

Western Australia

**Statutory Corporations (Liability of Directors)
Act 1996**

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Western Australia

Statutory Corporations (Liability of Directors) Act 1996

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Western Australia

Statutory Corporations (Liability of Directors) Act 1996

An Act to declare the duty that persons who control the affairs of a statutory corporation owe to the corporation, to provide for particular duties in the case of certain statutory corporations and for the recovery of compensation for breaches, to make provision in respect of Ministerial directions, and for connected purposes.

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Statutory Corporations (Liability of Directors) Act 1996*¹.

2. Commencement

This Act comes into operation on such day as is fixed by proclamation¹.

[3. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

Part 2 — Statutory corporations generally

Division 1 — Interpretation

4. Interpretation

In this Part, unless the contrary intention appears —

“corporation” means any body corporate established for a public purpose by a written law, but does not include a local government;

“director” means —

- (a) a member of the governing body of a corporation;
- (b) if the affairs of a corporation are managed by its members, a member of the corporation; or
- (c) where a corporation consists of one person, that person.

Division 2 — Duties of directors stated

5. Duties of directors

(1) It is declared that a director of a corporation has —

- (a) the same fiduciary relationship with the corporation; and
- (b) the same duties to the corporation to act with loyalty and in good faith,

as a director of a company incorporated under the *Corporations Act 2001* of the Commonwealth has with and to the company.

(2) The duties referred to in subsection (1) are enforceable —

- (a) by the Minister who is responsible for the administration of the Act under which the director holds or held his or her position;
- (b) if the Act under which the director held his position has been repealed and replaced by another Act, by the

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Part 2 Statutory corporations generally

Division 3 Ministerial directions

s. 6

Minister who is responsible for the administration of that other Act; or

(c) in any case by the Attorney General,

and not otherwise.

(3) Despite this section a written law may relieve a director of liability arising from a breach of the duties referred to in subsection (1).

[Section 5 amended by No. 10 of 2001 s. 220.]

Division 3 — Ministerial directions

6. Unlawful directions

It is declared that a Minister cannot give a direction to a corporation under a written law if the direction —

(a) would require the corporation —

(i) to do something that it could not otherwise do; or

(ii) not to do something that it is obliged to do;

or

(b) is unlawful for some other reason.

Part 3 — Duties of directors of certain corporations

Division 1 — Interpretation

7. Interpretation

- (1) In this Part, unless the contrary intention appears —
- “**corporation**”, in relation to a director, means the body specified in the first column in Schedule 1 opposite the reference in the second column that includes that director;
- “**director**” means a person who holds a position described in the second column of Schedule 1, and includes a person who, under a relevant Act mentioned in that Schedule or another written law, is acting in place of a director, whether the acting is —
- (a) expressed to be temporary;
 - (b) as a deputy, an alternate or a representative; or
 - (c) in any other circumstances.
- (2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Part is guilty of that offence.
- (3) The duties provided for by this Part are in addition to those in section 5.
- (4) The provisions of this Part apply to a Board member of the Mid West Development Commission and the South West Development Commission established by the *Regional Development Commissions Act 1993* only in respect of the functions of the relevant Commission under Part 5 of that Act.
- [Section 7 amended by No. 4 of 2004 s. 58.]*

8. Amendment of Schedule 1

The Governor may by regulation amend Schedule 1.

Division 2 — Duties stated

9. Duty to act honestly

- (1) A director 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 subsection (1) —
 - (a) with intent to deceive or defraud —
 - (i) the corporation; or
 - (ii) creditors of the corporation or of any other person;
 - or
 - (b) for any other fraudulent purpose,

is guilty of a crime and is liable to 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 subsection (2) does not apply a person who contravenes subsection (1) is liable to a fine of \$5 000.

10. Duty to exercise reasonable care and diligence

A director must at all times exercise the degree of care and diligence in the performance of the functions of his or her office, whether within or outside the State, that a reasonable person in that position would reasonably be expected to exercise in the corporation's circumstances.

Penalty: \$5 000.

11. Duty not to make improper use of information

- (1) A director or a former director must not, whether within or outside the State, make improper use of information acquired by virtue of his or her position as such to gain, directly or

indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

- (2) A person who contravenes subsection (1) is guilty of a crime and is liable to 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.

12. Duty not to make improper use of position

- (1) A director must not, whether within or outside the State, make improper use of his or her position as such to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the corporation.

- (2) A person who contravenes subsection (1) is guilty of a crime and is liable to 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.

