

South Australia

South Australian Water Corporation Act 1994

An Act to provide for the provision of water and sewerage services; to establish a corporation for that purpose; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *South Australian Water Corporation Act 1994*.

3—Object

The object of this Act is to establish a statutory corporation as a business enterprise with the principal responsibility of providing water and sewerage services for the benefit of the people and economy of the State.

4—Interpretation

In this Act, unless the contrary intention appears—

board means the board of directors established as the governing body of the Corporation under Part 3;

Corporation means South Australian Water Corporation established under Part 2;

director means a member of the board under Part 3;

reticulated system for the supply of water includes major pipes, ducts, conduits and channels for the movement of water from reservoirs and other sources of supply;

sewerage system means pipes, channels, tunnels, pumping stations, plant and other works and facilities used in the removal and treatment of wastewater.

Part 2—Corporation

5—Establishment of South Australian Water Corporation

- (1) *South Australian Water Corporation* is established.
- (2) The Corporation—
 - (a) has perpetual succession and a common seal; and
 - (b) is capable of suing and being sued in its corporate name; and
 - (c) has the functions and powers assigned or conferred by or under this or any other Act.

6—Application of *Public Corporations Act 1993*

The Corporation is a statutory corporation to which the provisions of the *Public Corporations Act 1993* apply.

7—Functions of Corporation

- (1) The Corporation's primary functions are to provide services—
 - (a) for the supply of water by means of reticulated systems; and
 - (b) for the storage, treatment and supply of bulk water; and
 - (c) for the removal and treatment of wastewater by means of sewerage systems.
- (2) The Corporation has the following further functions:
 - (a) to carry out research and works to improve water quality and wastewater disposal and treatment methods;
 - (b) to provide consultancy and other services within areas of the Corporation's expertise;
 - (c) to develop commercially and market products, processes and intellectual property produced or created in the course of the Corporation's operations;
 - (d) to advise users of water in the efficient and effective use of water;
 - (e) to encourage and facilitate private or public sector investment and participation, whether from within or outside the State, in the provision of water and wastewater services and facilities;
 - (f) any other function conferred on the Corporation by this Act, any other Act or the Minister or delegated to the Corporation by the Minister.

8—Powers of Corporation

- (1) The Corporation has all the powers of a natural person together with the powers specifically conferred on it by this or any other Act.
- (2) The Corporation may exercise its powers within or outside the State.

9—Restriction on contracting out by Corporation

The board must not cause water or wastewater services or facilities to be provided or operated on behalf of the Corporation by another party under a contract or arrangement without first giving full consideration (having regard to the powers, functions and duties of the board under this Act, the *Public Corporations Act 1993* and any other Act) as to whether the Corporation could provide or operate the same services or facilities competitively.

10—Corporation to furnish Treasurer with certain information

- (1) The Corporation must furnish the Treasurer with such information or records in the possession or control of the Corporation as the Treasurer may require in such manner and form as the Treasurer may require.
- (2) Subsections (2), (3) and (4) of section 7 of the *Public Corporations Act 1993* apply in relation to such a requirement of the Treasurer in the same way as to a requirement of the Minister under that section.

11—Common seal and execution of documents

- (1) The common seal of the Corporation must not be affixed to a document except in pursuance of a decision of the board, and the affixing of the seal must be attested by the signatures of two directors.

- (2) The Corporation may, by instrument under its common seal, authorise a director, an employee of the Corporation (whether nominated by name or by office or title) or any other person to execute documents on behalf of the Corporation subject to conditions and limitations (if any) specified in the instrument of authority.
- (3) Without limiting subsection (2), an authority may be given so as to authorise two or more persons to execute documents jointly on behalf of the Corporation.
- (4) A document is duly executed by the Corporation if—
 - (a) the common seal of the Corporation is affixed to the document in accordance with this section; or
 - (b) the document is signed on behalf of the Corporation by a person or persons in accordance with an authority conferred under this section.

