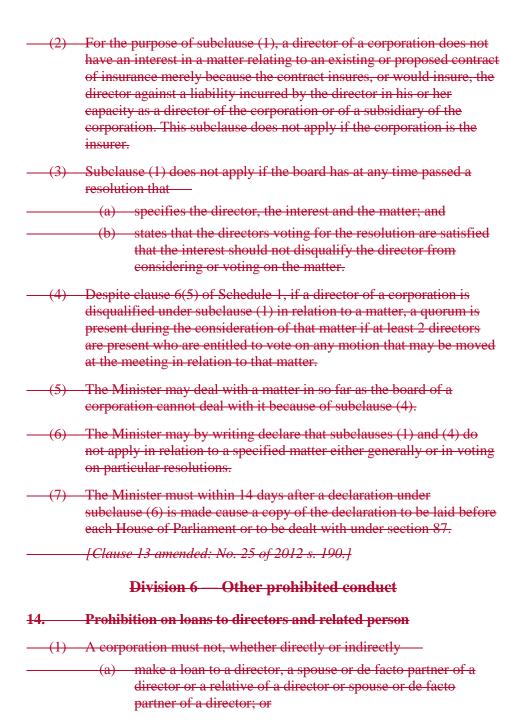


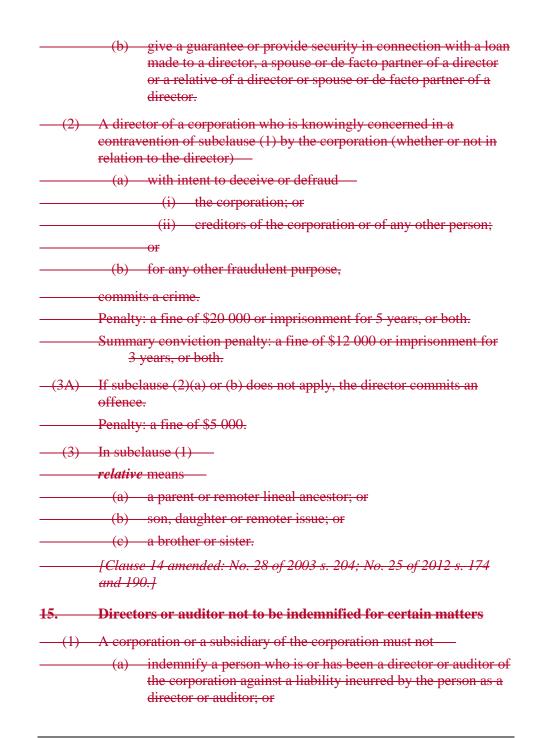


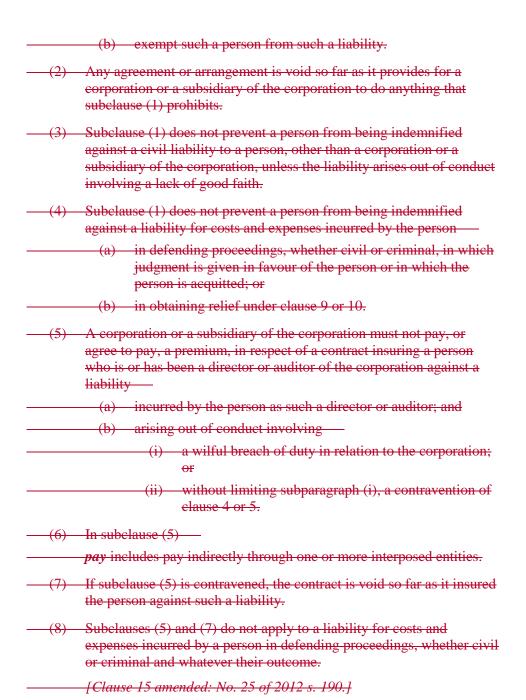


Division 5 — **Disclosure etc. of personal interests**







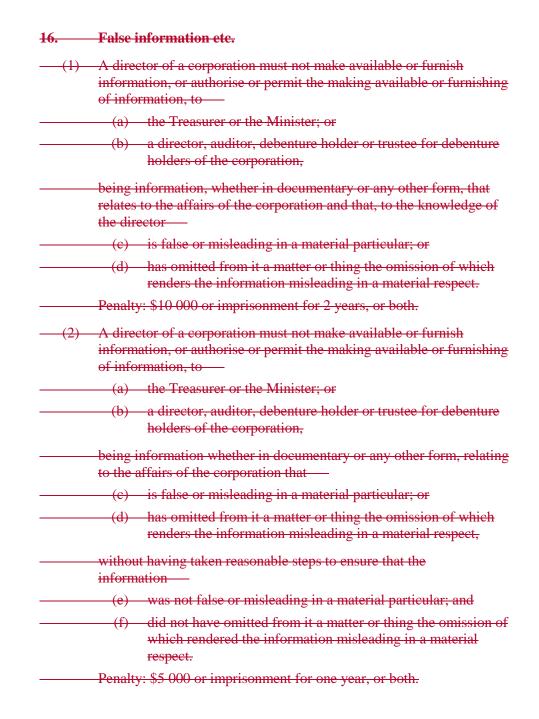


Schedule 2

Provisions as to duties of directors and related provisions

Division 6

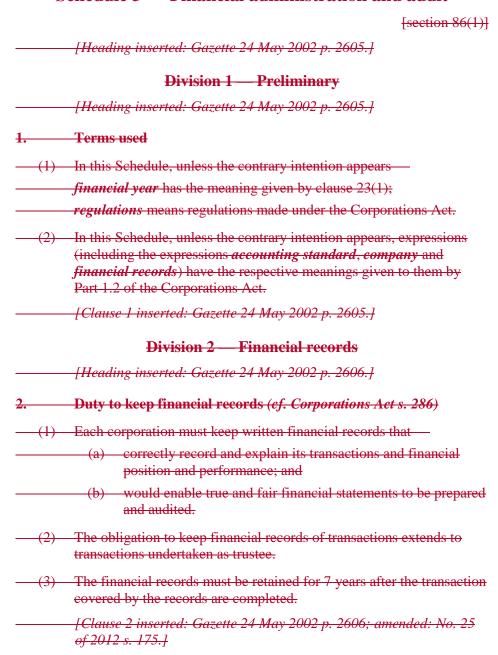
Other prohibited conduct

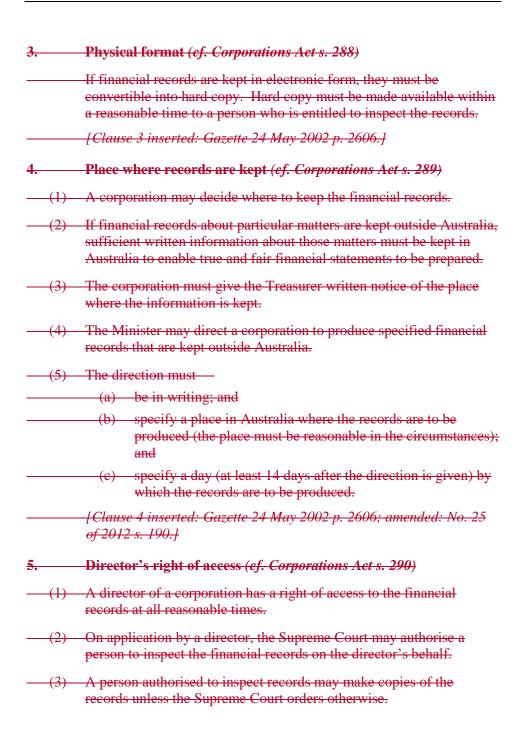


- (3) The references in subclauses (1) and (2) to a director of a corporation making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of the corporation include references to a director making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that director with respect to the affairs of the corporation.
- (4) Where information is made available or furnished to a person referred to in subclause (1)(a) or (b) or (2)(a) or (b) in response to a question asked by that person, the question and information are to be considered together in determining whether the information was false or misleading.

[Clause 16 amended: No. 25 of 2012 s. 190.]

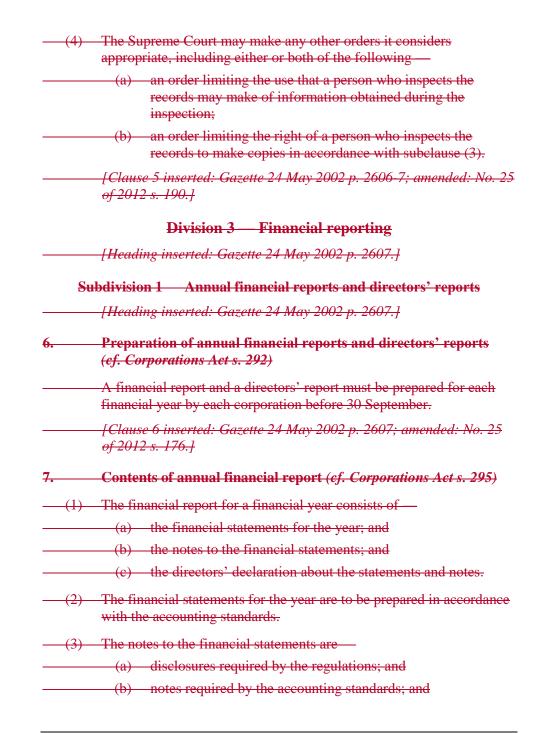
Schedule 3 — Financial administration and audit