Division 3 — Compensation

13. Payment of compensation may be ordered

- (1) Where —
- (a) a person is convicted of an offence for a contravention of section 9, 10, 11 or 12; and
 - (b) the court is satisfied that the corporation has suffered loss or damage as a result of the act or omission that constituted the offence,

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the corporation of such amount as the court specifies.

- (2) Any such order may be enforced as if it were a judgment of the court.

14. Civil proceedings for recovery

Where a person contravenes section 9, 10, 11 or 12, the corporation may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the corporation by action in any court of competent jurisdiction —

- (a) if that person or any other person made a profit as a result of the contravention, an amount equal to that profit; and
- (b) if the corporation has suffered loss or damage as a result of the contravention, an amount equal to that loss or damage.

15. Corporation's power to insure

- (1) A corporation may, with the approval of the responsible Minister, pay a premium in respect of a contract insuring a director or a former director against a liability incurred by him or her under section 13 or 14 where the liability arises from conduct involving a breach of section 9 or 10, other than a wilful breach.

- (2) In subsection (1) —

“responsible Minister” means the Minister responsible for the administration of the Act under which the corporation is established.

Division 4 — Ministerial directions

16. Interpretation

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

“governing body”, in relation to a corporation whose affairs are managed by its members, means the members of the corporation;

“responsible Minister”, in relation to a direction referred to in section 17, means the Minister by whom the direction is given.

- (2) For the purposes of this Division a direction is unlawful if it —
- (a) would require the corporation —
 - (i) to do something that it could not otherwise do; or
 - (ii) not to do something that it is obliged to do;
 - or
 - (b) is unlawful for some other reason.

17. Governing body may question direction

- (1) Where a direction is given under a written law to a corporation by a Minister and the governing body determines that —
- (a) it would not be in the interests of the corporation for it to comply with the direction; or
 - (b) the direction is unlawful,

the governing body is to notify the responsible Minister in writing within 7 days of receipt of the direction of its determination and the reasons for it.

- (2) Where a governing body gives such a notice to the responsible Minister, that Minister is to either —
- (a) cancel the direction; or
 - (b) confirm it and state his or her reasons for doing so.
- (3) The confirmation of a direction has no effect if the direction is unlawful.
- (4) If the direction is confirmed the corporation is required, subject to subsection (3), to give effect to it.

18. Corporation may challenge direction

A corporation has standing to apply to a court for relief against a direction that the corporation considers to be unlawful.

19. Protection of directors

- (1) A director does not contravene section 5, 9 or 10 by doing or omitting to do any thing —
 - (a) if that thing is done or omitted in compliance with a lawful direction given by a Minister in exercise of a power conferred by a written law; and
 - (b) where the director was of the opinion that section 17(1)(a) applied to the direction, if he or she made reasonable efforts to cause the governing body to give notice to the Minister under that section.
- (2) Subsection (1) does not extend to the manner in which any thing is done or omitted if it is done or omitted in a manner that is contrary to section 9 or 10 and the direction did not require that it be done in that manner.

Part 4 — Relief from liability

20. Relief from liability

For the purposes of section 5, 13 or 14, if it appears to the court that a person —

- (a) is, or may be, liable under that section;
- (b) has acted honestly; and
- (c) ought fairly to be excused having regard to all the circumstances of the case, including those connected with the person's appointment,

the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

21. Application for relief

- (1) Where a person has reason to believe that any claim will or might be made against him or her under section 5, 13 or 14 the person may apply to the Supreme Court for relief.
- (2) On an application under subsection (1) the Supreme Court has the same power to relieve the person as it would have had under section 20 if it had been a court exercising jurisdiction under section 5, 13 or 14.

22. Case may be withdrawn from jury

Where a case to which section 20 applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that section to be relieved either wholly or partly from liability sought to be enforced against the person —

- (a) withdraw the case in whole or in part from the jury; and
- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

Schedule 1

Schedule 1

Persons who are directors under Part 3

[Section 7(1)]

Corporation	Persons who are directors for the purposes of this Act	Act under which holds position
Albany Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Armadale Redevelopment Authority	a member of the board of management of the Authority	<i>Armadale Redevelopment Act 2001</i>
Broome Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Bunbury Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Bunbury Water Board	a member of the Board	<i>Water Boards Act 1904</i>
Busselton Water Board	a member of the Board	<i>Water Boards Act 1904</i>
Country Housing Authority	a member of the Authority	<i>Country Housing Act 1998</i>
Dampier Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Eastern Goldfields Transport Board	a member of the Board	<i>Eastern Goldfields Transport Board Act 1984</i>
East Perth Redevelopment Authority	a member of the Authority	<i>East Perth Redevelopment Act 1991</i>
Esperance Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Forest Products Commission	a commissioner	<i>Forest Products Act 2000</i>