Part 3—Board

12—Establishment of board

- (1) A board of directors is established as the governing body of the Corporation.
- (2) The board consists of—
 - (a) six members appointed by the Governor; and
 - (b) the chief executive officer.
- (3) The board's membership must include persons who together have, in the Minister's opinion, the abilities and experience required for the effective performance of the Corporation's functions and the proper discharge of its business and management obligations.
- (4) At least two members of the board must be women and two men.
- (5) One director (who must not be the chief executive officer) will be appointed by the Governor to chair meetings of the board.
- (6) The Governor may appoint a director (who must not be the chief executive officer) to be the deputy of the director appointed to chair meetings of the board and the deputy may perform or exercise the functions and powers of that director in his or her absence.
- (7) On the office of an appointed director becoming vacant, a person may be appointed under this section to the vacant office.

13—Conditions of membership

- (1) A director will be appointed for a term, not exceeding three years, specified in the instrument of appointment and will, at the expiration of a term of appointment, be eligible for reappointment.
- (2) The Governor may remove an appointed director from office on the recommendation of the Minister.
- (3) The Minister may recommend the removal of an appointed director on any ground that the Minister considers sufficient.

- (4) The office of an appointed director becomes vacant if the director—
- (a) dies; or
 - (b) completes a term of office and is not reappointed; or
 - (c) resigns by written notice to the Minister; or
 - (d) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
 - (e) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
 - (f) is removed from office under subsection (2).

14—Vacancies or defects in appointment of directors

An act of the board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a director.

15—Remuneration

An appointed director is entitled to be paid from the funds of the Corporation such remuneration, allowances and expenses as may be determined by the Governor.

16—Board proceedings

- (1) A quorum of the board consists of four members.
- (2) The director appointed to chair meetings of the board will preside at each meeting of the board at which he or she is present.
- (3) If the director appointed to chair meetings of the board is absent from a meeting of the board, the following provisions apply:
 - (a) if another director has been appointed as that director's deputy and is present at the meeting—the deputy will preside at the meeting;
 - (b) in any other case—a director (who must not be the chief executive officer) chosen by the directors present at the meeting will preside at the meeting.
- (4) A decision carried by a majority of the votes cast by directors at a meeting is a decision of the board.
- (5) Each director present at a meeting of the board has one vote on any question arising for decision and, if the votes are equal, the director presiding at the meeting may exercise a casting vote.
- (6) A conference by telephone or other electronic means between directors will, for the purposes of this section, be taken to be a meeting of the board at which the participating directors are present if—
 - (a) notice of the conference is given to all directors in the manner determined by the board for that purpose; and
 - (b) each participating director is capable of communicating with every other participating director during the conference.

- (7) A proposed resolution of the board becomes a valid decision of the board despite the fact that it is not voted on at a meeting of the board if—
 - (a) notice of the proposed resolution is given to all directors in accordance with procedures determined by the board; and
 - (b) a majority of the directors express their concurrence in the proposed resolution by letter, telex, facsimile transmission or other written communication setting out the terms of the resolution.
- (8) The board must cause accurate minutes to be kept of its proceedings.
- (9) Subject to this Act, the board may determine its own procedures.

Part 4—Staff

17—Staff of Corporation

- (1) The chief executive officer of the Corporation will be appointed by the board with the approval of the Minister.
- (2) The Corporation may appoint such other employees as it thinks necessary or desirable.
- (3) An employee's appointment will be on terms and conditions fixed by the Corporation.

Part 5—Miscellaneous

18—Delegation to Corporation

- (1) The Minister may delegate any of the Minister's powers or functions under any Act to the Corporation.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated by the Corporation.
- (3) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the power of the delegator to act in any matter; and
 - (d) is revocable at will by the delegator.

18A—Entry onto land of the Corporation

- (1) A person who enters onto, or remains on, land owned or occupied by the Corporation or that is under the care, control and management of the Corporation without being authorised to do so by the Corporation is guilty of an offence.
Maximum penalty: \$2 500.
Expiation fee: \$315.
- (2) Without limiting the manner in which the Corporation may authorise a person to enter and remain on land, the Corporation may authorise members of the public to enter and remain on its land by notice published in the Gazette.
- (3) A notice referred to in subsection (2) may be varied or revoked by the Corporation by subsequent notice published in the Gazette.