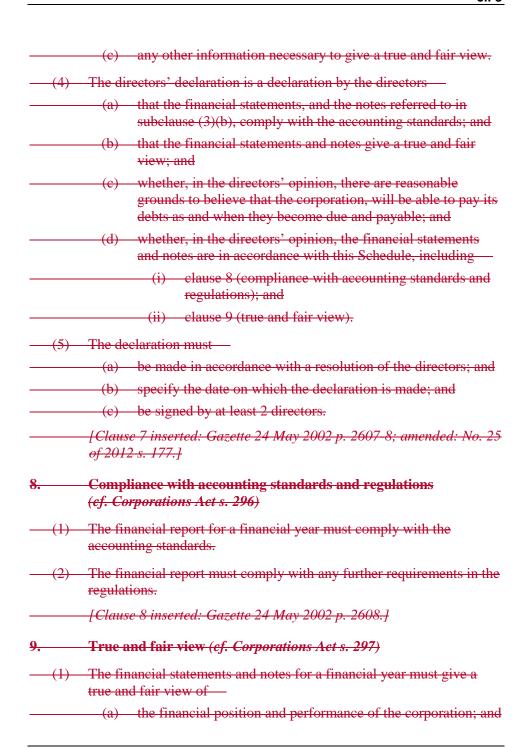




Schedule 3 Financial administration and audit

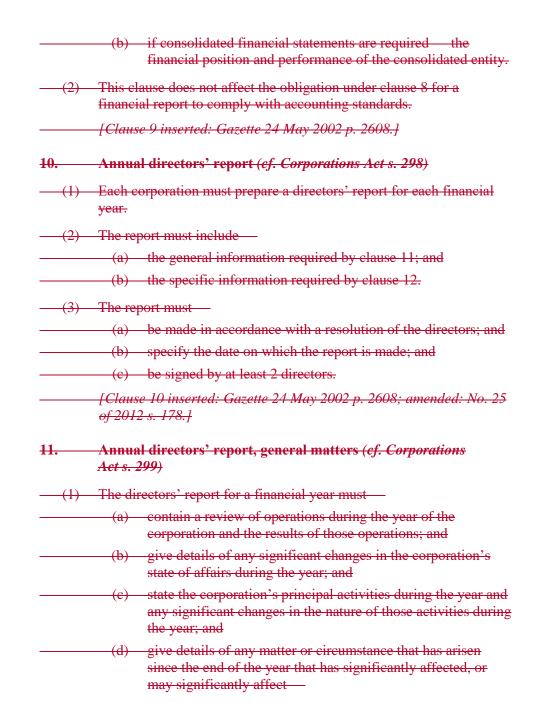
Division 3 Financial reporting





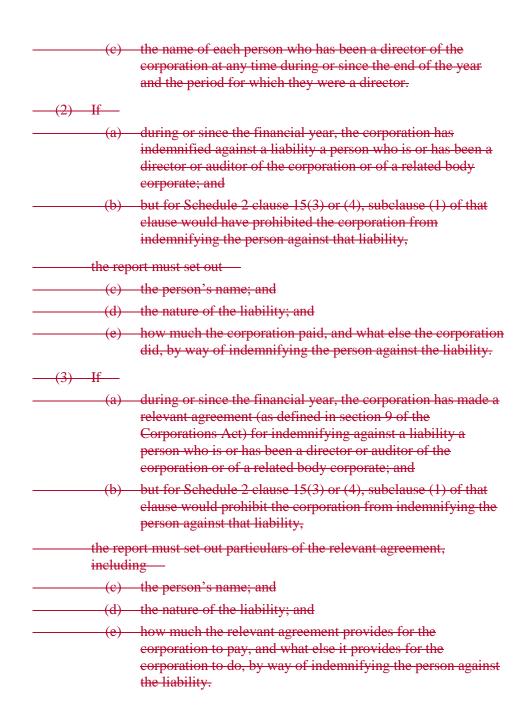
Schedule 3 Financial administration and audit

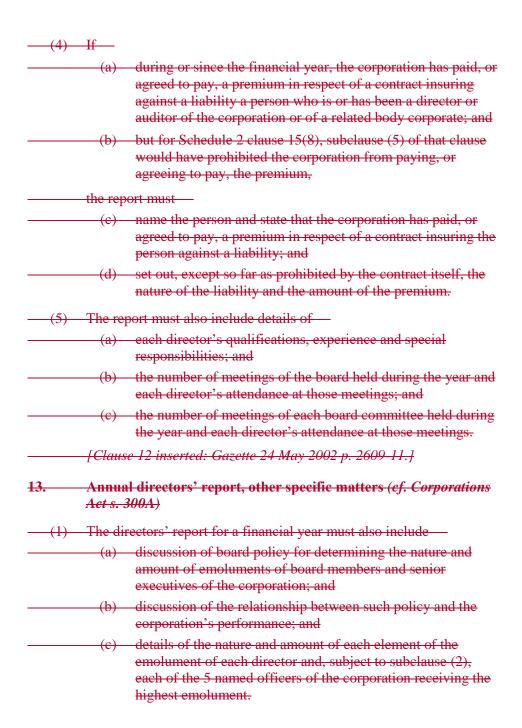
Division 3 Financial reporting

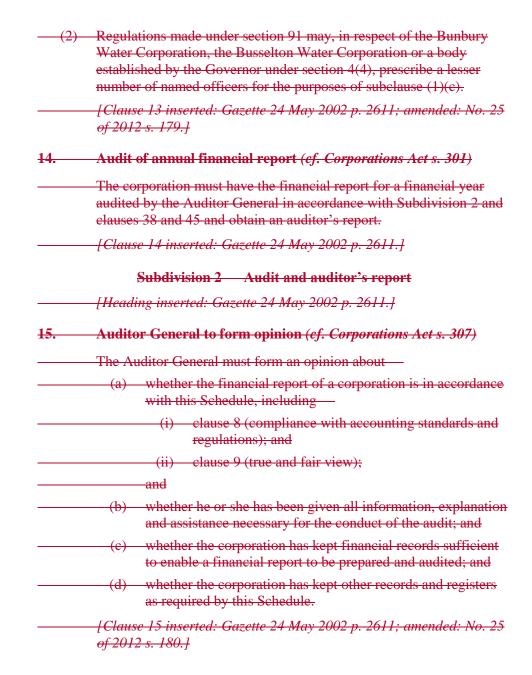


(i) the corporation's operations in future financial years; or
(ii) the results of those operations in future financial years; or
(iii) the corporation's state of affairs in future financial years;
and
(e) refer to likely developments in the corporation's operations in future financial years and the expected results of those operations; and
(f) if the corporation's operations are subject to any particular and significant environmental regulation under a law of the State or of the Commonwealth or of another State or a Territory—give details of the corporation's performance in relation to environmental regulation.
(2) If accounting standards require consolidated financial statements, the report must be on the consolidated entity of which the corporation is part.
— (3) The report may omit material that would otherwise be included under subclause (1)(e) if it is likely to result in unreasonable prejudice to—
(a) the corporation; or
(b) if consolidated financial statements are required—the consolidated entity or any entity (including the corporation) that is part of the consolidated entity.
— (4) If material is omitted from the report, the report must say so.
[Clause 11 inserted: Gazette 24 May 2002 p. 2608-9.]
12. Annual directors' report, specific matters (cf. Corporations Act s. 300)
(1) The directors' report for a financial year must include details of
(a) dividends or distributions paid during the year; and
(b) dividends or distributions recommended or declared for payment, but not paid, during the year; and

