

WESTERN AUSTRALIA

**STATUTORY CORPORATIONS
(LIABILITY OF DIRECTORS)
ACT 1996**

(No. 41 of 1996)

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WESTERN AUSTRALIA

**STATUTORY CORPORATIONS
(LIABILITY OF DIRECTORS)
ACT 1996**

No. 41 of 1996

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

[Assented to 10 October 1996.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

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

Commencement

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

Consequential amendments

3. The Acts specified in Schedule 2 are amended as set out in that Schedule.

PART 2 — STATUTORY CORPORATIONS GENERALLY

Division 1 — Interpretation

Interpretation

4. In this Part, unless the contrary intention appears —

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

“**director**” means —

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

Division 2 — Duties of directors stated

Duties of directors

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

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

as a director of a company incorporated under the Corporations Law has with and to the company.

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

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- (b) if the Act under which the director held his position has been repealed and replaced by another Act, by the Minister who is responsible for the administration of that other Act; or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

and not otherwise.

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

Division 3 — Ministerial directions

Unlawful directions

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

- (a) would require the corporation —
 - (i) to do something that it could not otherwise do; or
 - (ii) not to do something that it is obliged to do; or
- (b) is unlawful for some other reason.

**PART 3 — DUTIES OF DIRECTORS OF CERTAIN
CORPORATIONS**

Division 1 — Interpretation

Interpretation

7. (1) In this Part, unless the contrary intention appears —

“corporation”, in relation to a director, means the body specified in the first column in Schedule 1 opposite the reference in the second column that includes that director;

“director” means a person who holds a position described in the second column of Schedule 1, and includes a person who, under a relevant Act mentioned in that Schedule or another written law, is acting in place of a director, whether the acting is —

- (a) expressed to be temporary;
- (b) as a deputy, an alternate or a representative; or
- (c) in any other circumstances.

“summary conviction penalty”, in relation to a crime, has the same meaning as in section 5 of *The Criminal Code*.

(2) A person who attempts (within the meaning in section 4 of *The Criminal Code*) to commit an offence against a provision of this Part is guilty of that offence.

(3) The duties provided for by this Part are in addition to those in section 5.

(4) The provisions of this Part apply to a Board member of the Mid West Development Commission and the South West Development Commission established by the *Regional*

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Development Commissions Act 1993 only in respect of the functions of the relevant Commission under Part 5 of that Act.

Amendment of Schedule 1

8. The Governor may by regulation amend Schedule 1.

Division 2 — Duties stated

Duty to act honestly

9. (1) A director must at all times act honestly in the performance of the functions of his or her office, whether within or outside the State.

(2) A person who contravenes subsection (1) —

(a) with intent to deceive or defraud —

(i) the corporation; or

(ii) creditors of the corporation or of any other person; or

(b) for any other fraudulent purpose,

is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

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

Duty to exercise reasonable care and diligence

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

Penalty: \$5 000.

Duty not to make improper use of information

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

(2) A person who contravenes subsection (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

Duty not to make improper use of position

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

(2) A person who contravenes subsection (1) is guilty of a crime and is liable to a fine of \$20 000 or imprisonment for 5 years, or both.

Summary conviction penalty: A fine of \$12 000 or imprisonment for 3 years, or both.

Division 3 — Compensation

Payment of compensation may be ordered

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

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

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

Civil proceedings for recovery

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

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

Corporation's power to insure

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

(2) In subsection (1) —

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

Division 4 — Ministerial directions

Interpretation

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

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

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

(2) For the purposes of this Division a direction is unlawful if it —

(a) would require the corporation —

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

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

- (b) is unlawful for some other reason.

Governing body may question direction

17. (1) Where a direction is given under a written law to a corporation by a Minister and the governing body determines that —

- (a) it would not be in the interests of the corporation for it to comply with the direction; or
- (b) the direction is unlawful,

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

(2) Where a governing body gives such a notice to the responsible Minister, that Minister is to either —

- (a) cancel the direction; or
- (b) confirm it and state his or her reasons for doing so.

(3) The confirmation of a direction has no effect if the direction is unlawful.

(4) If the direction is confirmed the corporation is required, subject to subsection (3), to give effect to it.

Corporation may challenge direction

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

Protection of directors

19. (1) A director does not contravene section 5, 9 or 10 by doing or omitting to do any thing —

- (a) if that thing is done or omitted in compliance with a lawful direction given by a Minister in exercise of a power conferred by a written law; and
- (b) where the director was of the opinion that section 17 (1) (a) applied to the direction, if he or she made reasonable efforts to cause the governing body to give notice to the Minister under that section.

(2) Subsection (1) does not extend to the manner in which any thing is done or omitted if it is done or omitted in a manner that is contrary to section 9 or 10 and the direction did not require that it be done in that manner.

PART 4 — RELIEF FROM LIABILITY

Relief from liability

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

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

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

Application for relief

21. (1) Where a person has reason to believe that any claim will or might be made against him or her under section 5, 13 or 14 the person may apply to the Supreme Court for relief.

