
Part 4 Board of directors

Division 1 Appointment and related matters

597 Board of directors

Each water authority has a board of directors (a *board*).

598 Role of board

- (1) The board of a water authority is responsible for the way in which the authority performs its functions and exercises its powers.
- (2) Without limiting subsection (1), it is the board's role—
 - (a) to decide the objectives, strategies and policies to be followed by the authority; and
 - (b) to ensure the authority performs its functions in a proper, effective and efficient way.

599 Number of directors

The board of a water authority consists of the number of directors for the authority stated by the chief executive in a gazette notice.

600 Appointment

- (1) The Governor in Council may appoint an appropriately qualified person as a director for a category 1 water authority.
- (2) The Minister may appoint an appropriately qualified person as a director for a category 2 water authority.
- (3) In recommending a person to the Governor in Council for appointment under subsection (1), or appointing a person under subsection (2), the Minister must have regard to—

- (a) providing balanced gender representation in the boards of water authorities; and
 - (b) any other matter the Minister considers relevant.
- (4) Also, in appointing a person under subsection (2), the Minister must have regard to the names of suitable candidates, if any, given to the Minister under section 609.

601 Chairperson

- (1) The chief executive may appoint a director for a category 1 water authority as the board's chairperson.
- (2) The directors for a category 2 water authority may appoint a director as the board's chairperson.
- (3) If a chairperson is not appointed under subsection (2) within 1 month after the board's first meeting under section 620(2)(a) or 1 month after the office of chairperson becomes vacant, the chief executive may appoint a director as the board's chairperson.
- (4) Unless a director's appointment as chairperson ends sooner under this Act, the director holds office as chairperson until the annual meeting after the appointment is made and may be reappointed at that meeting.

602 Disqualification as director

- (1) A person is disqualified from being appointed or continuing as a director for a water authority if the person—
 - (a) has a conviction, other than a spent conviction, for an indictable offence; or
 - (b) is an insolvent under administration; or
 - (c) is disqualified from managing corporations because of the Corporations Act, part 2D.6; or
 - (d) is an employee of the authority; or
 - (e) is directly interested in an agreement with, or on behalf of, the authority.

- (2) Subsection (1)(e) does not apply to a person to the extent the person is directly interested in an agreement with the water authority for the supply of water.

603 Criminal history report

- (1) To decide if a person is disqualified from being appointed or continuing as a director for a water authority, the Minister may ask the commissioner of the police service for—
 - (a) a written report about the criminal history of the person; and
 - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (2) However, the Minister may make the request only if the person has given the Minister written consent for the request.
- (3) The commissioner of the police service must comply with the request.
- (4) However, the duty to comply applies only to information in the possession of the commissioner of the police service or to which the commissioner of the police service has access.
- (5) The Minister must ensure the report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

604 Term

- (1) A director for a water authority holds office for the term stated in the director's instrument of appointment.
- (2) The stated term must not be more than 3 years.
- (3) The director may be reappointed.
- (4) Despite subsections (1) and (2), a director for a category 1 water authority continues holding office after the director's term of office ends until the day the director's successor is appointed under section 600.

605 Resignation

- (1) A director for a water authority may resign by signed notice given to the chairperson of the authority's board and the chief executive.
- (2) The chairperson of a board may resign from office as chairperson, or as a director, by signed notice of resignation given to the other directors of the board and the chief executive.

606 Removal of director

The Governor in Council, for a category 1 water authority, or the Minister, for a category 2 water authority, may remove a director for the authority from office if the director—

- (a) has engaged in—
 - (i) inappropriate or improper conduct in an official capacity; or
 - (ii) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or
- (b) has become incapable of performing the director's functions; or
- (c) has neglected the director's duties or performed the director's functions incompetently.

607 Vacancy in office

- (1) The office of a director for a water authority becomes vacant if the director—
 - (a) completes a term of office and is not reappointed; or
 - (b) resigns office under section 605; or
 - (c) becomes disqualified under section 602 from continuing as a director; or
 - (d) is removed from office under section 606.

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- (2) Also, the office of a director for a water authority becomes vacant if the director—
- (a) is a nominee and councillor of a local government; and
 - (b) stops being a councillor of the local government other than by defeat at an election of councillors of the local government or failure to contest an election.
- (3) In addition, the office of a director for a water authority becomes vacant if—
- (a) the director is the nominee of a local government; and
 - (b) 6 months have elapsed from the day for holding the quadrennial election next following the director's appointment.

- (4) In this section—

nominee, of a local government, means a person nominated by the local government under section 609(2)(a) or (4)(a).

quadrennial election see the *Local Government Electoral Act 2011*.

608 Acting director

The Governor in Council, for a category 1 water authority, or the Minister, for a category 2 water authority, may appoint a person to act as director for a water authority—

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the director is absent from duty or from the State or is, for another reason, unable to perform the duties of the office.