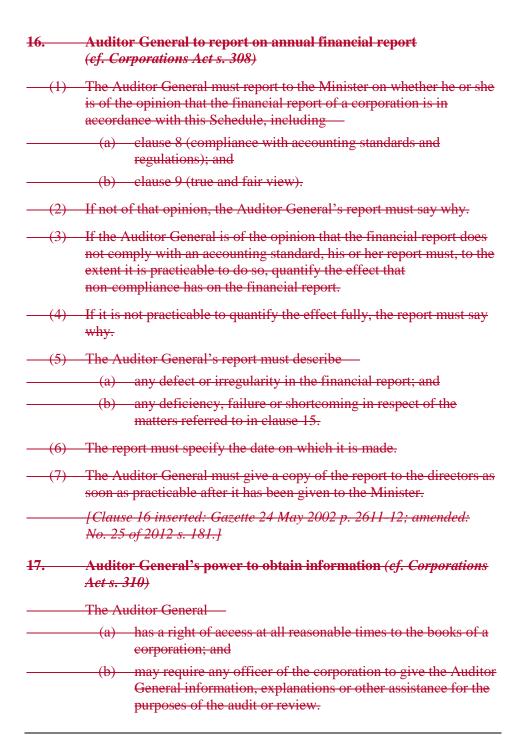






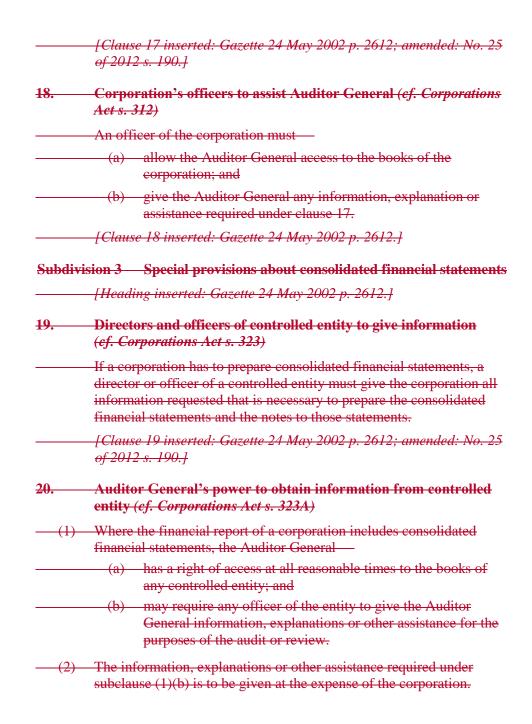


Division 3



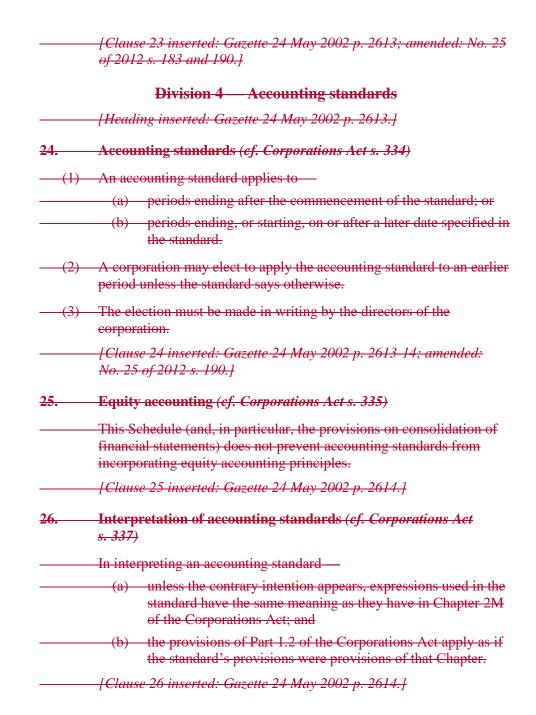
Schedule 3 Financial administration and audit