- (4) An authorisation under this section is subject to conditions imposed—
 - (a) by this section; or
 - (b) by regulation; or
 - (c) by including them in a notice published in the Gazette under subsection (2) or in any other form of authorisation given by the Corporation; or
 - (d) by direction of a person under subsection (5); or
 - (e) by 2 or more of those methods.
- (5) A person acting with the authority of the Corporation (whether an employee of the Corporation or not) may give directions to a person on, or about to enter, land referred to in subsection (1) in relation to their entry, or their right to remain on, the land.
- (6) A direction given to a person under subsection (5) is a condition of that person's authorisation to enter and remain on the land.
- (7) It is a condition of an authorisation under this section (except in the case of a person who has been exempted from this condition by the Corporation) that a person who is on land referred to in subsection (1)—
 - (a) must carry with him or her identification that shows his or her name and his or her current residential address; and
 - (b) must present the identification to a person who is entitled to give directions under subsection (5) when requested to do so.
- (8) A person must not give directions under subsection (5) or make a request under subsection (7)(b) unless he or she—
 - (a) carries identification issued by the Corporation that states that he or she is authorised to act under this section; and
 - (b) presents, or makes a genuine attempt to present, the identification to a person for inspection when giving a direction to the person under subsection (5) or when requesting to see the person's identification under subsection (7).
- (9) A person who contravenes or fails to comply with a condition to which an authorisation is subject is guilty of an offence.

Maximum penalty: \$2 500.

Expiation fee: \$315.

18B—Power to lease infrastructure

- (1) The Corporation may lease any of its infrastructure to any other body or person as the Corporation thinks fit.
- (2) A lease under subsection (1) will be for such period, at such rent, on such terms and conditions, and subject to such powers, reservations, restrictions and provisions, as the Corporation thinks fit.
- (3) The Corporation may accept a surrender of such a lease on such terms and conditions, and may allow such concessions and remissions, as the Corporation thinks fit.

- (4) During the term of a lease under this section—
- (a) the lessee may have and exercise, in relation to the infrastructure subject to the lease, all such rights, powers and privileges vested in and exercisable by the Corporation (under this or any other Act) as the Governor may from time to time declare by proclamation; and
 - (b) the infrastructure subject to the lease may be taken to be infrastructure of the lessee (for the purposes of this or any other Act) to such extent as the Governor may from time to time declare by proclamation.
- (5) In this section—
- infrastructure* has the same meaning as in the *Water Industry Act 2012* and includes any property connected to such infrastructure.

18C—Recovery of amounts due to Corporation

- (1) Subject to subsection (2), any amount (other than a pecuniary penalty) due to the Corporation with respect to the provision of a water service or a sewerage service under the *Water Industry Act 2012* or under an agreement to defer payment of an amount due with respect to the provision of a water service or a sewerage service under the *Water Industry Act 2012* will, until payment, be and remain a first charge on the land in relation to which the relevant services have been provided.
- (2) An amount referred to in subsection (1) that is payable in relation to land that comprises the whole or part of the common property of a scheme under the *Community Titles Act 1996* or the *Strata Titles Act 1988* is not a charge on the common property but is, instead, a first charge on each of the lots or units of the community or strata scheme.
- (3) No statute of limitations or other Act will bar or in any way affect any action or other legal proceeding for the recovery of any such amount.

18D—Power to sell land

- (1) If any designated charges are in arrears for a period of 2 years, the Corporation may publish a notice in the prescribed manner and form for the purposes of this section.
- (2) If, after at least 1 year from the publication of a notice under subsection (1), all or any of the relevant designated charges remain unpaid, the Corporation may, with the approval of the Minister, take action to sell the relevant land.
- (3) Before the Corporation sells land in pursuance of this section, the Corporation must serve notice on the owner and occupier of the land—
- (a) stating the period for which the designated charges have been in arrears; and
 - (b) stating the amount of the total liability presently outstanding and charged on the land; and
 - (c) stating that if that amount is not paid in full within 1 month of service of the notice (or such longer time as the Corporation may allow), the Corporation intends to sell the land under this section.
- (4) A copy of a notice must be served on—
- (a) any registered mortgagee or encumbrancee of the land; and
 - (b) the holder of any caveat over the land.

