



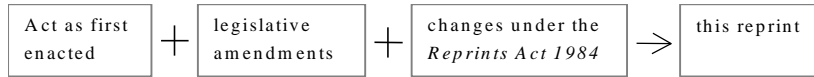
Western Australia

# **Water Corporations Act 1995**

**Reprint 4: The Act as at 7 February 2014**

## Guide for using this reprint

### What the reprint includes



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

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Western Australia

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at 7 February 2014

## **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 by No. 25 of 2012 s. 111.]*

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Water Corporations Act 1995*<sup>1</sup>.  
[Section 1 amended by 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<sup>1</sup>.

### 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;

**executive officer**, of a corporation, means a member of staff of the corporation designated under section 18 as an executive officer;

**function**, except in sections 27(1), (2) and (4) and 29, includes powers, duties and authorities;

**member of staff**, of a corporation, means a person engaged by the board of the corporation under section 15;

**subsidiary**, of a corporation, means —

- (a) a body determined to be a subsidiary of the corporation under subsection (2); or
- (b) an interest or other rights of the corporation in a unit trust, joint venture or partnership where the interest or other rights of the corporation in connection with the unit trust, joint venture or partnership entitle the corporation to —
  - (i) control the composition of the governing body of the unit trust, joint venture or partnership; or
  - (ii) cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the unit trust, joint venture or partnership; or
  - (iii) control the business affairs of the unit trust, joint venture or partnership;

**Treasurer** means the Treasurer of the State;

**Water Corporation** means the body established by section 4(1);

**water service** has the meaning given in the Water Services Act section 3(1);

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

- (2) Part 1.2 Division 6 of the Corporations Act applies for the purpose of determining whether a body is a subsidiary of the corporation.

*[Section 3 amended by 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.]*

## **Part 2 — Water corporations**

*[Heading amended by No. 25 of 2012 s. 190.]*

### **Division 1 — Establishment of water corporations**

*[Heading amended by 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 by 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 by No. 25 of 2012 s. 115.]*



**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 by 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 by 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

**Water Corporations Act 1995**

**Part 2** Water corporations

**Division 2** Boards of directors

**s. 7**

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- 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 Part 4 Division 3 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 by No. 25 of 2012 s. 117.]*

**Division 2 — Boards of directors**

*[Heading amended by No. 25 of 2012 s. 190.]*

**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 member of staff of a corporation cannot to be a director of the corporation.
- (2) In making nominations 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.
- (3A) In subsection (2)(b) —  
***operating area***, of a corporation, means an operating area of a licence held by the corporation under the Water Services Act;  
***regional water corporation*** means the Bunbury Water Corporation or the Busselton Water Corporation.
- (3B) The Minister need only comply with subsection (2)(b) to the extent practicable.
- (3) Where a vacancy occurs in the membership 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 the nominee was recommended by the board under subsection (3).

*[Section 7 amended by No. 38 of 2007 s. 137; No. 25 of 2012 s. 118 and 190.]*

**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 by 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 by No. 25 of 2012 s. 190.]*

**10. Remuneration of non-executive directors**

(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.

*[Section 10 amended by No. 25 of 2012 s. 119.]*

**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 by 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.
- (3) A committee may, with the approval of the board, invite any person, including a member of staff of the corporation, to participate in a meeting of the committee but such a person cannot vote on any resolution before the committee.
- (4) Subject to subsection (2), a committee may determine its own procedures.

*[Section 12 amended by 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) 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).
- (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
  - (b) during any period when the chief executive officer is unable to carry out his or her duties or is absent from the State.
- (6) Despite subsection (2), the Minister is to appoint the initial chief executive officer of a corporation.

*[Section 13 amended by No. 10 of 1998 s. 73(1); No. 25 of 2012 s. 120 and 190.]*

**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 by No. 25 of 2012 s. 190.]*

**15. Staff**

- (1) The power to engage and manage the staff of a corporation is vested in its board.
- (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 by No. 20 of 2002 s. 27; No. 25 of 2012 s. 121 and 190; amended in Gazette 15 Aug 2003 p. 3692.]*

**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).
- (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 by No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190.]*

**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.

*[Section 17 amended by 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.

*[Section 18 amended by No. 25 of 2012 s. 190.]*



**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.
- (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 by No. 43 of 2000 s. 70; No. 25 of 2012 s. 190.]*

**Division 4 — Duties of, and relating to, directors and staff**

**20. Directors, duties 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 by No. 25 of 2012 s. 122.]*

**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.  
*[Section 21 amended by No. 25 of 2012 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 by 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 by No. 25 of 2012 s. 125.]*

**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 by 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.

**Water Corporations Act 1995**

**Part 2** Water corporations

**Division 4** Duties of, and relating to, directors and staff

**s. 26**

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- (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 by No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190.]*

**26. Reports to Minister**

- (1) The board of a corporation, when it delivers to the Minister its annual report under section 60, 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 by No. 39 of 2010 s. 87(3); No. 25 of 2012 s. 190.]*

## **Part 3 — Functions and powers of corporations**

*[Heading amended by 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.

**Water Corporations Act 1995**

**Part 3** Functions and powers of corporations

**Division 1** Functions, powers and related provisions

**s. 28A**

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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 by 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.

*[Section 28A inserted by No. 25 of 2012 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.

*[Section 28 amended by No. 25 of 2012 s. 190.]*

**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
  - (g) subject to sections 31 and 32, participate in any business arrangement and acquire, hold and dispose of shares,

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**Part 3** Functions and powers of corporations

**Division 1** Functions, powers and related provisions

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- 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.
- (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 by No. 10 of 1998 s. 73(2); No. 25 of 2012 s. 128 and 190.]



**30. Corporation to act on commercial principles**

- (1) A corporation in performing its functions must —
  - (a) act in accordance with prudent commercial principles; and
  - (b) endeavour to make a profit, consistently with maximizing its long term value.
- (2) If there is any conflict or inconsistency between the duty imposed by subsection (1) and a direction given by the Minister under this Act the direction prevails.

*[Section 30 amended by No. 25 of 2012 s. 190.]*

**31. Subsidiaries, acquisition of etc. (Sch. 4)**

- (1) A corporation must obtain the approval of the Minister before it acquires a subsidiary or enters into any transaction that will result in the acquisition of a subsidiary.
- (2A) The Minister cannot give approval under subsection (1) without the concurrence of the Treasurer.
- (2) A corporation must ensure that the constitution of every subsidiary of the corporation that under a written law or the Corporations Act is required to have a constitution —
  - (a) contains provisions to the effect of those set out in Schedule 4; and
  - (b) is consistent with this Act; and
  - (c) is not amended in a way that is inconsistent with this Act.
- (3) A corporation must, to the maximum extent practicable, ensure that every subsidiary of the corporation complies with its constitution and with this Act.
- (4) The provisions of this Act prevail to the extent of any inconsistency with the constitution of any subsidiary of a corporation.

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**Part 3** Functions and powers of corporations

**Division 1** Functions, powers and related provisions

**s. 32**

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- (5) A director, the chief executive officer or a member of staff of a corporation may, with the approval of the board of the corporation, become —
- (a) a member of the committee of an incorporated association; or
  - (b) a director of a company,
- that is or is to be a subsidiary of the corporation and may represent the interests of the corporation on that committee or the board of directors of that company.
- (6) Neither —
- (a) subsection (2) or (3); nor
  - (b) the provisions referred to in subsection (2)(a) included in the constitution of a subsidiary,
- make a corporation or the Minister a director of a subsidiary of the corporation for the purposes of the Corporations Act.
- (7) Subsections (1) to (6) and Schedule 4, as in force immediately after the *Water Services Legislation Amendment and Repeal Act 2012* section 129 came into operation<sup>1</sup>, are declared to be Corporations legislation displacement provisions for the purposes of the Corporations Act section 5G in relation to the Corporations legislation to which Part 1.1A of that Act applies generally.

*[Section 31 amended by No. 25 of 2012 s. 129 and 190.]*

**32. Transactions which require Ministerial approval**

- (1) Despite sections 27 and 29, a corporation must obtain the approval of the Minister before a transaction to which this section applies is entered into.
- (2) This section applies to a transaction if —
- (a) it is to be entered into by a corporation or a subsidiary of the corporation; and
  - (b) it is not exempt under section 33; and

- (c) the corporation's liability exceeds the prescribed amount for the corporation.
- (3) For the purposes of subsection (2)(c) a corporation's liability is the amount or value of the consideration or the amount to be paid or received by the corporation or a subsidiary of the corporation, ascertained as at the time when the transaction is entered into.
- (4) The prescribed amount for a corporation is the greater of —
  - (a) a sum equal to 0.25% of the written down value of the corporation's consolidated fixed assets and investments as appearing in its last audited accounts; or
  - (b) the sum of \$15 million.
- (5) In this section and section 33 —  
**transaction** —
  - (a) includes a contract or other arrangement or any exercise of the power conferred by section 29(2)(g); and
  - (b) does not include any transaction under section 80 or 82.

*[Section 32 amended by No. 25 of 2012 s. 130 and 190.]*

**33. Exemptions from s. 32**

- (1) The Minister may by order exempt a transaction or class of transaction from the operation of section 32 either unconditionally or on specified conditions.
- (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 by No. 25 of 2012 s. 131.]*

**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 section 12; 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.