609 Category 2 water authority board must seek and nominate suitable candidates

- (1) This section applies to a category 2 water authority.

- (2) At least 6 months, but not more than 12 months, before the end of a director's term of office, the board of the authority must—
 - (a) seek suitable candidates for the office; and
 - (b) give the Minister the names of suitable candidates for the office.
- (3) Also, the authority must comply with subsection (2)(a) and (b) within 3 months after a director's office becomes vacant under section 607(1)(b), (c) or (d).
- (4) The chief executive may require the board of a category 2 water authority—
 - (a) to seek suitable candidates under subsection (2)(a) in a particular way, including, for example, by asking the authority's ratepayers or another entity to elect or nominate suitable candidates; or
 - (b) to give under subsection (2)(b) a stated number of names.
- (5) If the chief executive makes a requirement under subsection (4), the chief executive must publish the requirement on the department's website.
- (6) In performing the board's functions under subsection (2), the board must have regard to providing balanced gender representation in the board.
- (7) Subsection (2) does not apply if the Minister gives the board a notice stating the Minister does not expect to appoint a person to the office of the director mentioned in subsection (2) because the water authority may be amalgamated or dissolved, or its functions transferred to a local government, under part 7.
- (8) In this section—

suitable candidate means an appropriately qualified person suitable for appointment under this division as a director.

609A Removal of all directors of board

The Governor in Council, for a category 1 water authority, or the Minister, for a category 2 water authority, may remove all the directors for the authority from office if the board—

- (a) does not comply with a public sector policy notified to the board by the Minister under this Act; or
- (b) does not comply with a direction given to the board by the Minister under this Act; or
- (c) does not comply with an obligation of the board under this Act for the preparation and submission of—
 - (i) a performance plan; or
 - (ii) a report under a performance plan; or
 - (iii) a corporate plan; or
- (d) does not comply with an obligation of the board under the *Financial Accountability Act 2009* for the preparation or submission of a report or plan.

609B Administration of water authority if no board

- (1) The Minister may appoint the chief executive, or another appropriately qualified person, to administer a water authority formed on an amalgamation under section 690 until the authority's first board is appointed.
- (2) Subsection (3) applies if—
 - (a) the Governor in Council or Minister removes all the directors of a water authority's board from office; or
 - (b) for another reason, there are no directors for a water authority's board.
- (3) The Minister may appoint either of the following persons to administer the water authority until a board is appointed for the authority—
 - (a) the chief executive;
 - (b) another appropriately qualified person.

- (4) Subsection (5) applies if the Minister considers it is not practicable for the chief executive or another person to administer a new category 2 water authority formed on an amalgamation under section 690 until the authority's first board is appointed.
- (5) The Minister may direct, or the regulation providing for the amalgamation may provide, that until the new authority's first board is appointed under section 600, the new authority is to be administered by a board made up of each person who, immediately before the amalgamation, was a director for 1 or more of the water authorities that were amalgamated.

Division 2 Directors' duties

610 Disclosure of interests

- (1) This section applies to a director on a water authority's board if—
 - (a) the director has a direct or indirect financial or personal interest in a matter being considered, or about to be considered, by the board; and
 - (b) the interest could conflict with the proper performance of the director's duties about the consideration of the matter.
- (2) As soon as practicable after the relevant facts come to the director's knowledge, the director must disclose the nature of the interest to a meeting of the board.
Maximum penalty—100 penalty units.
- (3) The disclosure must be recorded in the board's minutes.
- (4) Unless the board otherwise decides, the director must not—
 - (a) be present when the board considers the matter; or
 - (b) take part in a decision of the board on the matter.

Maximum penalty—100 penalty units.

- (5) The director must not be present when the board is considering its decision under subsection (4).

Maximum penalty—100 penalty units.

- (6) Another director who also has a direct or indirect financial or personal interest in the matter must not—

- (a) be present when the board is considering its decision under subsection (4); or
(b) take part in making the decision.

Maximum penalty—100 penalty units.

- (7) In this section—

financial or personal interest, of a person in a matter, does not include—

- (a) the person's interest in the matter as a customer or ratepayer of the water authority; or
(b) for a person nominated by an entity for appointment as a director, an interest in an agreement with the authority for the supply of water to the entity.

611 Declaration about duty to act in authority's interest

To remove any doubt, it is declared that a director of a water authority, in exercising powers, and discharging functions, as a director of the authority, must act in the best interests of the authority.

612 Prohibition on loans to directors

- (1) A water authority must not, directly or indirectly—
- (a) make a loan to a director, a director's spouse, or a relative of a director or a director's spouse; or
(b) give a guarantee or provide security for a loan made to a director, a director's spouse, or a relative of a director or a director's spouse.

