

BOARD CHARTER



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Terms

Board means the Board of Directors of the Bunbury Water Corporation (trading as Aqwest).

Bunbury Water Corporation (trading as Aqwest) means the body established by section 4(2) of the *Water Corporations Act 1995*.

Corporation means the Bunbury Water Corporation (trading as Aqwest).

Director of the Bunbury Water Corporation (trading as Aqwest) means a member of the Board of Aqwest. It does not include the Chief Executive Officer in his/her capacity (if any) as a Director.

Minister means the Minister to whom the administration of the *Water Corporations Act 1995* is committed.

GTE Act means the *Government Trading Enterprises Act 2023*.

GTE Minister means the Minister to whom the administration of the GTE Act is committed.

WCA means the *Water Corporations Act 1995*.

SAT means Salaries and Allowances Tribunal.

1. Introduction

Aqwest is the trading name of the Bunbury Water Corporation, established 18 November 2013 under the *Water Corporations Act 1995* (WCA). Aqwest provides potable water services to the City of Bunbury, Western Australia and surrounding areas.

The *Government Trading Enterprises Act 2023* (GTE Act) seeks to ensure that governance practices across Government Trading Enterprises, including Aqwest, are aligned. Aqwest is a body corporate with perpetual succession with a Board and the WCA and the GTE Act describes the functions, roles and responsibilities of the Board, management and staff. The GTE Act serves as Aqwest's constitution.¹

The Bunbury Water Corporation is not an agent of the Crown and is not part of the Public Service and employees are not public servants or employees of the public sector. It is required to act in accordance with prudent commercial principles, subject to direction from the Minister and to endeavour to make a profit, consistent with maximising its value.

Section 7 of the GTE Act establishes a purpose "to advance the public benefit through the performance of its functions". As such, the Board must consider factors including but not limited to profit, delivery of government policy and social licence to operate. The Statement of Expectations reflects how Aqwest will meet this requirement of public benefit.

2. Role of the Board

a) Authority

In accordance with section 11 of the GTE Act, the governing authority of the Bunbury Water Corporation trading as Aqwest is vested in the Board.

b) Board Responsibilities

The Board's role is to govern the Corporation and it is responsible for:

Strategy

- Providing the overall strategic direction of the Corporation.
- Ensuring management implements approved strategic plans for the Corporation.

Governance and Management Oversight

- Nomination and removal of the Chief Executive Officer (CEO).
- Approving remuneration and terms of employment for the CEO.
- Evaluating and providing feedback on the performance of the CEO.
- Ensuring that an effective system of corporate governance exists.
- Approving material changes to Board level policies.

¹ In accordance with section 5 of the GTE Act and section 3A of the WCA, the GTE Act and WCA are to be read together as if they form a single Act.

Financial Oversight

- Monitoring the Corporation's operational and financial performance including the approval budget approvals and the financial reporting processes.
- Approving delegated financial and legal authorisations.

Risk and Compliance

- Setting the Corporation's risk appetite within which the Board expects management to operate.
- Providing oversight to ensure risks facing the Corporation are identified, assessed and managed effectively.
- Monitoring internal compliance and control, including with respect to the code of conduct and legal compliance.
- Monitoring and guiding the culture, values, brand and reputation of the Corporation.
- Ensuring the Corporation is continuously and effectively operating commercially in the best interest of the Corporation, taking account of risk and maximising the long-term value of the Corporation.
- Approve on recommendation from the Audit & Risk Committee, the appointment of the Strategic Internal Auditor.

Stakeholder Relations

- Monitoring and overseeing the Corporation's stakeholder communication strategy and its implementation.
- Promoting processes for the development and maintenance of strong relationships with key stakeholders.

c) Working with the Government

The Board is required to report regularly to the Minister and Treasurer in accordance with section 81 and 82 of the GTE Act. The Corporation achieves this through its Annual Report and Interim Reports.

The Chair, CEO and other members of the Board and management will meet with the Minister as required.