*[Section 35 amended by No. 25 of 2012 s. 132 and 190.]*

**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 by No. 25 of 2012 s. 133.]*

**Division 3 — Protection of persons dealing with a corporation**

*[Heading amended by No. 25 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 by No. 25 of 2012 s. 190.]*

**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 by No. 25 of 2012 s. 135.]*

**39. Assumptions that may be made**

The assumptions that a person is, because of section 37 or 38, entitled to make are —

- (a) that, at all relevant times, this Act has been complied with; and
  - (b) that a person who is held out by the corporation to be a director, the chief executive officer, an executive officer, a member of staff or an agent of a particular kind —
    - (i) has been properly appointed; and
    - (ii) has authority to perform the functions customarily performed by a director, the chief executive officer, an executive officer, a member of staff or an agent of that kind, as the case may require;
- and
- (c) that a member of staff or agent of the corporation who has authority to issue a document on behalf of the corporation has authority to warrant that the document is genuine; and
  - (d) that a member of staff or agent of the corporation who has authority to issue a certified copy of a document on

behalf of the corporation has authority to warrant that the copy is a true copy; and

- (e) that a document has been properly sealed by the corporation if —
  - (i) it bears what appears to be an imprint of the corporation's seal; and
  - (ii) the sealing of the document appears to comply with section 88;

and

- (f) that the directors, chief executive officer, members of staff and agents of the corporation have properly performed their duties to the corporation.

**40. Exception to s. 37 and 38**

- (1) Despite sections 37 and 38, a person is not entitled to assume a matter mentioned in section 39 if —
  - (a) the person has actual knowledge that the assumption would be incorrect; or
  - (b) because of the person's connection or relationship with the corporation, the person ought to know that the assumption would be incorrect.
- (2) If, because of subsection (1), a person is not entitled to make a particular assumption —
  - (a) if the assumption is in relation to dealings with the corporation, section 37(2) does not apply to any assertion by the corporation in relation to the assumption; or
  - (b) if the assumption is in relation to an acquisition or purported acquisition from the corporation of title to property, section 38(2) does not apply to any assertion by the corporation or the second party in relation to the assumption.

*[Section 40 amended by No. 25 of 2012 s. 136.]*

## **Part 4 — Provisions as to accountability**

### **Division 1 — Strategic development plans**

#### **41. Draft plan to be submitted to Minister**

- (1) The board of a corporation must in each year prepare, and submit to the Minister for his or her agreement, a draft strategic development plan for the corporation and any subsidiary of the corporation.
- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board of a corporation —
  - (a) fix a day in each year by which a draft strategic development plan is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft strategic development plan is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 2 months before the start of the next financial year.

*[Section 41 amended by No. 74 of 2003 s. 127(3); No. 77 of 2006 s. 14(2); No. 25 of 2012 s. 190.]*

#### **42. Corporations established by Governor — first strategic development plan**

In respect of a corporation established by the Governor under section 4(4), the first strategic development plan for the corporation is to be for a period starting at the commencement of the first financial year after the day on which the order referred to in section 4(4) comes into operation.

*[Section 42 inserted by No. 25 of 2012 s. 137.]*



**43. Matters to be included in plan**

- (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 by 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 by 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

of the next financial year, the Minister may, by written notice, direct the board —

- (a) to take specified steps in relation to the draft plan; or
  - (b) to make specified modifications to the draft plan.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 87.

*[Section 45 amended by No. 25 of 2012 s. 139.]*

**46. Strategic development plan pending agreed plan**

- (1) If the board of a corporation and the Minister have not reached agreement on a draft strategic development plan before the start of a financial year, the latest draft plan is to be the strategic development plan for the corporation and any subsidiary of the corporation until a draft strategic development plan is agreed to under section 47.
- (2) In subsection (1) —
- latest draft plan*** means the draft strategic development plan submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

*[Section 46 amended by No. 25 of 2012 s. 140.]*

**47. Agreed plan, effect of**

When the board of a corporation and the Minister have reached agreement on a draft strategic development plan, it becomes the strategic development plan for the relevant financial year or the remainder of the year, as the case may be.

*[Section 47 amended by No. 25 of 2012 s. 141.]*

**48. Modifying strategic development plan**

- (1) A strategic development plan may be modified by the board of a corporation with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the board of a corporation to modify the strategic development plan.
- (3) Before giving the direction to the board under subsection (2), the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 87.

*[Section 48 amended by No. 25 of 2012 s. 142 and 190.]*

**49. Concurrence of Treasurer**

- (1) The Minister is not to —
  - (a) agree to a draft strategic development plan under section 47; or
  - (b) agree to or direct any modification of a strategic development plan under section 48,except with the concurrence of the Treasurer.
- (2) If the Minister does not administer the *Water Agencies (Powers) Act 1984*, the Minister must consult with the Minister administering that Act prior to taking an action under subsection (1).

*[Section 49 amended by No. 38 of 2007 s. 138.]*

**Division 2 — Statement of corporate intent**

**50. Draft statement to be submitted to Minister**

- (1) The board of a corporation must in each year prepare, and submit to the Minister for his or her agreement, a draft

statement of corporate intent for the corporation and any subsidiary of the corporation.

- (2) The Minister may from time to time, with the concurrence of the Treasurer, by written notice to the board of a corporation —
  - (a) fix a day in each year by which a draft statement of corporate intent is to be submitted under subsection (1); or
  - (b) cancel a notice given under paragraph (a).
- (3) Each draft statement of corporate intent is to be submitted not later than —
  - (a) the day fixed under subsection (2); or
  - (b) if there is for the time being no day so fixed — 2 months before the start of the next financial year.

*[Section 50 amended by No. 74 of 2003 s. 127(4); No. 77 of 2006 s. 14(3); No. 25 of 2012 s. 190.]*

**51. Corporations established by Governor — first statement of corporate intent**

In respect of a corporation established by the Governor under section 4(4), the first statement of corporate intent for the corporation is to be for the first financial year to start after the day on which the order referred to in section 4(4) comes into operation.

*[Section 51 inserted by No. 25 of 2012 s. 143.]*

**52. Matters to be included in statement**

- (1) The statement of corporate intent for a corporation and any subsidiary of the corporation must be consistent with the strategic development plan under Division 1 for the corporation and any subsidiary.

- (2) The statement of corporate intent must specify —
- (a) an outline of objectives including —
    - (i) the continuity of the provision of water services; and
    - (ii) the maintenance of assets to ensure the proper provision of water services; and
    - (iii) the delivery of an optimum service to customers in meeting their requirements for water services; and
  - (b) the performance targets and other measures by which performances may be judged and related to objectives; and
  - (c) measures to be taken to protect the environment; and
  - (d) an outline of the nature and scope of the functions proposed to be performed during the relevant financial year; and
  - (e) an outline of the borrowings to be undertaken or proposed to be undertaken; and
  - (f) an outline of main undertakings during the relevant financial year; and
  - (g) the dividend policy for the relevant financial year; and
  - (h) accounting policies that apply to the preparation of accounts; and
  - (i) the type of information to be given to the Minister, including information to be given in quarterly and annual reports; and
  - (j) the nature and extent of community service obligations that are to be performed; and
  - (k) the costings of, funding for, or other arrangements to make adjustments relating to, community service obligations; and

- (l) the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
  - (m) such other matters as may be agreed on by the Minister and the board.
- (3) The Minister may exempt the corporation from including any matter, or any aspect of a matter, mentioned in subsection (2) in the statement of corporate intent.
- (4) In subsection (2) —
- community service obligations* means obligations to perform functions that it is not in the commercial interests of the corporation to perform.

*[Section 52 amended by No. 25 of 2012 s. 144.]*

**53. Board and Minister to agree on statement if possible**

The board of a corporation and the Minister must endeavour to reach agreement on the draft statement of corporate intent as soon as possible and, in any event not later than the start of the next financial year.

*[Section 53 amended by No. 25 of 2012 s. 190.]*

**54. Minister's powers in relation to draft statement**

- (1) The Minister may return a draft statement of corporate intent 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 statement; and
  - (b) revise the draft statement 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 statement of corporate intent by one month before the start

of the financial year, the Minister may, by written notice, direct the board —

- (a) to take specified steps in relation to the draft statement; or
  - (b) to make specified modifications to the draft statement.
- (4) The board must comply with a direction under subsection (3) as soon as is practicable.
- (5) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 87.

*[Section 54 amended by No. 25 of 2012 s. 145.]*

**55. Statement of corporate intent pending agreed statement**

- (1) If the board of a corporation and the Minister have not reached agreement on a draft statement of corporate intent before the start of a financial year, the latest draft statement is to be the statement of corporate intent for the corporation and any subsidiary of the corporation until a draft statement of corporate intent is agreed to under section 56.
- (2) In subsection (1) —
- latest draft statement*** means the draft statement of corporate intent submitted, or last submitted, by the board to the Minister before the start of the financial year with any modifications made by the board, whether before or after that time, at the direction of the Minister.

*[Section 55 amended by No. 25 of 2012 s. 146.]*

**56. Agreed statement, effect of, to be given to Parliament**

- (1) When the board of a corporation and the Minister have reached agreement on a draft statement of corporate intent, it becomes the statement of corporate intent for the relevant financial year or the remainder of the year as the case may be.