- (2) Subsection (1) does not apply to the entering into by the authority of an instrument with a person mentioned in the subsection if the instrument is entered into on the same terms as similar instruments are entered into by the authority with members of the public.
- (3) A director of a water authority must not be knowingly concerned in a contravention of subsection (1) by the authority, whether or not in relation to the director.

Maximum penalty—100 penalty units.

- (4) In this section—
relative, of a person, means the person's—
 - (a) parent or remoter lineal ancestor; or
 - (b) son, daughter or remoter issue; or
 - (c) brother or sister.

613 Water authority not to indemnify officers

- (1) A water authority must not—
 - (a) indemnify a person who is or has been an officer of the authority against a liability incurred by the person as an officer of the authority; or
 - (b) exempt a person who is or has been an officer of the authority from a liability incurred as an officer of the authority.
- (2) An instrument is void to the extent it is inconsistent with subsection (1).
- (3) Subsection (1) does not prevent a water authority from indemnifying a person against a civil liability, other than a liability to the authority, unless the liability arises out of conduct involving lack of good faith.
- (4) Subsection (1) does not prevent a water authority from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
 - (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.
- (5) A water authority may give an indemnity mentioned in subsection (3) or (4) only if the Minister has approved the giving of the indemnity.

614 Water authority not to pay premiums for particular liabilities of officers

- (1) A water authority must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer of the authority against a liability—
- (a) incurred by the person as an officer of the authority; and
 - (b) arising out of a breach of conduct involving—
 - (i) a wilful breach of duty in relation to the authority; or
 - (ii) a contravention of section 585(3) or (4).
- (2) Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever the outcome of the proceedings.
- (3) An instrument is void to the extent it is inconsistent with subsection (1).
- (4) In this section—
- pay* includes pay indirectly through 1 or more interposed entities.

615 Director's duty to prevent insolvent trading

- (1) This section applies if—

- (a) immediately before a water authority incurs a debt—
 - (i) there are reasonable grounds to suspect the authority will not be able to pay all its debts as and when they become payable; or
 - (ii) there are reasonable grounds to suspect that, if the authority incurs the debt, it will not be able to pay all its debts as and when they become payable; and
 - (b) the authority is, or later becomes, unable to pay all its debts as and when they become payable.
- (2) A person who is a director of the authority, or takes part in the authority's management, at the time the debt is incurred commits an offence.

Maximum penalty—100 penalty units or imprisonment for 1 year.

- (3) In a proceeding against a person for an offence against this section, it is a defence if it is proved—
- (a) that the debt was incurred without the person's express or implied authority or consent; or
 - (b) that, at the time the debt was incurred, the person did not have reasonable cause to suspect that—
 - (i) the authority would not be able to pay all its debts as and when they became payable; or
 - (ii) if the authority incurred the debt, it would not be able to pay all its debts as and when they became payable; or
 - (c) the person took all reasonable steps to prevent the authority from incurring the debt; or
 - (d) for a director—the person did not take part at the time in the authority's management because of illness or for some other good cause.

616 Court may order compensation

- (1) This section applies if a person is convicted of an offence against section 615 in relation to the incurring of a debt by a water authority.
- (2) The Supreme Court or the District Court may declare that the person is to be personally responsible, without any limitation of liability, for the payment to the authority of the amount required to satisfy the part of the authority's debts that the court considers appropriate.
- (3) This section does not affect any rights of a person to indemnity, subrogation or contribution.
- (4) This section—
 - (a) is in addition to, and does not limit, any rule of law about the duty or liability of a person because of the person's office in relation to a water authority; and
 - (b) does not prevent proceedings being started for a breach of the duty or the liability.

617 Examination of persons concerned with water authorities

- (1) This section applies if it appears to the Attorney-General that—
 - (a) a person who has been concerned, or taken part, in a water authority's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to the authority; or
 - (b) a person may be capable of giving information in relation to a water authority's management, administration or affairs.
- (2) The Attorney-General may apply to the Supreme Court or the District Court for an order under this section in relation to the person.
- (3) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on

any matters relating to the water authority's management, administration or affairs.

- (4) The examination of the person must be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.
- (5) The court may give directions about—
 - (a) the matters to be inquired into at the examination; and
 - (b) the procedures to be followed at the examination including, if the examination is to be held in private, the persons who may be present.
- (6) The person must not fail, without reasonable excuse—
 - (a) to attend as required by the order; or
 - (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

- (7) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or imprisonment for 2 years.

- (8) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or imprisonment for 2 years.

- (9) The person may be directed by the court (whether in the order or by subsequent direction) to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

- (10) The person must not, without reasonable excuse, contravene a direction under subsection (9).

Maximum penalty—200 penalty units or imprisonment for 2 years.