Corporation	Persons who are directors for the purposes of this Act	Act under which holds position
Fremantle Cemetery Board	a member of the Board	<i>Cemeteries Act 1986</i>
Fremantle Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Geraldton Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>
Government Employees Superannuation Board	a director	<i>State Superannuation Act 2000</i>
Independent Market Operator	a director	<i>Electricity Industry Act 2004</i>
Insurance Commission of Western Australia	a commissioner	<i>Insurance Commission of Western Australia Act 1986</i>
Lotteries Commission	a member of the Commission	<i>Lotteries Commission Act 1990</i>
Metropolitan Cemeteries Board	a member of the Board	<i>Cemeteries Act 1986</i>
Midland Redevelopment Authority	a member of the Authority	<i>Midland Redevelopment Act 1999</i>
Mid West Development Commission	a Board member	<i>Regional Development Commissions Act 1993</i>
Perth Market Authority	a member of the Authority	<i>Perth Market Act 1926</i>
Perth Theatre Trust	a trustee	<i>Perth Theatre Trust Act 1979</i>
Port Hedland Port Authority	a director of the Authority	<i>Port Authorities Act 1999</i>

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Schedule 1

Corporation	Persons who are directors for the purposes of this Act	Act under which holds position
Potato Marketing Corporation of Western Australia	a member of the Corporation	<i>Marketing of Potatoes Act 1946</i>
Racing and Wagering Western Australia	a director of the board	<i>Racing and Wagering Western Australia Act 2003</i>
Rottnest Island Authority	a member of the Authority	<i>Rottnest Island Authority Act 1987</i>
State Government Insurance Corporation ⁴	a director of the Corporation ⁴	<i>Insurance Commission of Western Australia Act 1986</i> ³
State Housing Commission	a member of the Commission	<i>Housing Act 1980</i>
South West Development Commission	a Board member	<i>Regional Development Commissions Act 1993</i>
Subiaco Redevelopment Authority	a member of the Authority	<i>Subiaco Redevelopment Act 1994</i>
Western Australian Coastal Shipping Commission	a Commissioner	<i>Western Australian Coastal Shipping Commission Act 1965</i>
Western Australian Land Authority	a director	<i>Western Australian Land Authority Act 1992</i>
Western Australian Meat Commission	a member of the Commission	<i>Abattoirs Act 1909</i> ⁵
Western Australian Meat Industry Authority	a member of the Authority	<i>Western Australian Meat Industry Authority Act 1976</i>

Corporation	Persons who are directors for the purposes of this Act	Act under which holds position
Western Australian Treasury Corporation	a director	<i>Western Australian Treasury Corporation Act 1986</i>

[Schedule 1 amended by No. 4 of 1998 s. 48; No. 30 of 1998 s. 8; No. 25 of 1998 s. 27; No. 46 of 1998 s. 12; No. 5 of 1999 s. 21; No. 8 of 1999 s. 19; No. 38 of 1999 s. 76; No. 34 of 2000 s. 72; No. 43 of 2000 s. 65; No. 25 of 2001 s. 69; No. 30 of 2002 s. 47; No. 31 of 2003 s. 208(2); No. 35 of 2003 s. 24(2) and 52; No. 20 of 2004 s. 9; amended in Gazette 26 Nov 2004 p. 5314-15.]

[Schedule 2 omitted by the Reprints Act 1984 s. 7(4)(e).]

Notes

¹ This is a compilation of the *Statutory Corporations (Liability of Directors) Act 1996* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Statutory Corporations (Liability of Directors) Act 1996</i>	41 of 1996	10 Oct 1996	1 Dec 1996 (see s. 2 and <i>Gazette</i> 12 Nov 1996 p. 6301)
<i>Country Housing Act 1998</i> s. 48	4 of 1998	14 Apr 1998	1 Jul 1998 (see s. 2 and <i>Gazette</i> 30 Jun 1998 p. 3557)
<i>Western Australian Treasury Corporation Amendment Act 1998</i> s. 27	25 of 1998	30 Jun 1998	10 Nov 1998 (see s. 2 and <i>Gazette</i> 10 Nov 1998 p. 6149)
<i>WADC and WA Exim Corporation Repeal Act 1998</i> s. 8	30 of 1998	30 Jun 1998	30 Jun 1998 (see s. 2)
<i>Western Australian Meat Industry Authority Amendment Act 1998</i> s. 12	46 of 1998	19 Nov 1998	19 Nov 1998 (see s. 2)
<i>Port Authorities (Consequential Provisions) Act 1999</i> s. 21 (Sch. 1-8)	5 of 1999	13 Apr 1999	Sch. 1, 3-8: 14 Aug 1999 (see s. 2 and <i>Gazette</i> 13 Aug 1999 p. 3823); Sch. 2: 1 Jan 2000 (see s. 2(9) and <i>Gazette</i> 24 Dec 1999 p. 6871)
<i>Marketing of Meat Amendment Act 1999</i> s. 19	8 of 1999	13 Apr 1999	13 Aug 1999 (see s. 2(2) and <i>Gazette</i> 13 Aug 1999 p. 3823)
<i>Midland Redevelopment Act 1999</i> s. 76	38 of 1999	11 Nov 1999	1 Jan 2000 (see s. 2 and <i>Gazette</i> 31 Dec 1999 p. 7059)
Reprint of the <i>Statutory Corporations (Liability of Directors) Act 1996</i> as at 8 Sep 2000 (includes amendments listed above)			
<i>Forest Products Act 2000</i> s. 72	34 of 2000	10 Oct 2000	16 Nov 2000 (see s. 2 and <i>Gazette</i> 15 Nov 2000 p. 6275)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 65	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)