- (2) The Minister must within 14 days after he or she agrees to a draft statement of corporate intent under subsection (1) cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 87.
- (3) The board of a corporation may request the Minister to delete from the copy of a statement of corporate intent that is to be laid before Parliament a matter that is of a commercially sensitive nature, and the Minister may, despite subsection (2), comply with the request.

*[Section 56 amended by No. 25 of 2012 s. 147 and 190.]*

**57. Modifying statement of corporate intent**

- (1) A statement of corporate intent may be modified by the board of a corporation with the agreement of the Minister.
- (2) The Minister may, by written notice, direct the board of a corporation to modify the statement of corporate intent, and the board must comply with any such direction.
- (3) Before giving the direction to the board under subsection (2), the Minister must consult with the board and take its views into account.
- (4) The Minister must within 14 days after a direction is given cause a copy of it to be laid before each House of Parliament or dealt with in accordance with section 87.

*[Section 57 amended by No. 25 of 2012 s. 148 and 190.]*

**58. Concurrence of Treasurer**

- (1) The Minister is not to —
  - (a) agree to a draft statement of corporate intent under section 56; or
  - (b) agree to or direct any modification of a statement of corporate intent under section 57,

except with the concurrence of the Treasurer.



- (2) If the Minister does not administer the *Water Agencies (Powers) Act 1984*, the Minister must consult with the Minister administering that Act prior to taking an action described in subsection (1).

*[Section 58 amended by 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 by 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

of each of the corporation and any subsidiary of the corporation in accordance with clauses 35 and 36 of Schedule 3.

- (2) All of the reports under subsection (1) are to be sent to the Minister at the same time.
- (3) The Minister must within 21 days after the day on which a copy of an annual report of a corporation is delivered to the Minister cause a copy of the report to be laid before each House of Parliament or dealt with in accordance with section 87.
- (4) An annual report on the operations of a subsidiary of a corporation is not required to be laid before Parliament or dealt with under section 87.

*[Section 60 amended by No. 25 of 2012 s. 151 and 190.]*

**61. Contents of annual reports**

- (1) The annual report in respect of a corporation or a subsidiary of the corporation must —
    - (a) contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of the operations of the corporation or the subsidiary; and
    - (b) include a comparison of the performance of the corporation or the subsidiary with any relevant statement of corporate intent; and
    - (c) include particulars of any directions given by the Minister under section 45(3), 48(2), 54(3), 57(2), 64(1), 70(4) or 79(3) or (6) —
      - (i) that apply to the corporation or the subsidiary; and
      - (ii) were given during the relevant financial year, or at any other time to the extent that they continued to be material during that year;
- and

- (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.
- (3) The requirements of this section are in addition to clauses 35 and 36 of Schedule 3.

*[Section 61 amended by No. 25 of 2012 s. 190.]*

**62. Deletion of commercially sensitive matters from reports**

- (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 by 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 by No. 25 of 2012 s. 190.]*

**64. Minister may give directions**

- (1) The Minister may give directions in writing to a corporation generally with respect to the performance of its functions and, subject to section 65, the corporation is to give effect to any such direction.
- (2) The Minister must cause the text of any direction under subsection (1) to be laid before each House of Parliament or dealt with under section 87 —
  - (a) within 14 days after the direction is given; or
  - (b) if the direction is the subject of a notification under section 65, within 14 days after it is confirmed under that section.

*[Section 64 amended by No. 25 of 2012 s. 190.]*

**65. Directions contrary to commercial interest**

- (1) Where a direction under section 64 is given to a corporation and the board of the corporation determines that —
  - (a) it would be inconsistent with section 30(1) for the corporation to comply with the direction; or
  - (b) there is some other reason why it should not so comply,the board is to notify the Minister in writing within 7 days of receipt of the direction, of its determination and the reason for it.
- (2) Where the board gives such a notice to the Minister —
  - (a) the Minister is to consult with the Treasurer and having regard to those consultations the Minister is to cancel or confirm the direction; and
  - (b) the corporation is not required to give effect to the direction unless it is so confirmed.

*[Section 65 amended by No. 25 of 2012 s. 152.]*

**66. When directions take effect**

- (1) A direction under section 64 becomes effective —
  - (a) on the expiry of 7 days after its receipt by the board of the corporation or of such longer period as the Minister may, at the request of the board, determine; or
  - (b) if subsection (1) of section 65 applies, on its being confirmed under subsection (2) of that section.
- (2) If the board asks the Minister to extend the 7 day period under subsection (1), the Minister must consider the request and notify the board of his or her decision before the 7 day period has expired.

*[Section 66 amended by No. 25 of 2012 s. 190.]*

**Division 5 — Consultation and provision of information**

**67. Consultation**

The board of a corporation and the Minister, at the request of either, are to consult together, either personally or through appropriate representatives, in relation to any aspect of the operation of the corporation.

*[Section 67 amended by No. 25 of 2012 s. 190.]*

**68. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of a corporation and any subsidiary of the corporation; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the chief executive officer or the board of the corporation to furnish information to the Minister;
  - (b) request the chief executive officer or the board to give the Minister access to information;

- (c) for the purposes of paragraph (b) make use of the staff of the corporation and any subsidiary of the corporation to obtain the information and furnish it to the Minister.
- (3) The chief executive officer or the board is to —
  - (a) comply with a request under subsection (2); and
  - (b) make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) Where the chief executive officer or the board furnishes or gives access to information to the Minister, the Minister is to be advised whether or not in the opinion of the chief executive officer or the board the public disclosure of the information would adversely affect the commercial interests of the corporation or any subsidiary of the corporation.
- (5) In this section —

*document* includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

*information* means information specified, or of a description specified, by the Minister that relates to the functions of the corporation.

*[Section 68 amended by No. 25 of 2012 s. 153 and 190.]*

**69. Minister to be kept informed**

The board of a corporation must —

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the corporation and its subsidiaries, including the assets and liabilities, profits and losses and prospects of the corporation and its subsidiaries; and
- (b) give the Minister reports and information that he or she requires for the making of informed assessments of matters mentioned in paragraph (a); and

- (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of the corporation's —
  - (i) objectives outlined in its statement of corporate intent; or
  - (ii) targets under its strategic development plan,promptly inform the Minister of the matters and its opinion in relation to them.

*[Section 69 amended by No. 25 of 2012 s. 154.]*

**70. Notice of financial difficulty**

- (1) The board of a corporation must notify the Minister if the board forms the opinion that the corporation or a subsidiary of the corporation is unable to, or will be unlikely to be able to, satisfy any financial obligation, of the corporation or the subsidiary from the financial resources available or likely to be available to the corporation or the subsidiary at the time the financial obligation is due.
- (2) The notice must —
  - (a) be in writing; and
  - (b) provide the reasons for the board's opinion; and
  - (c) provide such other information as the board considers relevant.
- (3) Within 7 days of receipt of the notice, the Minister must —
  - (a) confer with the Treasurer and the board for the purpose of determining what action is required to ensure that the corporation or subsidiary is able to satisfy the relevant financial obligation when it is due; and
  - (b) initiate such action as is required to ensure that the corporation or subsidiary is able to satisfy the relevant financial obligation when it is due.

- (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 by 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 by No. 25 of 2012 s. 190.]*



## **Part 5 — Financial provisions**

### **Division 1 — General**

[72. Deleted by No. 25 of 2012 s. 155.]

**73. Bank account**

- (1) For each corporation, an account is to be established —
- (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds of the corporation are to be credited.

- (2) Money received by and expenditure of the corporation is to be credited to or paid from the account referred to in subsection (1).

*[Section 73 amended by No. 28 of 2006 s. 400; No. 77 of 2006 Sch. 1 cl. 177(1); No. 25 of 2012 s. 156.]*

**74. Investment**

Funds of a corporation may, unless section 73(1)(a) applies, be invested, until they are required for the performance of the corporation's functions, in such investments as the board determines.

*[Section 74 amended by No. 25 of 2012 s. 190.]*

**75. Exemption from rates**

No local government rate or charge is to be imposed or levied on any land vested in, or under the management and control of, a corporation that is used or reserved exclusively for the purpose of providing works, undertakings or facilities necessary to the performance of the functions of the corporation.

*[Section 75 amended by No. 25 of 2012 s. 190.]*

## **Division 2 — Payments to State**

### **76. Payment of amount in lieu of rates**

A corporation is to pay to the Treasurer in respect of a financial year a sum equal to the amount of any local government rate or charge that, apart from section 75 or the *Local Government Act 1995* section 6.26(2)(a)(i), the corporation would have been liable to pay in respect of that financial year.

*[Section 76 amended by No. 25 of 2012 s. 157.]*

*[77. Deleted by No. 55 of 1996 s. 10(4).]*

### **78. Determination of amounts under s. 76**

Amounts payable under section 76 —

- (a) are to be determined in accordance with such principles; and
- (b) are to be paid at such time or times,

as the Treasurer may direct.