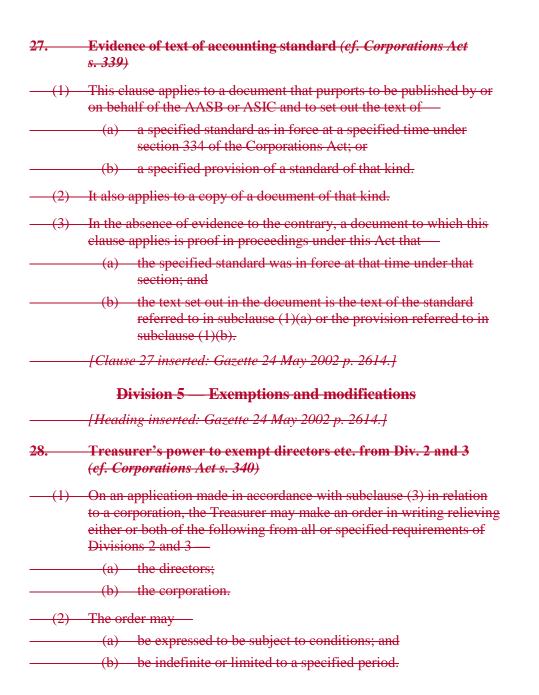
Division 3 Financial reporting

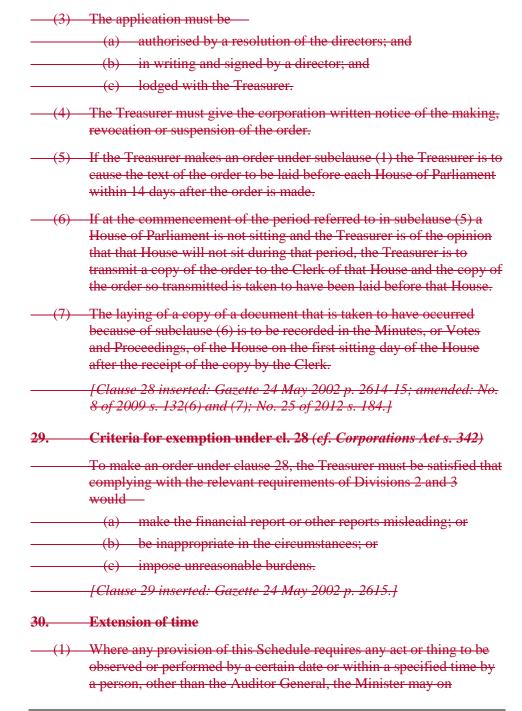


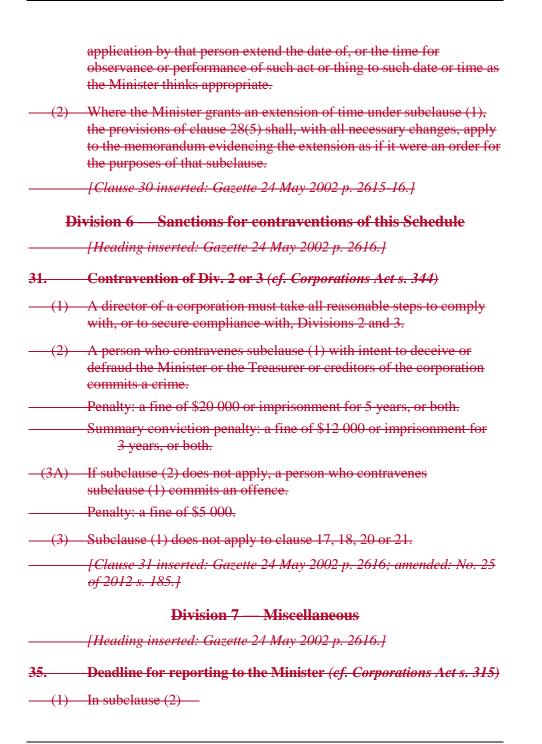
	[Clause 20 inserted: Gazette 24 May 2002 p. 2613; amended: No. 25
	of 2012 s. 182.]
21.	Controlled entity to assist the Auditor General (cf. Corporations Act s. 323B)
	If a corporation has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must
	(a) allow the Auditor General access to the controlled entity's books; and
	 (b) give the Auditor General any information, explanation or assistance required under clause 20.
	[Clause 21 inserted: Gazette 24 May 2002 p. 2613; amended: No. 25 of 2012 s. 190.]
22.	Application of subdivision to entity that has ceased to be controlled (cf. Corporations Act s. 323C)
	Clauses 19, 20 and 21 apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the corporation when its financial report is being prepared or audited.
	[Clause 22 inserted: Gazette 24 May 2002 p. 2613.]
Sul	bdivision 4 — Financial years of the corporation and the entities it controls
	[Heading inserted: Gazette 24 May 2002 p. 2613.]
23.	Financial years (cf. Corporations Act s. 323D)
(1)	The financial year of each corporation is the 12 month period ending on 30 June.
(2)	Where a corporation has to prepare consolidated financial statements, it must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years.
(3)	It must achieve this synchronisation by the end of 12 months after the

situation that calls for consolidation arises.



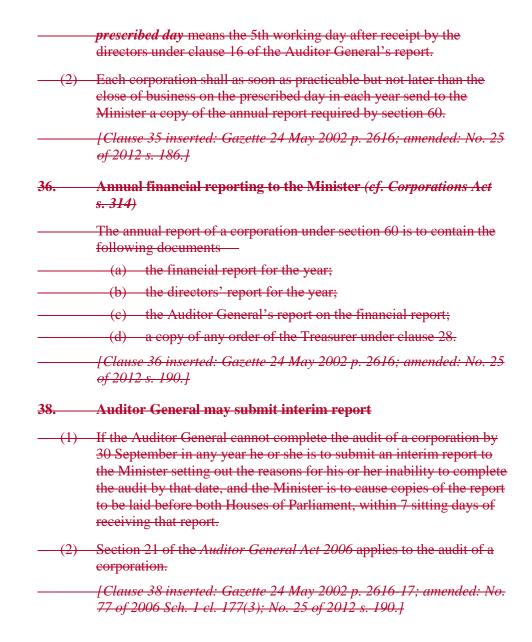




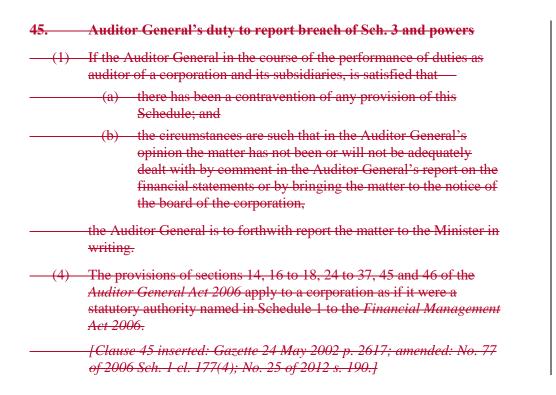


Schedule 3 Financial administration and audit

Division 7 Miscellaneous



Miscellaneous



Schedule 4—Provisions to be included in articles of association of subsidiaries

[s. 31]

[Heading amended: No. 19 of 2010 s. 4.] 1. Disposal of shares (1) The corporation is not to sell or otherwise dispose of shares in the subsidiary other than as approved by the Minister. (2) The Minister is empowered to execute a transfer of any shares in the subsidiary held by the corporation. 