- (11) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.
- (12) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.
Maximum penalty—500 penalty units or imprisonment for 5 years.
- (13) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.
- (14) Subsection (15) applies if—
 - (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
 - (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty.
- (15) The answer is not admissible in evidence against the person in a criminal proceeding or a proceeding for the imposition of a penalty, other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.
- (16) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.
- (17) Subject to subsection (15), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.
- (18) The person may, at his or her own expense, employ a lawyer, and the lawyer may put to the person questions that the court

considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

- (19) The court may adjourn the examination from time to time.
- (20) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order all, or any part, of the costs incurred by the person be paid by the State.

618 Power to grant relief

- (1) This section applies to a person who is—
 - (a) an officer or employee of a water authority; or
 - (b) an employee of a government entity who performs work for a water authority under a work performance arrangement between the water authority and the government entity.
- (2) Subsection (3) applies if, in a proceeding against the person for negligence, default, breach of trust or breach of duty as an officer or employee of the water authority or as an employee of the government entity, it appears to the court that—
 - (a) the person is or may be liable for the negligence, default or breach; but
 - (b) the person has acted honestly and, having regard to all the circumstances of the case, including circumstances connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach.
- (3) The court may relieve the person, wholly or partly, from liability on terms the court considers appropriate.
- (4) If the person believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as an officer or employee of the water authority or as an employee of the government entity, the person may apply to the Supreme Court or the District Court for relief.

- (5) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.
- (6) Subsection (7) applies if—
 - (a) a proceeding mentioned in subsection (2) is being tried by a judge with a jury; and
 - (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved, wholly or partly, from the liability sought to be enforced against the person.
- (7) The judge may withdraw the case, wholly or partly, from the jury and direct that judgment be entered for the defendant on the terms, as to costs or otherwise, that the judge considers appropriate.

619 False or misleading information or documents

- (1) In this section—
officer, of a water authority, includes—
 - (a) an employee of the water authority; and
 - (b) an employee of a government entity who performs work for the water authority under a work performance arrangement between the water authority and the government entity.
- (2) An officer of a water authority must not—
 - (a) make a statement concerning the affairs of the authority to another officer or the Minister that the first officer knows is false or misleading in a material particular; or
 - (b) omit from a statement concerning the authority's affairs made to another officer or the Minister anything without which the statement is, to the first officer's knowledge, misleading in a material particular.
- (3) It is enough for a complaint for an offence against subsection (2)(a) or (b) to state the statement made was 'false

or misleading' to the person's knowledge, without specifying which.

- (4) An officer of a water authority must not give to another officer or the Minister a document containing information that the first officer knows is false, misleading or incomplete in a material particular without—
- (a) indicating to the recipient that the document is false, misleading or incomplete and the respect in which the document is false, misleading or incomplete; and
 - (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud the water authority, its creditors or creditors of another person or for another fraudulent purpose—
500 penalty units or imprisonment for 5 years; or
- (b) otherwise—100 penalty units.

Division 3 Board proceedings

619A Application

- (1) Sections 620 to 622 apply to the board of a category 1 water authority.
- (2) Section 623 applies to the board of any water authority.

620 Time and place of meetings

- (1) Meetings of the board are to be held at the times and places it decides.
- (2) However, the board must hold—
 - (a) its first meeting at the time and place decided by the chief executive; and

- (b) at least 1 meeting a year.
- (3) The board chairperson—
 - (a) may call a board meeting at any time; and
 - (b) must call a meeting if asked by at least one-half of the directors comprising the board or, if the number is not a whole number, the next highest whole number of directors.

621 Conduct of proceedings

- (1) The board's chairperson must preside at all meetings at which the chairperson is present.
- (2) If the chairperson is absent, the director chosen by the directors present must preside.
- (3) At a board meeting—
 - (a) a quorum is the number of directors equalling one-half the number of directors on the board plus 1 or, if the number is not a whole number, the next highest whole number; and
 - (b) a question is decided by a majority of the votes of the directors present and voting; and
 - (c) each director present has a vote on each question to be decided and, if the votes are equal, the chairperson has a casting vote.
- (4) Unless otherwise prescribed under a regulation, the board may conduct its proceedings, including its meetings, as it considers appropriate.

622 Participation in meetings by telephone etc.

- (1) The board may permit directors to participate in a particular meeting, or all meetings, by—
 - (a) telephone; or
 - (b) closed circuit television; or

- (c) another means of communication.
- (2) A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

623 Minutes

The board must keep minutes of its proceedings.

Division 4 Directors' fees and allowances

624 Fees and allowances

A director is entitled to be paid the fees and allowances approved by the Minister.

Part 5 Category 1 water authority matters

Division 1 Commercialising category 1 water authorities

Subdivision 1 Preliminary

637 Meaning of *commercialisation*

Commercialisation of a category 1 water authority involves the authority undergoing a structural reform process so that it operates, as far as practicable, on a commercial basis and in a competitive environment.

638 Key commercialisation principles

- (1) The key commercialisation principles are the following—