*[Section 78 amended by No. 55 of 1996 s. 10(4).]*

### **79. Dividends**

(1) A final dividend under this section is to be —

- (a) calculated with respect to the net profits of a corporation for a financial year after first taking into account —
  - (i) any amounts payable to the Treasurer under section 76 and the *State Enterprises (Commonwealth Tax Equivalent) Act 1996*; and
  - (ii) the amount of any interim dividend paid to the Treasurer during that financial year, in accordance with subsection (7);
- (b) paid to the Treasurer, in accordance with subsection (4).

- (2) The board of a corporation, as soon as practicable after the end of each financial year, is to make a recommendation to the Minister as to the amount of the final dividend (if any) that the board recommends as appropriate for that financial year.
- (3) The Minister, with the concurrence of the Treasurer —
  - (a) may accept a recommendation under subsection (2); or
  - (b) after consultation with the board, is to direct that the amount of the final dividend is to be some other amount.
- (4) The corporation is to pay the final dividend —
  - (a) as soon as practicable after the amount is fixed under subsection (3); and
  - (b) in any case not later than —
    - (i) 6 months after the end of the financial year to which the final dividend relates; or
    - (ii) such other time as may be agreed between the Treasurer and the board.
- (5) If the board of a corporation considers that payment of an interim dividend is justified by the net profits of the corporation during part of a financial year, the board may make a recommendation to the Minister as to the amount of the interim dividend that the board recommends should be paid to the Treasurer.
- (6) The Minister, with the concurrence of the Treasurer —
  - (a) may accept a recommendation under subsection (5); or
  - (b) after consultation with the board, is to direct that the amount of the interim dividend is to be some other amount.
- (7) The corporation is to pay an interim dividend —
  - (a) as soon as practicable after the amount is fixed under subsection (6); and

- (b) in any case not later than the end of the financial year to which the interim dividend relates.
- (8) The Minister is to cause the text of any direction given under subsection (3) or (6) to be laid before each House of Parliament within 14 days after the direction is given or dealt with in accordance with section 87.

*[Section 79 amended by No. 55 of 1996 s. 10(4); No. 25 of 2012 s. 190.]*

### **Division 3 — Borrowing**

#### **80. Corporation may borrow etc.**

- (1) A corporation may, subject to section 81 —
  - (a) borrow or re-borrow moneys; or
  - (b) obtain credit; or
  - (c) issue, acquire, hold or dispose of debt paper; or
  - (d) create and issue capital instruments; or
  - (e) otherwise arrange for financial accommodation to be extended to the corporation.
- (2) Capital instruments under subsection (1)(d) —
  - (a) may be described in any way determined by the corporation; and
  - (b) are to be created and issued on such terms as the corporation determines and the Minister approves.
- (3) A corporation is to keep such registers for the purposes of this section as may be prescribed.
- (4) In subsection (1) —  
**debt paper** means inscribed stock, bonds, debentures with coupons annexed, bills of exchange, promissory notes or bearer securities, or other similar instruments evidencing indebtedness.

*[Section 80 amended by No. 25 of 2012 s. 190.]*

**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<sup>1</sup>.
- (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 by 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;

or

  - (b) enter into an agreement or arrangement to effect any transaction which is a combination of —
    - (i) 2 or more transactions permitted under paragraph (a); or
    - (ii) one or more transactions permitted under paragraph (a) and one or more transactions permitted under section 80.

- (2) In subsection (1)(a) —  
*interest rate* includes coupon rate, discount rate and yield.

*[Section 82 amended by No. 10 of 2001 s. 206; No. 21 of 2003 s. 35; No. 25 of 2012 s. 190.]*

#### **Division 4 — Guarantees**

### **83. Guarantees for corporation by Crown**

- (1) The Treasurer may with the concurrence of the Minister, in the name and on behalf of the Crown, guarantee the performance by a corporation, in the State or elsewhere, of any financial obligation of the corporation arising under section 80.
- (2) A guarantee is to be in such form and subject to such terms and conditions as the Treasurer determines.
- (3) The due payment of moneys payable by the Treasurer under a guarantee —
- (a) is by this subsection guaranteed by the State; and
  - (b) is to be made by the Treasurer and charged to the Consolidated Account, and this subsection appropriates that Account accordingly.
- (4) The Treasurer is to cause any amounts received or recovered from a corporation or otherwise in respect of any payment made by the Treasurer under a guarantee to be credited to the Consolidated Account.

*[Section 83 amended by No. 77 of 2006 s. 4 and 5(1); No. 25 of 2012 s. 190.]*

### **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.

*[Section 84 amended by No. 77 of 2006 s. 4; No. 25 of 2012 s. 190.]*

**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 by 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 —
    - (i) the Corporations Law (as in force at any time before the commencement of the Corporations Act); or
    - (ii) the Corporations Act,does not accurately reflect the corresponding provision of the Corporations Act; or



- (b) the Corporations Act does not contain a provision that corresponds to a provision of Schedule 3 that set out the substance of a provision of —
  - (i) the Corporations Law (as in force at any time before the commencement of the Corporations Act); or
  - (ii) the Corporations Act;or
- (c) the Corporations Act contains a provision relating to a matter provided for by Schedule 3, the substance of which is not set out in Schedule 3,

the Minister may recommend to the Governor, as soon as practicable after the circumstance in paragraph (a), (b) or (c) arises, that regulations be made under subsection (2).

- (4) The regulations are to be in such form that Schedule 3 as amended will, in the opinion of the Minister, be substantially the same as the corresponding provisions of the Corporations Act, but with such modifications as are consistent with the policy of this Act.

*[Section 86 amended by No. 10 of 2001 s. 207; No. 25 of 2012 s. 190.]*

## **Part 6 — Miscellaneous**

### **87. Laying documents before Parliament**

- (1) If —
- (a) at the commencement 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 a document a House of Parliament is not sitting; and
  - (b) the Minister is of the opinion that that House will not sit during that period,

the Minister is to transmit a copy of the document to the Clerk of that House.

- (2) A copy of a document transmitted to the Clerk of a House is taken to have been laid before that House.
- (3) 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 by No. 8 of 2009 s. 132(4) and (5).]*

### **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 presence of —
    - (i) 2 directors; or
    - (ii) a director and the chief executive officer; or
    - (iii) a director and an executive officer;
- or

- (b) it is signed on behalf of the corporation by a person or persons referred to in subsection (4).
- (3) The common seal of a corporation is not to be affixed to a document except in accordance with this section.
- (4) A corporation may, by writing under its common seal, authorise a director, the chief executive officer, a member of staff or other agent of the corporation to execute documents on its behalf.
- (5) An authority under subsection (4) —
  - (a) may be given —
    - (i) either generally or in respect of a specified matter or specified matters; and
    - (ii) so as to authorise 2 or more persons to execute documents jointly;
  - and
  - (b) may be presumed by a person dealing with the corporation to continue —
    - (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.
- (6) 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 by No. 25 of 2012 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.

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- (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 by No. 25 of 2012 s. 161 and 190.]*

**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.  
*[Section 91 amended by No. 67 of 2003 Sch. 2 cl. 87; No. 25 of 2012 s. 162.]*

**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

**s. 93**

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*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 —
- (a) in the case of an order under subsection (2) — each estate or interest in land specified in the order vests in the Water Corporation by force of this paragraph; or
  - (b) in the case of an order under subsection (3) — the care, 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 by No. 25 of 2012 s. 163.]*

**93.      Review of Act**

- (1) The Minister must carry out a review of the operation and 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;  
and
  - (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 by No. 25 of 2012 s. 163.]*

**94. Transitional provisions**

Schedule 5 sets out transitional provisions.

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

**Schedule 1 — Provisions as to constitution and proceedings of board**

[s. 9]

*[Heading amended by No. 19 of 2010 s. 4.]*

**1. Term used: director**

In clauses 2, 3, 4 and 5(1) —

**director** does not include the chief executive officer in his or her capacity (if any) as a director.

*[Clause 1 amended by No. 25 of 2012 s. 164.]*

**2. Term of office**

- (1) Subject to clause 3, a director of a corporation holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment, and is eligible for reappointment.
- (2) A director, unless he or she sooner resigns or is removed from office, continues in office until his or her successor comes into office, even if the period for which he or she was appointed has expired.
- (3) A director's duties are not required to be performed on a full-time basis.
- (4) Despite subclause (1) the directors first appointed to the board of a corporation are to be appointed for periods of between one year and 3 years so that approximately one third of the directors retire each year.

*[Clause 2 amended by No. 25 of 2012 s. 165 and 190.]*

**3. Resignation and removal**

- (1) A director of a corporation may resign from office by notice in writing delivered to the Minister.
- (2) The Governor may at any time remove a director of a corporation from office and is not required to give any reason for doing so.

*[Clause 3 amended by No. 25 of 2012 s. 190.]*



**4. Chairperson and deputy chairperson**

- (1) For each corporation, the Governor is to appoint a director of the corporation to be chairperson and another to be deputy chairperson of the board, appointments in each case being made on the nomination of the Minister.
- (2) The chief executive officer is not eligible for appointment under subclause (1).
- (3) Where the chairperson is unable to act because of sickness, absence or other cause, the deputy chairperson is to act in his or her place.
- (4) Where the deputy chairperson is acting in place of the chairperson at a meeting, clause 5(1) applies as if the deputy chairperson were absent from the meeting.