- (5) If the outstanding amount is not paid in full within the time allowed under subsection (3), the Corporation may proceed to sell the land.
- (6) The sale will, except in the case of land held from the Crown under a lease, licence or agreement to purchase, be by public auction (and the Corporation may set a reserve price for the purposes of the auction).
- (7) An auction under this section must be advertised on at least 2 separate occasions in a newspaper circulating generally throughout the State.
- (8) If, before the date of the auction, the outstanding amount and the costs incurred by the Corporation in proceeding under this section are paid to the Corporation, the Corporation must withdraw the land from auction.
- (9) If—
 - (a) an auction fails; or
 - (b) the land is held from the Crown under a lease, licence or agreement to purchase,the Corporation may sell the land by private contract for the best price that the Corporation can reasonably obtain.
- (10) Any money received by the Corporation in respect of the sale of land under this section will be applied as follows:
 - (a) firstly—in paying the costs of the sale and any other costs incurred in proceeding under this section;
 - (b) secondly—in discharging the liability for the designated charges and any other liabilities to the Corporation in respect of the land;
 - (c) thirdly—in discharging any liability to the Crown for rates, charges or taxes (including rates, charges or taxes that are a charge on the land);
 - (d) fourthly—in discharging any liability to a council for rates or any other liability to a council in respect of the land;
 - (e) fifthly—in discharging any liabilities secured by registered mortgages, encumbrances or charges;
 - (f) sixthly—in discharging any other mortgages, encumbrances and charges of which the Corporation has notice;
 - (g) seventhly—in payment to the former owner of the land.
- (11) If the former owner cannot be found after making reasonable inquiries as to his or her whereabouts, an amount payable to the former owner must be dealt with as unclaimed money under the *Unclaimed Moneys Act 1891*.
- (12) If land is sold by the Corporation in pursuance of this section, an instrument of transfer executed by the Corporation will operate to vest title to the land in the purchaser.
- (13) If the Corporation cannot sell the land under this section after taking all reasonable steps to do so—
 - (a) the Corporation may, by notice in the Gazette, assume title to the land (and title will then, by force of this subsection, vest in the Corporation); and

- (b) the value of the land vested in the Corporation under paragraph (a), as at the date of the notice under that paragraph, will be deducted from any outstanding amount and the costs incurred by the Corporation in proceeding under this section.
- (14) The title vested under subsection (12) or (13) will be free of—
- (a) all mortgages, charges and caveats; and
 - (b) except in the case of land held from the Crown under lease or licence—all leases and licences.
- (15) An instrument of transfer passing title to land in pursuance of a sale under this section must, when lodged with the Registrar-General for registration or enrolment, be accompanied by a statutory declaration made by the chief executive officer of the Corporation stating that the requirements of this section in relation to the dealing with the land have been observed.
- (16) The chief executive officer of the Corporation must, as soon as is reasonably practicable after the publication of a notice under subsection (13), inform the Registrar-General of the publication of the notice and lodge with the Registrar-General a statutory declaration stating that the requirements of this section in relation to dealing with the land have been observed.
- (18) A reference in this section to land, or title to land, held from the Crown under lease, licence or agreement to purchase, is a reference to the interest of the lessee, licensee or purchaser in the land.
- (19) In this section—
- designated charges* means any amount (other than a pecuniary penalty) due to the Corporation with respect to the provision of a water service or a sewerage service under the *Water Industry Act 2012* or under an agreement to defer payment of an amount due with respect to the provision of a water service or a sewerage service under the *Water Industry Act 2012*.

19—Regulations

The Governor may make such regulations as are necessary or expedient for the purposes of this Act.

Schedule 1—Transitional provisions

1—Interpretative provision

The Governor may, by proclamation, declare that a reference in an Act or instrument to a Minister is a reference to the Corporation and the proclamation has effect in accordance with its terms.

2—Vesting of property, rights etc in Corporation

- (1) Subject to the *Sewerage Act 1929* and the *Waterworks Act 1932*, as amended by this Act, the Corporation succeeds to all the property, rights, powers, liabilities and obligations of the Minister arising from the operation of the *Sewerage Act 1929* and the *Waterworks Act 1932* as in force before the commencement of this Act.

- (2) A certificate executed by the Minister certifying that any specified property, right, power, liability or obligation has vested in the Corporation by virtue of this clause is to be taken to be conclusive evidence of the matter so certified.
- (3) An apparently genuine document purporting to be a certificate of the Minister under subclause (2) is to be presumed to be such a certificate in the absence of proof to the contrary.
- (4) Despite section 29(1) of the *Public Corporations Act 1993*, where property vests by virtue of this clause in the Corporation, the vesting of the property, and any instrument evidencing or giving effect to that vesting, are exempt from stamp duty.