2. Directors (1) The directors of the subsidiary are to be appointed by the corporation, but no such director may be appointed except with the prior written approval of the Minister. (2) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the corporation and the subsidiary. (3) The board of the subsidiary is accountable to the Minister in the manner set out in Part 4 and in the constitution of the subsidiary. [Clause 2 amended: No. 25 of 2012 s. 187.] 3. Further shares Shares may not be issued or transferred except with the prior written approval of the Minister. 4. Subsidiaries of subsidiary (1) The subsidiary may not form, participate in the formation of, or acquire any subsidiary without the prior written approval of the Minister.

(2) The subsidiary must ensure that the constitution of each of its

subsidiaries at all times comply with this Act.

s. 94

(3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of this Act.

[Clause 4 amended: No. 25 of 2012 s. 188.]

[Schedules 1-4 deleted: No. 13 of 2023 s. 276.]

Division 1

cl. 1

Schedule 5 — Transitional provisions

[s. 94]

[Heading inserted: No. 25 of 2012 s. 189.]

Division 1 — Transitional provisions relating to Water Services Legislation Amendment and Repeal Act 2012

[Heading inserted: No. 25 of 2012 s. 189.]

Subdivision 1 — Preliminary

[Heading inserted: No. 25 of 2012 s. 189.]

1. Terms used

In this Division —

amended Act means this Act as amended by the Water Services Legislation Amendment and Repeal Act 2012 Part 7;

Bunbury Water Board means the Bunbury Water Board constituted under the repealed Act;

Busselton Water Board means the Busselton Water Board constituted under the repealed Act;

commencement day means the day on which the Water Services Legislation Amendment and Repeal Act 2012 section 110 comes into operation;

corporation means —

- (a) the Bunbury Water Corporation; or
- (b) the Busselton Water Corporation;

former Board means —

- (a) the Bunbury Water Board; or
- (b) the Busselton Water Board;

relevant corporation, in relation to a former Board, means the corporation that is a continuation of the former Board under clause 3 or 4;

repealed Act means the Water Boards Act 1904.

[Clause 1 inserted: No. 25 of 2012 s. 189.]