*[Clause 4 amended by No. 25 of 2012 s. 166.]*

**5. Alternate directors**

- (1) Where a director of a corporation is unable to act because of sickness, absence or other cause, the Minister may in writing appoint another person to act temporarily in his or her place, and while so acting according to the tenor of the appointment that other person is to be taken to be a director of the corporation and is entitled to remuneration under section 10.
- (2) If the chief executive officer of a corporation is a director of the corporation then, except where there is a person acting in his or her place under section 13(5), the chief executive officer may, in writing delivered to the person presiding at a meeting of the board, nominate a senior officer of the corporation approved by the board to represent him or her at that meeting if he or she is unable to attend by reason of sickness, absence or other cause; and while so attending the person so nominated is to be taken to be a director of the corporation.
- (3) No act or omission of a person acting in place of another under this clause may be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

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

**cl. 6**

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**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 by 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.

- (2) For the purposes of subclause (1) —
- (a) the meeting is to be taken as having been held —
    - (i) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
    - (ii) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
- and
- (b) 2 or more separate documents in identical terms each of which is assented to by one or more directors are to be taken to constitute one document; and
  - (c) a director may signify assent to a document by signing the document or by notifying the corporation of the director's assent in person or by post, facsimile transmission, telephone or other method of written, audio or audio-visual communication.
- (3) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the board attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (4) Where a document is assented to in accordance with subclause (1), the document is to be taken as a minute of a meeting of the board.

*[Clause 8 amended by No. 25 of 2012 s. 190.]*

**9. Minutes of meetings etc.**

The board of a corporation is to ensure that an accurate record is kept and preserved of the proceedings at each meeting of the board and of each resolution passed under clause 8.

*[Clause 9 amended by No. 25 of 2012 s. 190.]*

**cl. 10**

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**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 by 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 by 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 by 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;
- or
- (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 by No. 25 of 2012 s. 168.]*

**3. Duty to exercise reasonable care and diligence**

A director of a corporation must at all times exercise the degree of care and diligence in the performance of his or her functions, 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.

*[Clause 3 amended by No. 25 of 2012 s. 190.]*

**4. Duty not to make improper use of information**

(1) A director or a former director of a corporation 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 subclause (1) 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.

*[Clause 4 amended by No. 25 of 2012 s. 169.]*

**5. Duty not to make improper use of position**

(1) A director of a corporation must not, whether within or outside the State, make improper use of his or her position as 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 subclause (1) 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.

*[Clause 5 amended by No. 25 of 2012 s. 170.]*

**6. Fiduciary duty**

- (1) A director of a corporation has the same fiduciary relationship with the corporation and has the same duties to the corporation to act with loyalty and in good faith as a director of a company under the Corporations Act has with and to the company.
- (2) The duties referred to in subclause (1) are enforceable by the Minister and not otherwise.
- (3) The provisions of this clause are in addition to the other provisions of this Schedule.

*[Clause 6 amended by No. 10 of 2001 s. 208; No. 25 of 2012 s. 190.]*

**Division 3 — Recovery from director**

**7. Payment of compensation may be ordered**

Where —

- (a) a person is convicted of an offence for a contravention of clause 2, 3, 4 or 5; and
- (b) the court is satisfied that the corporation concerned 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, and any such order may be enforced as if it were a judgment of the court.

*[Clause 7 amended by No. 25 of 2012 s. 171.]*

**8. Civil proceedings for recovery from director**

Where a person contravenes clause 2, 3, 4 or 5, the corporation concerned 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.

*[Clause 8 amended by No. 25 of 2012 s. 172.]*

#### **Division 4 — Relief of director**

#### **9. Director etc. may be relieved from liability**

Without limiting section 71, for the purposes of clause 6, 7 or 8 if it appears to the court that a person —

- (a) is, or may be, liable under that clause;
- (b) has acted honestly;
- (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.

#### **10. Director etc. may apply for relief**

- (1) Without limiting section 71, where a person has reason to believe that any claim will or might be made against him or her under clause 6, 7 or 8 the person may apply to the Supreme Court for relief.
- (2) On an application under subclause (1) the Supreme Court has the same power to relieve the person as it would have had under clause 9 if it had been a court exercising jurisdiction under clause 6, 7 or 8.

#### **11. Case may be withdrawn from jury**

Where a case to which clause 9 applies is being tried by judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the person ought under that clause be relieved either wholly or partly from liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.



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

**12. Disclosure of interests in contracts**

(1A) In subclause (1) —

*notifiable interest* means an interest in the matter that will, under clause 13(1), disqualify the director from voting on the matter at a meeting of the board unless allowed to do so by a resolution under clause 13(3) or a declaration under clause 13(6).

(1) A director of a corporation who has a notifiable interest in a matter involving the corporation must, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the board of the corporation.

Penalty: a fine of \$5 000.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting.

*[Clause 12 amended by No. 10 of 1998 s. 73(3); No. 50 of 2003 s. 103; No. 25 of 2012 s. 173.]*

**13. Voting by interested directors**

(1) A director of a corporation who has a material personal interest in a matter that is being considered by the board of the corporation —

- (a) must not vote whether at a meeting or otherwise —
  - (i) on the matter; or
  - (ii) in relation to a proposed resolution under subclause (3) in relation to the matter, whether in relation to that or a different director;

and

- (b) must not be present while —
  - (i) the matter; or
  - (ii) a proposed resolution of the kind referred to in paragraph (a)(ii),

is being considered at a meeting.

(2) For the purpose of subclause (1), a director of a corporation does not have an interest in a matter relating to an existing or proposed contract

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of insurance merely because the contract insures, or would insure, the director against a liability incurred by the director in his or her capacity as a director of the corporation or of a subsidiary of the corporation. This subclause does not apply if the corporation is the insurer.

- (3) Subclause (1) does not apply if the board has at any time passed a resolution that —
  - (a) specifies the director, the interest and the matter; and
  - (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (4) Despite clause 6(5) of Schedule 1, if a director of a corporation is disqualified under subclause (1) in relation to a matter, a quorum is present during the consideration of that matter if at least 2 directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (5) The Minister may deal with a matter in so far as the board of a corporation cannot deal with it because of subclause (4).
- (6) The Minister may by writing declare that subclauses (1) and (4) do not apply in relation to a specified matter either generally or in voting on particular resolutions.
- (7) The Minister must within 14 days after a declaration under subclause (6) is made cause a copy of the declaration to be laid before each House of Parliament or to be dealt with under section 87.

*[Clause 13 amended by No. 25 of 2012 s. 190.]*

**Division 6 — Other prohibited conduct**

**14. Prohibition on loans to directors and related person**

- (1) A corporation must not, whether directly or indirectly —
  - (a) make a loan to a director, a spouse or de facto partner of a director or a relative of a director or spouse or de facto partner of a director; or
  - (b) give a guarantee or provide security in connection with a loan made to a director, a spouse or de facto partner of a director

or a relative of a director or spouse or de facto partner of a director.

- (2) A director of a corporation who is knowingly concerned in a contravention of subclause (1) by the corporation (whether or not in relation to the director) —
- (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,

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.

- (3A) If subclause (2)(a) or (b) does not apply, the director commits an offence.

Penalty: a fine of \$5 000.

- (3) In subclause (1) —

**relative** means —

- (a) a parent or remoter lineal ancestor; or
- (b) son, daughter or remoter issue; or
- (c) a brother or sister.

*[Clause 14 amended by No. 28 of 2003 s. 204; No. 25 of 2012 s. 174 and 190.]*

**15. Directors or auditor not to be indemnified for certain matters**

- (1) A corporation or a subsidiary of the corporation must not —
- (a) indemnify a person who is or has been a director or auditor of the corporation against a liability incurred by the person as a director or auditor; or
  - (b) exempt such a person from such a liability.

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- (2) Any agreement or arrangement is void so far as it provides for a corporation or a subsidiary of the corporation to do anything that subclause (1) prohibits.
- (3) Subclause (1) does not prevent a person from being indemnified against a civil liability to a person, other than a corporation or a subsidiary of the corporation, unless the liability arises out of conduct involving a lack of good faith.
- (4) Subclause (1) does not prevent a person from being indemnified against a liability for costs and expenses incurred by the person —
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
  - (b) in obtaining relief under clause 9 or 10.
- (5) A corporation or a subsidiary of the corporation must not pay, or agree to pay, a premium, in respect of a contract insuring a person who is or has been a director or auditor of the corporation against a liability —
  - (a) incurred by the person as such a director or auditor; and
  - (b) arising out of conduct involving —
    - (i) a wilful breach of duty in relation to the corporation; or
    - (ii) without limiting subparagraph (i), a contravention of clause 4 or 5.
- (6) In subclause (5) —  
*pay* includes pay indirectly through one or more interposed entities.
- (7) If subclause (5) is contravened, the contract is void so far as it insured the person against such a liability.
- (8) Subclauses (5) and (7) do not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal and whatever their outcome.

*[Clause 15 amended by No. 25 of 2012 s. 190.]*

**16. False information etc.**

- (1) A director of a corporation must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
- (a) the Treasurer or the Minister; or
  - (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the director —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect.

Penalty: \$10 000 or imprisonment for 2 years, or both.