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Short title	Number and year	Assent	Commencement
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
Reprint of the <i>Statutory Corporations (Liability of Directors) Act 1996</i> as at 10 Aug 2001 (includes amendments listed above)			
<i>Armadale Redevelopment Act 2001</i> s. 69	25 of 2001	26 Nov 2001	23 Mar 2002 (see s. 2 and <i>Gazette</i> 22 Mar 2002 p. 1651)
<i>Grain Marketing Act 2002</i> s. 47	30 of 2002	25 Oct 2002	31 Oct 2002 (see s. 2 and <i>Gazette</i> 30 Oct 2002 p. 5351)
<i>Public Transport Authority Act 2003</i> s. 208	31 of 2003	26 May 2003	1 Jul 2003 (see s. 2(1) and <i>Gazette</i> 27 Jun 2003 p. 2384)
<i>Racing and Gambling Legislation Amendment and Repeal Act 2003</i> s. 24 and 52 ⁶	35 of 2003	26 Jun 2003	s. 24: 1 Aug 2003 (see s. 2 and <i>Gazette</i> 29 Jul 2003 p. 3259); s. 52: 30 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Jan 2004 p. 397)
Reprint 3: The <i>Statutory Corporations (Liability of Directors) Act 1996</i> as at 7 Nov 2003 (includes amendments listed above except those in the <i>Racing and Gambling Legislation Amendment and Repeal Act 2003</i> s. 52)			
<i>Criminal Code Amendment Act 2004</i> s. 58	4 of 2004	23 Apr 2004	21 May 2004 (see s. 2)
<i>Marketing of Eggs Amendment Act 2004</i> s. 9	20 of 2004	26 Aug 2004	2 Jul 2005 (see s. 2(2) and <i>Gazette</i> 28 Jun 2005 p. 2895)
<i>Statutory Corporations (Liability of Directors) (Act Amendment) Regulations 2004</i> (see <i>Gazette</i> 26 Nov 2004 p. 5314-15)			1 Dec 2004 (see r. 2 and <i>Gazette</i> 30 Nov 2004 p. 5515)

² Formerly referred to the State Government Insurance Commission the name of which was changed to the Insurance Commission of Western Australia by the *Acts Amendment (ICWA) Act 1996* s. 8. The reference was substituted under the *Reprints Act 1984* s. 7(3)(h).

³ Formerly referred to the *State Government Insurance Commission Act 1986* the short title of which was changed to the *Insurance Commission of Western Australia Act 1986* by the *Acts Amendment (ICWA) Act 1996* s. 5. The reference was substituted under the *Reprints Act 1984* s. 7(3)(gb).

⁴ The *Insurance Commission of Western Australia Act 1986* Part III provides for the establishment of the State Government Insurance Corporation and for a board of directors of the Corporation. The *Acts Amendment (ICWA) Act 1996* s. 20, which had not come into operation at the date on which this reprint was prepared, will repeal that Part.

⁵ Repealed by the *Meat Industry Legislation (Amendment and Repeal) Act 1993*.

⁶ The *Racing and Gambling Legislation Amendment and Repeal Act 2003* s. 19 reads as follows:

“

19. Power to amend regulations

- (1) The Governor, on the recommendation of the Minister, may make regulations amending subsidiary legislation made under any Act.
- (2) The Minister may make a recommendation under subsection (1) only if the Minister considers that each amendment proposed to be made by the regulations is necessary or desirable as a consequence of the enactment of the RWWA Act or this Act.
- (3) Nothing in this section prevents subsidiary legislation from being amended in accordance with the Act under which it was made.

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