

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.

Contents

Part 1—Preliminary

- 1 Short title
- 3 Object
- 4 Interpretation

Part 2—Corporation

- 5 Establishment of South Australian Water Corporation
- 6 Application of *Public Corporations Act 1993*
- 7 Functions of Corporation
- 8 Powers of Corporation
- 9 Restriction on contracting out by Corporation
- 10 Corporation to furnish Treasurer with certain information
- 11 Common seal and execution of documents

Part 3—Board

- 12 Establishment of board
- 13 Conditions of membership
- 14 Vacancies or defects in appointment of directors
- 15 Remuneration
- 16 Board proceedings

Part 4—Staff

- 17 Staff of Corporation

Part 5—Miscellaneous

- 18 Delegation to Corporation
- 19 Regulations

Schedule 1—Transitional provisions

- 1 Interpretative provision
- 2 Vesting of property, rights etc in Corporation
- 3 Application of Real Property Act
- 4 Appointment of first chief executive officer
- 5 Transfer of staff
- 6 Annual report

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;

wastewater does not include stormwater.

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.

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

- Amendments of this version that are uncommenced are not incorporated into the text.
- 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>)

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

South Australian Water Corporation Act 1994—19.10.1995 to 31.12.2012

Legislative history

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
Sch 1		
cl 7	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Sch 2	<i>amended by 23/1995 s 7</i>	1.7.1995
	<i>omitted under Legislation Revision and Publication Act 2002</i>	

Historical versions

Reprint No 1.7.1995