- (2) A director of a corporation must not make available or furnish information, or authorise or permit the making available or furnishing of information, to —
- (a) the Treasurer or the Minister; or
  - (b) a director, auditor, debenture holder or trustee for debenture holders of the corporation,

being information whether in documentary or any other form, relating to the affairs of the corporation that —

- (c) is false or misleading in a material particular; or
- (d) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect,

without having taken reasonable steps to ensure that the information —

- (e) was not false or misleading in a material particular; and
- (f) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect.

Penalty: \$5 000 or imprisonment for one year, or both.

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- (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 by No. 25 of 2012 s. 190.]*

## **Schedule 3 — Financial administration and audit**

[section 86(1)]

*[Heading inserted in Gazette 24 May 2002 p. 2605.]*

### **Division 1 — Preliminary**

*[Heading inserted in Gazette 24 May 2002 p. 2605.]*

#### **1. Terms used**

- (1) In this Schedule, unless the contrary intention appears —  
***financial year*** has the meaning given by clause 23(1);  
***regulations*** means regulations made under the Corporations Act.
- (2) In this Schedule, unless the contrary intention appears, expressions (including the expressions ***accounting standard***, ***company*** and ***financial records***) have the respective meanings given to them by Part 1.2 of the Corporations Act.

*[Clause 1 inserted in Gazette 24 May 2002 p. 2605.]*

### **Division 2 — Financial records**

*[Heading inserted in Gazette 24 May 2002 p. 2606.]*

#### **2. Duty to keep financial records (cf. Corporations Act s. 286)**

- (1) Each corporation must keep written financial records that —
  - (a) correctly record and explain its transactions and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited.
- (2) The obligation to keep financial records of transactions extends to transactions undertaken as trustee.
- (3) The financial records must be retained for 7 years after the transaction covered by the records are completed.

*[Clause 2 inserted in Gazette 24 May 2002 p. 2606; amended by No. 25 of 2012 s. 175.]*

**3. Physical format (cf. Corporations Act s. 288)**

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

*[Clause 3 inserted in Gazette 24 May 2002 p. 2606.]*

**4. Place where records are kept (cf. Corporations Act s. 289)**

- (1) A corporation may decide where to keep the financial records.
- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared.
- (3) The corporation must give the Treasurer written notice of the place where the information is kept.
- (4) The Minister may direct a corporation to produce specified financial records that are kept outside Australia.
- (5) The direction must —
  - (a) be in writing; and
  - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

*[Clause 4 inserted in Gazette 24 May 2002 p. 2606; amended by No. 25 of 2012 s. 190.]*

**5. Director's right of access (cf. Corporations Act s. 290)**

- (1) A director of a corporation has a right of access to the financial records at all reasonable times.
- (2) On application by a director, the Supreme Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Supreme Court orders otherwise.



- (4) The Supreme Court may make any other orders it considers appropriate, including either or both of the following —
- (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection;
  - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subclause (3).

*[Clause 5 inserted in Gazette 24 May 2002 p. 2606-7; amended by No. 25 of 2012 s. 190.]*

### **Division 3 — Financial reporting**

*[Heading inserted in Gazette 24 May 2002 p. 2607.]*

#### **Subdivision 1 — Annual financial reports and directors' reports**

*[Heading inserted in Gazette 24 May 2002 p. 2607.]*

**6. Preparation of annual financial reports and directors' reports**  
*(cf. Corporations Act s. 292)*

A financial report and a directors' report must be prepared for each financial year by each corporation before 30 September.

*[Clause 6 inserted in Gazette 24 May 2002 p. 2607; amended by No. 25 of 2012 s. 176.]*

**7. Contents of annual financial report** *(cf. Corporations Act s. 295)*

- (1) The financial report for a financial year consists of —
- (a) the financial statements for the year; and
  - (b) the notes to the financial statements; and
  - (c) the directors' declaration about the statements and notes.
- (2) The financial statements for the year are to be prepared in accordance with the accounting standards.
- (3) The notes to the financial statements are —
- (a) disclosures required by the regulations; and
  - (b) notes required by the accounting standards; and
  - (c) any other information necessary to give a true and fair view.

- (4) The directors' declaration is a declaration by the directors —
- (a) that the financial statements, and the notes referred to in subclause (3)(b), comply with the accounting standards; and
  - (b) that the financial statements and notes give a true and fair view; and
  - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the corporation, will be able to pay its debts as and when they become due and payable; and
  - (d) whether, in the directors' opinion, the financial statements and notes are in accordance with this Schedule, including —
    - (i) clause 8 (compliance with accounting standards and regulations); and
    - (ii) clause 9 (true and fair view).
- (5) The declaration must —
- (a) be made in accordance with a resolution of the directors; and
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by at least 2 directors.

*[Clause 7 inserted in Gazette 24 May 2002 p. 2607-8; amended by No. 25 of 2012 s. 177.]*

**8. Compliance with accounting standards and regulations**  
*(cf. Corporations Act s. 296)*

- (1) The financial report for a financial year must comply with the accounting standards.
- (2) The financial report must comply with any further requirements in the regulations.

*[Clause 8 inserted in Gazette 24 May 2002 p. 2608.]*

**9. True and fair view** *(cf. Corporations Act s. 297)*

- (1) The financial statements and notes for a financial year must give a true and fair view of —
  - (a) the financial position and performance of the corporation; and
  - (b) if consolidated financial statements are required — the financial position and performance of the consolidated entity.

- (2) This clause does not affect the obligation under clause 8 for a financial report to comply with accounting standards.

*[Clause 9 inserted in Gazette 24 May 2002 p. 2608.]*

**10. Annual directors' report (cf. Corporations Act s. 298)**

- (1) Each corporation must prepare a directors' report for each financial year.
- (2) The report must include —
- (a) the general information required by clause 11; and
  - (b) the specific information required by clause 12.
- (3) The report must —
- (a) be made in accordance with a resolution of the directors; and
  - (b) specify the date on which the report is made; and
  - (c) be signed by at least 2 directors.

*[Clause 10 inserted in Gazette 24 May 2002 p. 2608; amended by No. 25 of 2012 s. 178.]*

**11. Annual directors' report, general matters (cf. Corporations Act s. 299)**

- (1) The directors' report for a financial year must —
- (a) contain a review of operations during the year of the corporation and the results of those operations; and
  - (b) give details of any significant changes in the corporation's state of affairs during the year; and
  - (c) state the corporation's principal activities during the year and any significant changes in the nature of those activities during the year; and
  - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect —
    - (i) the corporation's operations in future financial years;or

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- (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 in 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
  - (c) the name of each person who has been a director of the corporation at any time during or since the end of the year and the period for which they were a director.

(2) If —

- (a) during or since the financial year, the corporation has indemnified against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
- (b) but for Schedule 2 clause 15(3) or (4), subclause (1) of that clause would have prohibited the corporation from indemnifying the person against that liability,

the report must set out —

- (c) the person's name; and
- (d) the nature of the liability; and
- (e) how much the corporation paid, and what else the corporation did, by way of indemnifying the person against the liability.

(3) If —

- (a) during or since the financial year, the corporation has made a relevant agreement (as defined in section 9 of the Corporations Act) for indemnifying against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and
- (b) but for Schedule 2 clause 15(3) or (4), subclause (1) of that clause would prohibit the corporation from indemnifying the person against that liability,

the report must set out particulars of the relevant agreement, including —

- (c) the person's name; and
- (d) the nature of the liability; and
- (e) how much the relevant agreement provides for the corporation to pay, and what else it provides for the corporation to do, by way of indemnifying the person against the liability.

(4) If —

- (a) during or since the financial year, the corporation has paid, or agreed to pay, a premium in respect of a contract insuring against a liability a person who is or has been a director or auditor of the corporation or of a related body corporate; and

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- (b) but for Schedule 2 clause 15(8), subclause (5) of that clause would have prohibited the corporation from paying, or agreeing to pay, the premium,

the report must —

- (c) name the person and state that the corporation has paid, or agreed to pay, a premium in respect of a contract insuring the person against a liability; and
  - (d) set out, except so far as prohibited by the contract itself, the nature of the liability and the amount of the premium.
- (5) The report must also include details of —
- (a) each director's qualifications, experience and special responsibilities; and
  - (b) the number of meetings of the board held during the year and each director's attendance at those meetings; and
  - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

*[Clause 12 inserted in Gazette 24 May 2002 p. 2609-11.]*

**13. Annual directors' report, other specific matters (cf. Corporations Act s. 300A)**

- (1) The directors' report for a financial year must also include —
- (a) discussion of board policy for determining the nature and amount of emoluments of board members and senior executives of the corporation; and
  - (b) discussion of the relationship between such policy and the corporation's performance; and
  - (c) details of the nature and amount of each element of the emolument of each director and, subject to subclause (2), each of the 5 named officers of the corporation receiving the highest emolument.
- (2) Regulations made under section 91 may, in respect of the Bunbury Water Corporation, the Busselton Water Corporation or a body established by the Governor under section 4(4), prescribe a lesser number of named officers for the purposes of subclause (1)(c).

*[Clause 13 inserted in Gazette 24 May 2002 p. 2611; amended by No. 25 of 2012 s. 179.]*

**14.      Audit of annual financial report (cf. Corporations Act s. 301)**

The corporation must have the financial report for a financial year audited by the Auditor General in accordance with Subdivision 2 and clauses 38 and 45 and obtain an auditor's report.