Water Corporations Act 1995

Schedule 5 Transitional provisions

Division 1 Transitional provisions relating to Water Services Legislation

Amendment and Repeal Act 2012

cl. 2

2. Application of Interpretation Act 1984

- (1) If a provision of the amended Act deals with a matter dealt with by a provision of the repealed Act, then for the purposes of the provisions of the *Interpretation Act 1984* about the repeal of enactments and the substitution of other enactments for those so repealed
 - (a) the provision of the repealed Act is to be taken to have been repealed and re-enacted by the amended Act; and
 - (b) a reference to the commencement of the repealing law is to be taken to be a reference to commencement day.
- (2) Despite subclause (1), the *Interpretation Act 1984* sections 36(d) (to the extent to which it applies to subsidiary legislation) and 38 do not apply to the repeal of the *Water Boards Act 1904* by the *Water Services Legislation Amendment and Repeal Act 2012* section 201.
- (3) This Division does not limit the operation of the *Interpretation Act 1984* except to the extent provided for by this clause.
- (4) The provisions of this Division and of the regulations made for the purposes of this Division prevail over the provisions of the *Interpretation Act 1984* to the extent of any inconsistency.

[Clause 2 inserted: No. 25 of 2012 s. 189.]

Subdivision 2 — Continuation of former Boards

[Heading inserted: No. 25 of 2012 s. 189.]

3. Bunbury Water Board continues

- (1) The Bunbury Water Corporation is a continuation of, and is the same legal entity as, the Bunbury Water Board, and rights and liabilities of or in relation to the Bunbury Water Board continue as rights and liabilities of or in relation to the Bunbury Water Corporation.
- (2) On commencement day, the name "Aqwest" becomes a trading name of the Bunbury Water Corporation, as if approved by the Minister under section 5A(3) of the amended Act.

[Clause 3 inserted: No. 25 of 2012 s. 189.]

4. Busselton Water Board continues

- (1) The Busselton Water Corporation is a continuation of, and is the same legal entity as, the Busselton Water Board, and rights and liabilities of or in relation to the Busselton Water Board continue as rights and liabilities of or in relation to the Busselton Water Corporation.
- (2) On commencement day, the name "Busselton Water" becomes a trading name of the Busselton Water Corporation, as if approved by the Minister under section 5A(3) of the amended Act.

[Clause 4 inserted: No. 25 of 2012 s. 189.]

5. Members of former Boards

- (1) A person who, immediately before commencement day, was a member of a former Board becomes, on commencement day
 - (a) a director of the board of the relevant corporation as if appointed by the Governor, on the nomination of the Minister, under section 7 of the amended Act; and
 - (b) if the person was, immediately before commencement day, the chairman of the former Board — the chairperson of the board of the relevant corporation as if appointed by the Governor, on the nomination of the Minister, under Schedule 1 clause 4 of the amended Act.
- (2) A person to whom subclause (1) applies holds office, subject to the amended Act, until the expiration of the term of office, and on the same terms and conditions, that applied to the person immediately before commencement day.

[Clause 5 inserted: No. 25 of 2012 s. 189.]

6. Operating licences of former Boards

- (1) An operating licence held by a former Board under the *Water Services Licensing Act 1995* ¹ immediately before commencement day (the *former licence*) becomes, on commencement day, a licence under the Water Services Act as if granted under section 11 of that Act.
- (2) The licence remains in force until the day on which the former licence would have expired.

Water Corporations Act 1995

Schedule 5 Transitional provisions

Division 1 Transitional provisions relating to Water Services Legislation

Amendment and Repeal Act 2012

cl. 7

- (3) The licence authorises the provision of water supply services in the area of the State to which the former licence applied immediately before commencement day.
- (4) For the purposes of the Water Services Act, the area of the State referred to in subclause (3) is the operating area of the licence for the provision of water supply services.
- (5) The licence is subject to the same terms and conditions as those to which the former licence was subject immediately before commencement day, to the extent that those terms and conditions are not inconsistent with the Water Services Act.
- (6) The licence has effect subject to the Water Services Act and so, for example, the licence may be cancelled or amended.

[Clause 6 inserted: No. 25 of 2012 s. 189.]

- 7. Supply of water to Water Corporation under Busselton Water Board (Supply of Water to Dunsborough) Act 2009
 - (1) This clause applies to a supply of water to the Water Corporation under the *Busselton Water Board (Supply of Water to Dunsborough)*Act 2009 (before the repeal of that Act) that is to continue on and after commencement day.
 - (2) The repeal of the Busselton Water Board (Supply of Water to Dunsborough) Act 2009 does not affect
 - (a) the supply of water; or
 - (b) any agreement about the supply of water; or
 - (c) anything to be done under, for or in relation to such an agreement or the supply of water.
 - (3) The supply of water becomes, on commencement day, a supply of water under the amended Act.

[Clause 7 inserted: No. 25 of 2012 s. 189.]

Subdivision 3 — Staff of former Boards

[Heading inserted: No. 25 of 2012 s. 189.]

8. Term used: PSM Act

- (1) In this Subdivision
 - **PSM Act** means the *Public Sector Management Act 1994*.
- (2) If a term has a meaning given in the PSM Act, it has the same meaning in this Subdivision.
- (3) In this Subdivision a reference to the PSM Act Part 6 includes the regulations referred to in section 94 of that Act.

[Clause 8 inserted: No. 25 of 2012 s. 189.]

9. Transition of employment

- (1) A person who, immediately before commencement day, was an officer of a former Board under section 31 of the repealed Act becomes, on commencement day
 - (a) if the person was the chief executive officer of the former Board the chief executive officer of the relevant corporation as if appointed by the board of the corporation, with the concurrence of the Minister, under section 13 of the amended Act; or
 - (b) if paragraph (a) does not apply a member of staff of the relevant corporation as if engaged by the board of the corporation under section 15 of the amended Act.
- (2) Except as otherwise agreed by a person to whom subclause (1) applies, the person's remuneration, existing, accruing or accrued rights, rights under a superannuation scheme or fund and continuity of service are not affected, prejudiced or interrupted by the operation of subclause (1) or the former Board ceasing to be an organisation under the PSM Act.
- (3) For the purposes of this clause, a person's service with a former Board is to be taken to have been with the relevant corporation.