In addition, the Board must, after consultation with the Public Sector Commissioner, prepare and issue a code or codes of conduct for the Corporation's staff setting out:

- (a) Minimum standards of conduct and integrity to be observed by members of staff of the Corporation (WCA, s. 24); and
- (b) Minimum standards of merit, equity and probity applicable to management of staff (section 16 of the WCA, s. 16).

3. Board Composition

The GTE Act allows for a board of five to nine members (GTE Act, s. 12(1)). The Aqwest Board comprises of six Non-Executive Directors (appointed by the Minister after consultation with the Board (GTE Act, s.13(1)). A quorum consists of three Directors.

4. Appointment and Retirement of Directors

If a vacancy occurs, or is soon to occur, in the membership of the Corporation's Board, the Board may recommend a candidate to the Minister. In preparing to consult with the Minister, the Board will undertake appropriate checks in relation to matters such as relevant qualifications and experience, and potential conflicting interests.

The recommendation must include advice to the Minister on the extent to which the Board, if the candidate were to be appointed, would satisfy the Director skills matrix as described in section 5 of the Board Charter. However, the Minister is not required to wait for, or follow, a recommendation from the Board (GTE Act, s. 15).

The Minister may, with the approval of the GTE Minister, appoint the Corporation's CEO to its Board (GTE Act, s.13(2)).

Directors hold office for such period, not exceeding three (3) years, as is specified in the instrument of his or her appointment and are eligible for reappointment but cannot hold office for more than nine (9) consecutive years (GTE Act, s.17). The Minister may, at any time, remove a Director, including the Board Chairperson, or Deputy Chairperson, from office and is not required to give any reason for doing so (GTE Act, s.13(4)).

Directors receive a formal letter of appointment from the Minister. An induction and induction pack is provided by the CEO and Board Chairperson.

Directors may resign from office by signed notice in writing delivered to the Minister. The resignation takes effect on the later of (GTE Act, s.21(3)):

- (a) Receipt by the Minister; or
- (b) The day specified in the resignation.

5. Board Skills

The Board and the Minister must endeavour to agree a skills matrix for the Board (GTE Act, s. 14(1)).

The purpose of the Board Skills Matrix is to identify:

- The skills, knowledge and experience the Board should collectively hold;
- Diversity represented and diversity considerations relevant to the role and functions of the Board; and
- Gaps in skills, knowledge, and experience and areas for professional development across the Board.

The Board will review the range of expertise of its members on an annual basis and ensure that it has access to operational and technical expertise relevant to the overview of the operations of Aqwest.

It is important to note that each individual Director is not expected to hold all professional and industry skills set out in the Board Skills Matrix. Rather, these skills should be held collectively by the Board as a whole.

6. Director Remuneration

A Director is paid from the funds of the Corporation. Each Director's remuneration is determined by the Minister within the range determined by section 7D of the *Salaries and Allowances Tribunal Act 1975*. Remuneration is not paid to a Director who holds a fulltime office, or position, that is remunerated out of moneys appropriated by Parliament (GTE Act, s. 18(6)).

7. Directors' Duties

In accordance with statutory requirements, specifically Part 5, Division 2, sections 45 to 52 of the GTE Act, and in keeping with the common law, Directors have the following responsibilities:

- (a) Exercise their powers and discharge their duties in good faith and in the best interests of the Corporation as a whole;
- (b) Use their powers of office for a proper purpose and not for personal advantage or for the benefit of another party;
- (c) Notify the Board of any interest that could (or could be perceived to) impact on the Director's ability to act in the Corporation's best interest as soon as the Director is aware of that conflict;
- (d) Use due care and diligence;
- (e) Make a reasonable effort to become and remain familiar with the affairs of Aqwest; and
- (f) Attend all Board meetings and Board functions unless they have a valid reason for non-attendance.

8. Conflicts of Interest

Directors must, on an ongoing basis, keep the Board advised of any personal or other interest that could potentially conflict with Aqwest's interests. Board members must comply with the Corporation's conflict of interest disclosure procedures.