*[Clause 14 inserted in Gazette 24 May 2002 p. 2611.]*

**Subdivision 2 — Audit and auditor's report**

*[Heading inserted in Gazette 24 May 2002 p. 2611.]*

**15.      Auditor General to form opinion (cf. Corporations Act s. 307)**

The Auditor General must form an opinion about —

- (a) whether the financial report of a corporation is in accordance with this Schedule, including —
  - (i) clause 8 (compliance with accounting standards and regulations); and
  - (ii) clause 9 (true and fair view);
- and
- (b) whether he or she has been given all information, explanation and assistance necessary for the conduct of the audit; and
- (c) whether the corporation has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the corporation has kept other records and registers as required by this Schedule.

*[Clause 15 inserted in Gazette 24 May 2002 p. 2611; amended by No. 25 of 2012 s. 180.]*

**16.      Auditor General to report on annual financial report (cf. Corporations Act s. 308)**

- (1) The Auditor General must report to the Minister on whether he or she is of the opinion that the financial report of a corporation is in accordance with this Schedule, including —
  - (a) clause 8 (compliance with accounting standards and regulations); and
  - (b) clause 9 (true and fair view).

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- (2) If not of that opinion, the Auditor General's report must say why.
- (3) If the Auditor General is of the opinion that the financial report does not comply with an accounting standard, his or her report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report.
- (4) If it is not practicable to quantify the effect fully, the report must say why.
- (5) The Auditor General's report must describe —
  - (a) any defect or irregularity in the financial report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in clause 15.
- (6) The report must specify the date on which it is made.
- (7) The Auditor General must give a copy of the report to the directors as soon as practicable after it has been given to the Minister.

*[Clause 16 inserted in Gazette 24 May 2002 p. 2611-12; amended by No. 25 of 2012 s. 181.]*

**17. Auditor General's power to obtain information (cf. Corporations Act s. 310)**

The Auditor General —

- (a) has a right of access at all reasonable times to the books of a corporation; and
- (b) may require any officer of the corporation to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.

*[Clause 17 inserted in Gazette 24 May 2002 p. 2612; amended by No. 25 of 2012 s. 190.]*

**18. Corporation's officers to assist Auditor General (cf. Corporations Act s. 312)**

An officer of the corporation must —

- (a) allow the Auditor General access to the books of the corporation; and



- (b) give the Auditor General any information, explanation or assistance required under clause 17.

*[Clause 18 inserted in Gazette 24 May 2002 p. 2612.]*

**Subdivision 3 — Special provisions about consolidated financial statements**

*[Heading inserted in Gazette 24 May 2002 p. 2612.]*

**19. Directors and officers of controlled entity to give information**  
*(cf. Corporations Act s. 323)*

If a corporation has to prepare consolidated financial statements, a director or officer of a controlled entity must give the corporation all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

*[Clause 19 inserted in Gazette 24 May 2002 p. 2612; amended by No. 25 of 2012 s. 190.]*

**20. Auditor General's power to obtain information from controlled entity**  
*(cf. Corporations Act s. 323A)*

- (1) Where the financial report of a corporation includes consolidated financial statements, the Auditor General —
  - (a) has a right of access at all reasonable times to the books of any controlled entity; and
  - (b) may require any officer of the entity to give the Auditor General information, explanations or other assistance for the purposes of the audit or review.
- (2) The information, explanations or other assistance required under subclause (1)(b) is to be given at the expense of the corporation.

*[Clause 20 inserted in Gazette 24 May 2002 p. 2613; amended by 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

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- (b) give the Auditor General any information, explanation or assistance required under clause 20.

*[Clause 21 inserted in Gazette 24 May 2002 p. 2613; amended by 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 in Gazette 24 May 2002 p. 2613.]*

**Subdivision 4 — Financial years of the corporation and the entities it controls**

*[Heading inserted in 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.

*[Clause 23 inserted in Gazette 24 May 2002 p. 2613; amended by No. 25 of 2012 s. 183 and 190.]*

**Division 4 — Accounting standards**

*[Heading inserted in Gazette 24 May 2002 p. 2613.]*

**24. Accounting standards (cf. Corporations Act s. 334)**

- (1) An accounting standard applies to —
- (a) periods ending after the commencement of the standard; or

- (b) periods ending, or starting, on or after a later date specified in the standard.
- (2) A corporation may elect to apply the accounting standard to an earlier period unless the standard says otherwise.
- (3) The election must be made in writing by the directors of the corporation.

*[Clause 24 inserted in Gazette 24 May 2002 p. 2613-14; amended by No. 25 of 2012 s. 190.]*

**25. Equity accounting (cf. Corporations Act s. 335)**

This Schedule (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

*[Clause 25 inserted in Gazette 24 May 2002 p. 2614.]*

**26. Interpretation of accounting standards (cf. Corporations Act s. 337)**

In interpreting an accounting standard —

- (a) unless the contrary intention appears, expressions used in the standard have the same meaning as they have in Chapter 2M of the Corporations Act; and
- (b) the provisions of Part 1.2 of the Corporations Act apply as if the standard's provisions were provisions of that Chapter.

*[Clause 26 inserted in Gazette 24 May 2002 p. 2614.]*

**27. Evidence of text of accounting standard (cf. Corporations Act s. 339)**

- (1) This clause applies to a document that purports to be published by or on behalf of the AASB or ASIC and to set out the text of —
  - (a) a specified standard as in force at a specified time under section 334 of the Corporations Act; or
  - (b) a specified provision of a standard of that kind.
- (2) It also applies to a copy of a document of that kind.

- (3) In the absence of evidence to the contrary, a document to which this clause applies is proof in proceedings under this Act that —
- (a) the specified standard was in force at that time under that section; and
  - (b) the text set out in the document is the text of the standard referred to in subclause (1)(a) or the provision referred to in subclause (1)(b).

*[Clause 27 inserted in Gazette 24 May 2002 p. 2614.]*

**Division 5 — Exemptions and modifications**

*[Heading inserted in Gazette 24 May 2002 p. 2614.]*

**28. Treasurer's power to exempt directors etc. from Div. 2 and 3**  
*(cf. Corporations Act s. 340)*

- (1) On an application made in accordance with subclause (3) in relation to a corporation, the Treasurer may make an order in writing relieving either or both of the following from all or specified requirements of Divisions 2 and 3 —
- (a) the directors;
  - (b) the corporation.
- (2) The order may —
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The application must be —
- (a) authorised by a resolution of the directors; and
  - (b) in writing and signed by a director; and
  - (c) lodged with the Treasurer.
- (4) The Treasurer must give the corporation written notice of the making, revocation or suspension of the order.
- (5) If the Treasurer makes an order under subclause (1) the Treasurer is to cause the text of the order to be laid before each House of Parliament within 14 days after the order is made.

- (6) If at the commencement of the period referred to in subclause (5) a House of Parliament is not sitting and the Treasurer is of the opinion that that House will not sit during that period, the Treasurer is to transmit a copy of the order to the Clerk of that House and the copy of the order so transmitted is taken to have been laid before that House.
- (7) The laying of a copy of a document that is taken to have occurred because of subclause (6) 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.

*[Clause 28 inserted in Gazette 24 May 2002 p. 2614-15; amended by No. 8 of 2009 s. 132(6) and (7); No. 25 of 2012 s. 184.]*

**29. Criteria for exemption under cl. 28 (cf. Corporations Act s. 342)**

To make an order under clause 28, the Treasurer must be satisfied that complying with the relevant requirements of Divisions 2 and 3 would —

- (a) make the financial report or other reports misleading; or
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

*[Clause 29 inserted in Gazette 24 May 2002 p. 2615.]*

**30. Extension of time**

- (1) Where any provision of this Schedule requires any act or thing to be observed or performed by a certain date or within a specified time by a person, other than the Auditor General, the Minister may on application by that person extend the date of, or the time for observance or performance of such act or thing to such date or time as the Minister thinks appropriate.
- (2) Where the Minister grants an extension of time under subclause (1), the provisions of clause 28(5) shall, with all necessary changes, apply to the memorandum evidencing the extension as if it were an order for the purposes of that subclause.

*[Clause 30 inserted in Gazette 24 May 2002 p. 2615-16.]*

**Division 6 — Sanctions for contraventions of this Schedule**

*[Heading inserted in Gazette 24 May 2002 p. 2616.]*

**31. Contravention of Div. 2 or 3 (cf. Corporations Act s. 344)**

(1) A director of a corporation must take all reasonable steps to comply with, or to secure compliance with, Divisions 2 and 3.

(2) A person who contravenes subclause (1) with intent to deceive or defraud the Minister or the Treasurer or creditors of the corporation 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.

(3A) If subclause (2) does not apply, a person who contravenes subclause (1) commits an offence.

Penalty: a fine of \$5 000.

(3) Subclause (1) does not apply to clause 17, 18, 20 or 21.

*[Clause 31 inserted in Gazette 24 May 2002 p. 2616; amended by No. 25 of 2012 s. 185.]*

**Division 7 — Miscellaneous**

*[Heading inserted in Gazette 24 May 2002 p. 2616.]*

**35. Deadline for reporting to the Minister (cf. Corporations Act s. 315)**

(1) In subclause (2) —

**prescribed day** means the 5th working day after receipt by the directors under clause 16 of the Auditor General's report.