3—Application of Real Property Act

- (1) The Registrar-General must, on the application of the Corporation, register the Corporation as the proprietor of land that has vested in the Corporation under this Schedule.
- (2) An instrument relating to land that has vested in the Corporation under this Schedule must, if the instrument is executed by the Corporation and is otherwise in registrable form, be registered by the Registrar-General despite the fact that the Corporation has not been registered as the proprietor of the land under subclause (1).

4—Appointment of first chief executive officer

- (1) The first appointment to the position of chief executive officer of the Corporation is to be made by the Governor on the nomination of the Minister (but, on such an appointment having been made, the person so appointed will be taken to be an employee of the Corporation).
- (2) Any subsequent appointment to the position of chief executive officer of the Corporation is to be made by the board under Part 4.

5—Transfer of staff

- (1) All employees of the Department (other than the chief executive officer) are transferred to the employment of the Corporation.
- (2) An employee transferred to the employment of the Corporation will have rights, obligations and liabilities in respect of his or her employment with the Corporation that are the same as or equivalent to those that would apply if—
 - (a) the Engineering and Water Supply Department continued as an administrative unit of the Public Service; and
 - (b) the employee continued as an employee of the Department.
- (3) Subclause (2) applies subject to any industrial or enterprise award, determination or agreement that may become binding on the Corporation after the commencement of this Act.
- (4) In this clause—

employee of the Department means—

 - (a) a person employed in the Public Service in the Engineering and Water Supply Department; or

- (b) a person employed by the Minister and subject to the direction of the chief executive officer of the Engineering and Water Supply Department in that employment.

6—Annual report

The Corporation's report to the Minister on its operations during a financial year may incorporate a report on the operations of the Engineering and Water Supply Department during that financial year.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *South Australian Water Corporation Act 1994* amended the following:

Sewerage Act 1929

Waterworks Act 1932

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|--|------------------|---|
| 1994 | 82 | <i>South Australian Water Corporation Act 1994</i> | 8.12.1994 | 1.7.1995 except Sch 1 (cl 7)—22.6.1995 (<i>Gazette 15.6.1995 p2841</i>) |
| 1995 | 23 | <i>Waterworks (Rating) Amendment Act 1995</i> | 20.4.1995 | 1.7.1995 (<i>Gazette 8.6.1995 p2790</i>) |
| 1995 | 55 | <i>South Australian Water Corporation (Board) Amendment Act 1995</i> | 3.8.1995 | 19.10.1995 (<i>Gazette 19.10.1995 p1124</i>) |
| 2012 | 9 | <i>Water Industry Act 2012</i> | 19.4.2012 | Sch 2 (cll 17 & 18)—1.1.2013 (<i>Gazette 21.6.2012 p2837</i>) |
| 2016 | 29 | <i>Real Property (Electronic Conveyancing) Amendment Act 2016</i> | 16.6.2016 | Sch 2—4.7.2016 (<i>Gazette 30.6.2016 p2761</i>) |

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|------------|--|--------------|
| Long title | amended under <i>Legislation Revision and Publication Act 2002</i> | |
| Pt 1 | | |
| s 2 | <i>omitted under Legislation Revision and Publication Act 2002</i> | |
| s 4 | | |
| wastewater | <i>deleted by 9/2012 Sch 2 cl 17</i> | 1.1.2013 |

Pt 3

s 12

s 12(2) amended by 55/1995 s 3(a) 19.10.1995

s 12(4) substituted by 55/1995 s 3(b) 19.10.1995

s 16

s 16(1) amended by 55/1995 s 4 19.10.1995

Pt 5

ss 18A—18C inserted by 9/2012 Sch 2 cl 18 1.1.2013

s 18D inserted by 9/2012 Sch 2 cl 18 1.1.2013

s 18D(17) *deleted by 29/2016 Sch 2* **4.7.2016**

Sch 1

cl 7 *omitted under Legislation Revision and
Publication Act 2002*

Sch 2

amended by 23/1995 s 7 1.7.1995

*omitted under Legislation Revision and
Publication Act 2002*

Historical versions

Reprint No 1—1.7.1995

Reprint No 2—19.10.1995

1.1.2013