(2) On an application under subsection (1) the Supreme Court has the same power to relieve the person as it would have had under section 20 if it had been a court exercising jurisdiction under section 5, 13 or 14.

Case may be withdrawn from jury

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

- (a) withdraw the case in whole or in part from the jury; and

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- (b) direct judgment to be entered for the person on such terms as to costs or otherwise as the judge thinks proper.

**SCHEDULE 1 — PERSONS WHO ARE DIRECTORS
UNDER PART 3**

[Section 7 (1)]

Corporation	Persons who are directors for the purposes of this Act	Act under which holds position
Albany Port Authority	a member of the Authority	<i>Albany Port Authority Act 1926</i>
Bunbury Port Authority	a member of the Authority	<i>Bunbury Port Authority Act 1909</i>
Bunbury Water Board	a member of the Board	<i>Water Boards Act 1904</i>
Busselton Water Board	a member of the Board	<i>Water Boards Act 1904</i>
Dampier Port Authority	a member of the Authority	<i>Dampier Port Authority Act 1985</i>
Eastern Goldfields Transport Board	a member of the Board	<i>Eastern Goldfields Transport Board Act 1984</i>
East Perth Redevelopment Authority	a member of the Authority	<i>East Perth Redevelopment Act 1991</i>
Esperance Port Authority	a member of the Authority	<i>Esperance Port Authority Act 1968</i>
Fremantle Cemetery Board	a member of the Board	<i>Cemeteries Act 1986</i>
Fremantle Port Authority	a commissioner	<i>Fremantle Port Authority Act 1902</i>
Geraldton Port Authority	a member of the Authority	<i>Geraldton Port Authority Act 1968</i>
Government Employees Superannuation Board	a member of the Board	<i>Government Employees Superannuation Act 1987</i>
Grain Pool of W.A.	a Director	<i>Grain Marketing Act 1975</i>

Lotteries Commission	a member of the Commission	<i>Lotteries Commission Act 1990</i>
Metropolitan Cemeteries Board	a member of the Board	<i>Cemeteries Act 1986</i>
Metropolitan (Perth) Passenger Transport Trust	a member of the Trust	<i>Metropolitan (Perth) Passenger Transport Trust Act 1957</i>
Mid West Development Commission	a Board member	<i>Regional Development Commissions Act 1993</i>
Perth Market Authority	a member of the Authority	<i>Perth Market Act 1926</i>
Perth Theatre Trust	a trustee	<i>Perth Theatre Trust Act 1979</i>
Port Hedland Port Authority	a member of the Authority	<i>Port Hedland Port Authority Act 1970</i>
Potato Marketing Corporation of Western Australia	a member of the Corporation	<i>Marketing of Potatoes Act 1946</i>
Rottnest Island Authority	a member of the Authority	<i>Rottnest Island Authority Act 1987</i>
State Government Insurance Commission	a Commissioner	<i>State Government Insurance Commission Act 1986</i>
State Government Insurance Corporation	a director of the Corporation	<i>State Government Insurance Commission Act 1986</i>
State Housing Commission	a member of the Commission	<i>Housing Act 1980</i>
South West Development Commission	a Board member	<i>Regional Development Commissions Act 1993</i>
Subiaco Redevelopment Authority	a member of the Authority	<i>Subiaco Redevelopment Act 1994</i>
Totalisator Agency Board	a member of the Board	<i>Totalisator Agency Board Betting Act 1960</i>
Western Australian Coastal Shipping Commission	a Commissioner	<i>Western Australian Coastal Shipping Commission Act 1965</i>

Western Australian Development Corporation	a director of the Corporation	<i>Western Australian Development Corporation Act 1983</i>
Western Australian Egg Marketing Board	a member of the Board	<i>Marketing of Eggs Act 1945</i>
Western Australian Government Railways Commission	the Commissioner	<i>Government Railways Act 1904</i>
Western Australian Land Authority	a director	<i>Western Australian Land Authority Act 1992</i>
Western Australian Meat Commission	a member of the Commission	<i>Abattoirs Act 1909</i>
Western Australian Meat Marketing Corporation	a member of the Corporation	<i>Marketing of Meat Act 1971</i>

SCHEDULE 2 — AMENDMENT OF VARIOUS ACTS

[Section 3]

Abattoirs Act 1909

1. Section 12A is amended —

(a) by inserting after “**12A.**” the subsection designation “(1)”;
and

(b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

2. Section 25 is amended —

(a) by inserting after “**25.**” the subsection designation “(1)”; and

(b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

East Perth Redevelopment Act 1991

1. Section 11 is amended —

(a) by inserting after “**11.**” the subsection designation “(1)”; and

(b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

2. Section 13 is amended —

(a) by repealing subsection (1); and

(b) by repealing subsection (4).