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Schedule 5 Transitional provisions

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Amendment and Repeal Act 2012

cl. 10

(4) Except as provided by clause 11, the PSM Act Part 6 does not apply in relation to the transition of the employment of a person by this clause.

[Clause 9 inserted: No. 25 of 2012 s. 189.]

10. Election as to employment

- (1) A person who becomes a member of staff of a corporation because of clause 9(1)(b) may, by written notice given to the corporation, elect to return to the Public Sector.
- (2) A person cannot make an election if, immediately before commencement day, the person was
 - (a) employed under a contract of employment that has a fixed term; or
 - (b) a casual employee or a seasonal employee.
- (3) A person cannot make an election after the end of the period of 2 years after commencement day.
- (4) A person may withdraw an election at any time by giving the corporation written notice to that effect.
- (5) A person who makes an election and then withdraws it cannot make another election.

[Clause 10 inserted: No. 25 of 2012 s. 189.]

11. Application of PSM Act Part 6 to persons who make an election

- (1) If a person makes an election under clause 10(1), the PSM Act Part 6 applies in respect of the person until
 - (a) the person is employed for an indefinite period in a public sector body in accordance with that Part; or
 - (b) the person otherwise ceases to be a member of staff of the corporation; or
 - (c) the person withdraws the election under clause 10(4),

whichever occurs first.

Transitional provisions relating to Water Services Legislation Amendment and Repeal Act 2012

cl. 12

- (2) While the PSM Act Part 6 applies in respect of the person under subclause (1), it applies, with any necessary changes, as if
 - (a) the person were an employee of an organisation whose office, post or position in the organisation has been abolished; and
 - (b) the office, post or position was at the same level of classification as the substantive office, post or position held by the person immediately before commencement day; and
 - (c) the board of the corporation were the employing authority of the person; and
 - (d) the person were registered under the *Public Sector Management (Redeployment and Redundancy)*Regulations 1994 Part 4.

[Clause 11 inserted: No. 25 of 2012 s. 189.]

12. Arrangements for return to Public Sector

- (1) If a person makes an election under clause 10(1) or withdraws an election under clause 10(4), the corporation, as soon as practicable, must give the Public Sector Commissioner written notice of the election or the withdrawal, as the case requires.
- (2) If a person makes an election under clause 10(1), the corporation and the Public Sector Commissioner must make the necessary arrangements to facilitate the operation of clause 11 in respect of the person.
- (3) Subclause (4) applies if a person who makes an election under clause 10(1) is employed for an indefinite period in a public sector body in accordance with the PSM Act Part 6 as applied by clause 11.
- (4) The corporation must comply with any requirements in the Treasurer's instructions issued under the *Financial Management Act 2006* section 78 relating to the making of payments by an employing authority for liabilities relating to employees whose employing authority changes as if
 - (a) the corporation were an employing authority to which those instructions applied; and

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Amendment and Repeal Act 2012

cl. 13

- (b) the person were an employee to whom those instructions applied.
- (5) If a corporation incurs costs as a result of the operation of this clause or clause 10 or 11, the Treasurer may pay an amount to the corporation to reimburse the corporation for any or all of those costs.

[Clause 12 inserted: No. 25 of 2012 s. 189.]

13. Contracts for services

- (1) A person engaged by a former Board under a contract for services that is in force immediately before commencement day becomes, on commencement day, a person engaged by the relevant corporation as if engaged under section 29(2)(f) of the amended Act.
- (2) Except as otherwise agreed by the person engaged under the contract, the operation of subclause (1) does not affect the terms and conditions of the contract.

[Clause 13 inserted: No. 25 of 2012 s. 189.]

Subdivision 4 — Provisions as to accountability and financial provisions

[Heading inserted: No. 25 of 2012 s. 189.]

14. Strategic development plans

The first strategic development plan for a corporation under Part 4 Division 1 is to be in respect of a period starting on the day prescribed for the corporation for the purposes of this clause.

[Clause 14 inserted: No. 25 of 2012 s. 189.]

15. Statements of corporate intent

The first statement of corporate intent for a corporation under Part 4 Division 2 is to be in respect of the financial year prescribed for the corporation for the purposes of this clause.

[Clause 15 inserted: No. 25 of 2012 s. 189.]

16. Financial reporting

- (1) The first financial year in respect of which the reporting requirements in Part 4 Division 3 apply to a corporation is to be the financial year prescribed for the corporation for the purposes of this clause.
- (2) The *Financial Management Act 2006* Part 5 Division 2 continues to apply to a corporation in respect of the financial years ending before the financial year prescribed for the corporation under subclause (1) as if the *Water Services Legislation Amendment and Repeal Act 2012* section 212 had not been enacted.

[Clause 16 inserted: No. 25 of 2012 s. 189.]

17. Water funds

(1) In this clause —

bank has the meaning given in the *Financial Management Act* 2006 section 3.

(2) An account that, immediately before commencement day, was maintained by a former Board at a bank for the purposes of section 111 of the repealed Act becomes, on commencement day, an account for the relevant corporation under section 73(1)(b) of the amended Act as if established under that section with the approval of the Treasurer.

[Clause 17 inserted: No. 25 of 2012 s. 189.]

18. Payments to State under Part 5 Div. 2

- (1) The first financial year in respect of which section 76 applies to a corporation is to be the financial year prescribed for the corporation for the purposes of this subclause.
- (2) The first financial year in respect of which section 79 applies to a corporation is to be the financial year prescribed for the corporation for the purposes of this subclause.

[Clause 18 inserted: No. 25 of 2012 s. 189.]

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Schedule 5 Transitional provisions

Division 1 Transitional provisions relating to Water Services Legislation

Amendment and Repeal Act 2012

cl. 19

Subdivision 5 — Miscellaneous

[Heading inserted: No. 25 of 2012 s. 189.]

19. References to former Boards

Unless the context otherwise requires, a reference in a written law or other document or instrument to a former Board includes a reference to the relevant corporation.

[Clause 19 inserted: No. 25 of 2012 s. 189.]