(2) Each corporation shall as soon as practicable but not later than the close of business on the prescribed day in each year send to the Minister a copy of the annual report required by section 60.

*[Clause 35 inserted in Gazette 24 May 2002 p. 2616; amended by No. 25 of 2012 s. 186.]*

**36. Annual financial reporting to the Minister (cf. Corporations Act s. 314)**

The annual report of a corporation under section 60 is to contain the following documents —

- (a) the financial report for the year;
- (b) the directors' report for the year;
- (c) the Auditor General's report on the financial report;
- (d) a copy of any order of the Treasurer under clause 28.

*[Clause 36 inserted in Gazette 24 May 2002 p. 2616; amended by No. 25 of 2012 s. 190.]*

**38. Auditor General may submit interim report**

- (1) If the Auditor General cannot complete the audit of a corporation by 30 September in any year he or she is to submit an interim report to the Minister setting out the reasons for his or her inability to complete the audit by that date, and the Minister is to cause copies of the report to be laid before both Houses of Parliament, within 7 sitting days of receiving that report.
- (2) Section 21 of the *Auditor General Act 2006* applies to the audit of a corporation.

*[Clause 38 inserted in Gazette 24 May 2002 p. 2616-17; amended by No. 77 of 2006 Sch. 1 cl. 177(3); No. 25 of 2012 s. 190.]*

**45. Auditor General's duty to report breach of Sch. 3 and powers**

- (1) If the Auditor General in the course of the performance of duties as auditor of a corporation and its subsidiaries, is satisfied that —
  - (a) there has been a contravention of any provision of this Schedule; and
  - (b) the circumstances are such that in the Auditor General's opinion the matter has not been or will not be adequately dealt with by comment in the Auditor General's report on the financial statements or by bringing the matter to the notice of the board of the corporation,

the Auditor General is to forthwith report the matter to the Minister in writing.

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**Division 7** Miscellaneous

**cl. 45**

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- (4) The provisions of sections 14, 16 to 18, 24 to 37, 45 and 46 of the *Auditor General Act 2006* apply to a corporation as if it were a statutory authority named in Schedule 1 to the *Financial Management Act 2006*.

*[Clause 45 inserted in Gazette 24 May 2002 p. 2617; amended by No. 77 of 2006 Sch. 1 cl. 177(4); No. 25 of 2012 s. 190.]*



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

[s. 31]

*[Heading amended by 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 by 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.

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

**cl. 4**

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- (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 by No. 25 of 2012 s. 188.]*

## Schedule 5 — Transitional provisions

[s. 94]

*[Heading inserted by No. 25 of 2012 s. 189.]*

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

*[Heading inserted by No. 25 of 2012 s. 189.]*

#### Subdivision 1 — Preliminary

*[Heading inserted by 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<sup>1</sup>;

**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 by 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. 2**

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**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 by No. 25 of 2012 s. 189.]*

**Subdivision 2 — Continuation of former Boards**

*[Heading inserted by 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 by 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 by 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 by 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*<sup>2</sup> 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.
- (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.

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**Schedule 5** Transitional provisions

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

**cl. 7**

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- (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 by 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 by No. 25 of 2012 s. 189.]*

**Subdivision 3 — Staff of former Boards**

*[Heading inserted by 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 by 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.
- (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 by 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.

**Water Corporations Act 1995**

**Schedule 5** Transitional provisions

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**cl. 11**

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- (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 by 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.
- (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 by 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
  - (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 by 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 by No. 25 of 2012 s. 189.]*

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**Schedule 5** Transitional provisions

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**cl. 14**

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**Subdivision 4 — Provisions as to accountability and financial provisions**

*[Heading inserted by 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 by 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 by 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 by 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 by 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 by No. 25 of 2012 s. 189.]*

**Subdivision 5 — Miscellaneous**

*[Heading inserted by 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 by 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 by 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. 21**

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**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.
- (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 by No. 25 of 2012 s. 189.]*

**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 by No. 25 of 2012 s. 189.]*



## Notes

<sup>1</sup> This reprint is a compilation as at 7 February 2014 of the *Water Corporations Act 1995* 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>Water Corporation Act 1995</i> <sup>3</sup>	70 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2 and <i>Gazette</i> 29 Dec 1995 p. 6291)
<i>State Enterprises (Commonwealth Tax Equivalents) Act 1996</i> s. 10(4)	55 of 1996	11 Nov 1996	1 Jul 1996 (see s. 2 and 3(3))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 73	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 110	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 70	43 of 2000	2 Nov 2000	17 Feb 2001 (see s. 2(1) and <i>Gazette</i> 16 Feb 2001 p. 903)
<b>Reprint of the <i>Water Corporation Act 1995</i> as at 4 May 2001</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> 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)
<i>Water Corporation (Act Amendment) Regulations 2002</i> published in <i>Gazette</i> 24 May 2002 p. 2605-17			1 Jul 2002 (see r. 2)
<i>Labour Relations Reform Act 2002</i> s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2(1) and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 16 <sup>4</sup>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and Cwlth. <i>Gazette</i> 24 Oct 2001 No. GN42)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 59</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003 s. 103</i>	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003 r. 21</i> published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>Economic Regulation Authority Act 2003 Sch. 2 Div. 17</i>	67 of 2003	5 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5723)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 127<sup>5</sup></i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<b>Reprint 2: The Water Corporation Act 1995 as at 2 Jul 2004</b> (includes amendments listed above)			
<i>Machinery of Government (Miscellaneous Amendments) Act 2006 Pt. 15 Div. 3</i>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4, 5(1), 14 and Sch. 1 cl. 177</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Water Resources Legislation Amendment Act 2007 Pt. 7<sup>6</sup></i>	38 of 2007	21 Dec 2007	1 Feb 2008 (see s. 2(2) and <i>Gazette</i> 31 Jan 2008 p. 251)
<b>Reprint 3: The Water Corporation Act 1995 as at 4 Jul 2008</b> (includes amendments listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009 s. 132</i>	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Standardisation of Formatting Act 2010 s. 4</i>	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Public Sector Reform Act 2010 s. 87</i>	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)

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Short title	Number and year	Assent	Commencement
<i>Water Services Legislation Amendment and Repeal Act 2012 Pt. 7</i>	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5028)
<b>Reprint 4: The <i>Water Corporations Act 1995</i> as at 7 Feb 2014</b> (includes amendments listed above)			

- <sup>2</sup> Now known as the *Plumbers Licensing Act 1995*.
- <sup>3</sup> Now known as the *Water Corporations Act 1995*; short title changed (see note under s. 1).
- <sup>4</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 4 is a validation provision.
- <sup>5</sup> 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.
- <sup>6</sup> The *Water Resources Legislation Amendment Act 2007* Pt. 11 deals with certain transitional issues some of which may be relevant for this Act.



## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
accounting standard .....	Sch. 3 cl. 1(2)
amended Act .....	Sch. 5 cl. 1
arrangement.....	36(2)(a)
bank.....	Sch. 5 cl. 17(1)
board .....	3(1)
Bunbury Water Board .....	Sch. 5 cl. 1
Bunbury Water Corporation.....	3(1)
business arrangement .....	29(5)
Busselton Water Board .....	Sch. 5 cl. 1
Busselton Water Corporation.....	3(1)
chief executive officer.....	3(1)
commencement day .....	Sch. 5 cl. 1
community service obligations .....	52(4)
company.....	Sch. 3 cl. 1(2)
corporation .....	3(1), Sch. 5 cl. 1
Corporations Act.....	3(1)
debt paper.....	80(4)
director .....	3(1), Sch. 1 cl. 1
document.....	68(5)
executive officer.....	3(1)
financial records.....	Sch. 3 cl. 1(2)
financial year.....	Sch. 3 cl. 1(1)
former Board.....	Sch. 5 cl. 1
former licence .....	Sch. 5 cl. 6(1)
former member of staff .....	23(1)
former water authority .....	92(1)
function .....	3(1)
information.....	68(5)
interest rate.....	82(2)
latest draft plan.....	46(2)
latest draft statement .....	55(2)
management .....	16(2)
member of staff.....	3(1), 23(1)
members of staff .....	19(3), 24(4)
new provision.....	Sch. 5 cl. 20(2)
notifiable interest .....	Sch. 2 cl. 12(1A)
old provision .....	Sch. 5 cl. 20(2)
operating area.....	7(3A)

**Defined terms**

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order .....	92(1)
participate.....	29(5)
pay.....	Sch. 2 cl. 15(6)
prescribed day .....	Sch. 3 cl. 35(1)
PSM Act.....	Sch. 5 cl. 8(1)
public service officer.....	11(2)
regional water corporation .....	7(3A)
regulations.....	Sch. 3 cl. 1(1)
relative .....	Sch. 2 cl. 14(3)
relevant corporation .....	Sch. 5 cl. 1
relevant official .....	92(1)
repealed Act .....	Sch. 5 cl. 1
second party .....	38(1)
specified .....	7A(3)
subsidiary .....	3(1)
surplus water .....	27(7)
third party.....	38(1)
transaction.....	32(5)
Treasurer .....	3(1)
wastewater .....	27(7)
Water Corporation .....	3(1)
water service .....	3(1)
Water Services Act .....	3(1)