Eastern Goldfields Transport Board Act 1984

After section 18 (1a) the following subsection is inserted —

“
 (1b) Subsection (1a) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

Gold Corporation Act 1987

Schedule 1 is amended, in clause 6 —

- (a) by inserting after “6.” the subclause designation “(1)”; and
- (b) by inserting the following subclause —

“
 (2) Subclause (1) has effect subject to sections 71, 72, 73 and 74.
”

Government Employees Superannuation Act 1987

1. After section 6 (4) the following subsection is inserted —

“
 (5) Subsection (3) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

2. Schedule 3 is amended, in clause 4 —

- (a) by inserting after “4.” the subclause designation “(1)”; and
- (b) by inserting the following subclause —

“
 (2) Subclause (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

Government Railways Act 1904

Section 9 is amended —

- (a) by inserting after “**9.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

Grain Marketing Act 1975

Section 15 is amended —

- (a) by inserting after “**15.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

Housing Act 1980

1. After section 11 (2) the following subsection is inserted —

“
(3) Subsection (2) has effect subject to the *Statutory
Corporations (Liability of Directors) Act 1996.*
”.

2. Section 69 is amended —

- (a) by inserting after “**69.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

Lotteries Commission Act 1990

1. After section 7 (3) the following subsection is inserted —

“
(4) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

2. Schedule 1 is amended, in clause 6 —

- (a) by inserting after “6.” the subclause designation “(1)”; and
(b) by inserting the following subclause —

“
(2) Subclause (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

Marketing of Eggs Act 1945

Section 32I is amended —

- (a) by inserting after “32I.” the subsection designation “(1)”;
and
(b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

Marketing of Meat Act 1971

1. Section 13 is amended —

- (a) by inserting after “13.” the subsection designation “(1)”; and
(b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

2. After section 14A (4) the following subsection is inserted —

“
(5) Subsection (4) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”.

Marketing of Potatoes Act 1946

After section 16 (2) the following subsection is inserted —

“
(3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”.

Metropolitan (Perth) Passenger Transport Trust Act 1957

Section 22 is amended —

- (a) by inserting after “**22.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”.

Perth Market Act 1926

After section 10A (4) the following subsection is inserted —

“
(5) Subsection (2) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”.

Ports (Functions) Act 1993

Section 9 is repealed.

Regional Development Commissions Act 1993

1. Section 20 is amended —

- (a) by inserting after “**20.**” the subsection designation “(1)”; and

- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996* so far as it applies to the Mid West Development Commission or the South West Development Commission.
”

2. After section 25 (2) the following subsection is inserted —

“
(3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996* so far as it applies to the Mid West Development Commission or the South West Development Commission.
”

Rottnest Island Authority Act 1987

1. After section 9 (2) the following subsection is inserted —

“
(3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

2. After section 15 (2) the following subsection is inserted —

“
(3) Subsection (2) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

State Government Insurance Commission Act 1986

Schedule 1 is amended, in clause 11 —

- (a) by inserting after “11.” the subclause designation “(1)”; and
(b) by inserting the following subclause —

“
(2) Subclause (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

Subiaco Redevelopment Act 1994

1. Section 11 is amended —

- (a) by inserting after “**11.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

2. Section 13 is amended —

- (a) by repealing subsection (1); and
- (b) by repealing subsection (4).

Totalisator Agency Board Betting Act 1960

1. After section 5 (3a) the following subsection is inserted —

“
(3b) Subsection (3) has effect subject to the *Statutory
Corporations (Liability of Directors) Act 1996.*
”.

2. Section 14 is amended —

- (a) by inserting after “**14.**” the subsection designation “(1)”; and
- (b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the
Statutory Corporations (Liability of Directors)
Act 1996.
”.

Water Boards Act 1904

Section 13 is amended —

- (a) by inserting after “**13.**” the subsection designation “(1)”; and

(b) by inserting the following subsection —

“
(2) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996* so far as it applies to a Water Board a provision of a written law relating to protection from liability.
”

Western Australian Development Corporation Act 1983

After section 4 (4a) the following subsection is inserted —

“
(4b) Subsection (4) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

Western Australian Land Authority Act 1992

1. Section 9 (2) (a) is amended by deleting “Part B of Schedule 1” and substituting the following —

“ the *Statutory Corporations (Liability of Directors) Act 1996* ”.

2. After section 24 (4) the following subsection is inserted —

“
(5) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

3. Schedule 1 is amended in Part B by repealing clauses 3, 4 and 5.

Various Acts amended

Each section mentioned in the table to this item is amended by inserting after subsection (2) of the section the following subsection —

“
(3) Subsection (1) has effect subject to the *Statutory Corporations (Liability of Directors) Act 1996*.
”

TABLE

East Perth Redevelopment Act 1991, s. 25
Government Railways Act 1904, s. 8C
Marketing of Potatoes Act 1946, s. 20A
Perth Market Act 1926, s. 3A
Ports (Functions) Act 1993, s. 6
State Government Insurance Commission Act 1986, s. 10
Subiaco Redevelopment Act 1994, s. 29