20. References to repealed Act

- (1) Unless the context otherwise requires, a reference in a written law or other document or instrument to the repealed Act includes a reference to the amended Act.
- (2) Unless the context otherwise requires, a reference in a written law or other document or instrument to a provision of the repealed Act (the *old provision*) includes, if there is a provision of the amended Act (the *new provision*) that deals with the matter dealt with by the old provision, a reference to the new provision.

[Clause 20 inserted: No. 25 of 2012 s. 189.]

21. Transitional regulations

- (1) The regulations may
 - (a) deal with all matters of a savings or transitional nature arising as a result of the enactment of the *Water Services Legislation Amendment and Repeal Act 2012* Part 7 and of section 201; and
 - (b) clarify or vary the provisions of this Division; and
 - (c) amend or repeal subsidiary legislation consequentially on enactment of the *Water Services Legislation Amendment and Repeal Act 2012* Part 7 and of section 201.

Transitional provisions relating to Water Services Legislation Amendment and Repeal Act 2012

cl. 21

- (2) Regulations made for the purposes of this clause may
 - (a) be expressed to have effect despite another written law; and
 - (b) provide that a specified provision of a written law does not apply, or applies with specified modifications, to or in relation to a matter.
- (3) The power in this clause to amend subsidiary legislation made under another Act does not prevent that legislation from being amended under that Act.
- (4) If regulations made for the purposes of this clause provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than commencement day, the regulations have effect according to their terms.
- (5) If regulations contain a provision referred to in subclause (4), the provision does not operate so as to
 - (a) affect, in a manner prejudicial to any person (other than the State, an authority of the State or a local government), the rights of that person existing before the day of publication of those regulations; or
 - (b) impose liabilities on any person (other than the State, an authority of the State or a local government) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Regulations made for the purposes of this clause in relation to a matter referred to in subclause (2) must be made within such period as is reasonably and practicably necessary to deal with the transitional matters that arise as a result of the enactment of the *Water Services Legislation Amendment and Repeal Act 2012* Part 7 and of section 201.

[Clause 21 inserted: No. 25 of 2012 s. 189.]

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Schedule 5 Transitional provisions

Division 1 Transitional provisions relating to Water Services Legislation

Amendment and Repeal Act 2012

cl. 22

22. Relationship of provisions of this Division to transitional regulations

The provisions of the regulations made for the purposes of this Division prevail over the provisions of this Division to the extent of any inconsistency.

[Clause 22 inserted: No. 25 of 2012 s. 189.]

Notes

This is a compilation of the *Water Corporations Act 1995* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Water Corporation Act 1995 ²	70 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2 and Gazette 29 Dec 1995 p. 6291)
State Enterprises (Commonwealth Tax Equivalents) Act 1996 s. 10(4)	55 of 1996	11 Nov 1996	1 Jul 1996 (see s. 2 and 3(3))
Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 73	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Acts Amendment and Repeal (Financial Sector Reform) Act 1999 s. 110	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 70	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
Reprint of the <i>Water Corporation Act 1995</i> as at 4 May 2001 (includes amendments listed above)			
Corporations (Consequential Amendments) Act 2001 Pt. 54	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth. <i>Gazette</i> 13 Jul 2001 No. S285)
Water Corporation (Act Amendment) Regulations 2002 published in Gazette 24 May 2002 p. 2605-17			1 Jul 2002 (see r. 2)
Labour Relations Reform Act 2002 s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)

Short title	Number and year	Assent	Commencement	
Corporations (Consequential Amendments) Act (No. 3) 2003 Pt. 16 ³	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth. <i>Gazette</i> 24 Oct 2001 No. GN42)	
Acts Amendment (Equality of Status) Act 2003 Pt. 59	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)	
Sentencing Legislation Amendment and Repeal Act 2003 s. 103	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)	
Labour Relations Reform (C Regulations 2003 r. 21 publi p. 3685-92	15 Sep 2003 (see r. 2)			
Economic Regulation Authority Act 2003 Sch. 2 Div. 17	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)	
Statutes (Repeals and Minor Amendments) Act 2003 s. 127 ⁴	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)	
Reprint 2: The Water Corp listed above)	poration Act 1	995 as at 2 Jul	2004 (includes amendments	
Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 15 Div. 3	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)	
Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1), 14 and Sch. 1 cl. 177	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)	
Water Resources Legislation Amendment Act 2007 Pt. 7 ⁵	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251)	
Reprint 3: The Water Corp listed above)	poration Act 1	995 as at 4 Jul	2008 (includes amendments	
Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 132	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))	

Short title	Number and year	Assent	Commencement	
Standardisation of Formatting Act 2010 s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)	
Public Sector Reform Act 2010 s. 87	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)	
Water Services Legislation Amendment and Repeal Act 2012 Pt. 7	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5028)	
Reprint 4: The <i>Water Corporations Act 1995</i> as at 7 Feb 2014 (includes amendments listed above)				
Associations Incorporation Act 2015 s. 231	30 of 2015	2 Nov 2015	1 Jul 2016 (see s. 2(b) and Gazette 24 Jun 2016 p. 2291-2)	
Executive Officer Remuneration (Government Entities) Legislation Amendment Act 2016 Pt. 3 Div. 6	46 of 2016	7 Dec 2016	8 Dec 2016 (see s. 2(b))	

Uncommenced provisions table

To view the text of the uncommenced provisions see Acts as passed on the WA Legislation website.

Short title	Number and year	Assent	Commencement
Government Trading Enterprises Act 2023 Pt. 12 Div. 9	13 of 2023	22 Jun 2023	To be proclaimed 1 Jul 2023 (see s. 2(b))) and SL 2023/89 cl. 2)

Other notes

- Now known as the *Plumbers Licensing Act 1995*.
- Now known as the *Water Corporations Act 1995*; short title changed (see note under s. 1).
- The Corporations (Consequential Amendments) Act (No. 3) 2003 s. 4 is a validation provision.
- The amendment in the *Statutes (Repeals and Minor Amendments) Act 2003* s. 127(5) is not included because the Schedule it sought to amend had been

replaced in Gazette 24 May 2002 p. 2605-17 before the amendment purported to come into operation.

The Water Resources Legislation Amendment Act 2007 Pt. 11 deals with certain transitional issues some of which may be relevant for this Act.

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