The agenda of each Board and committee meeting includes a standing item for declarations of material personal or other interests to be made.

A Director with an actual or potential conflict of interest in relation to a matter being dealt with at a Board or committee meeting must not vote on or be present at the meeting while the matter is considered unless the Board by resolution decides that the interest should not disqualify the Director.

9. Appointment and Responsibilities of the Chairperson

a) Chairperson

The Minister must designate a Director to be the Chairperson. The Chairperson should be an Independent Director. The roles of the Chairperson and the Chief Executive Officer (CEO) may not be exercised by the same individual.

The Chairperson's responsibilities include:

- (a) Leading the Board, ensuring effective contribution by all Directors and monitoring performance;
- (b) Chairing Board meetings;
- (c) Establishing the agenda for Board meetings in consultation with the CEO;
- (d) Ensuring Board minutes properly reflect Board decisions;
- (e) Being the primary point of contact between the Board and the CEO;
- (f) Being available for consultation with the CEO;
- (g) Being the "interface" of the organisation with relevant external stakeholders (such as the Minister for Water, government, local organisations and media where necessary).
- (h) Supervising the process of Board and Director evaluations;
- (i) Supervising the process for CEO evaluation;
- (j) Authorising the expenses of Directors;² and
- (k) In accordance with section 30(1) and section 33(3) of the GTE Act, having a casting vote.

b) Deputy Chairperson

A Deputy Chairperson is appointed by the Minister (section 16(1)(b) of the GTE Act).

The Deputy Chairperson fulfills the duties of Chairperson if he/she is absent or declares a conflict of interest concerning a particular issue.

10. Appointment and Responsibilities of the Chief Executive Officer

The Chief Executive Officer (CEO) is appointed, and his or her terms and conditions of service are set by the Board, with approval of the Minister (section 13(2) of the GTE Act).

The CEO is responsible for the day-to-day management and administration of Aqwest in accordance with the strategy, policies and programs approved by the Board.

The Board has delegated to the CEO the responsibility for:

- (a) Strategy – making recommendations on significant corporate strategic initiatives and implementing Board approved strategies;

² The Deputy Chairperson or Chair of the Audit and Risk Committee will authorise expenses of the Chairperson.
AQWEST Bunbury Water Corporation – Board Charter

- (b) Senior management selection – the appointment of senior management, determining terms of appointment, evaluating performance, and developing and maintaining succession plans for senior management roles;
- (c) Financial performance – annual budgets and managing day to day operations within the budget;
- (d) Risk management – maintaining effective risk management frameworks; and
- (e) Sustainability – managing day to day operations in accordance with the social, ethical and environmental strategic objectives and outcomes set by the Board.

The CEO is the principal spokesperson for the Corporation on operational matters.

11. Company Secretary

Due to the relatively small size of the organisation, the role of the Company Secretary is covered by the CEO with support from the Executive team.

12. Committees

To assist with the execution of its responsibilities, the Board has the authority under section 26 of the GTE Act, to establish and determine the powers and functions of the committees of the Board.

To assist with the execution of its responsibilities, the Board is required under section 27 of the GTE Act, to appoint a Committee to assist the Board in performing its audit and risk management functions.

There are currently two Board committees:

- Audit and Risk Committee
- Salary Review Committee

Each Board Committee is governed by a Board-approved charter setting out that Committee's responsibilities. The Board may also delegate specific functions to Committees on an "as needs" basis.

In addition to the Committees listed above, Board Directors also hold membership on the following community related groups:

- Reconciliation Action Plan (RAP) Working Party (*RAP Working Party Terms of Reference*)
- Community Sponsorship Selection Panel (*Policy 4.30 Community Sponsorship Program*)

13. Delegations of Authority

Directors are responsible for any delegations of their responsibilities with regard to corporate operations. As such, the Board decides what Corporation matters are to be delegated, either to specific Directors or to Management. In addition, the Board outlines what controls are in place to oversee the operation of the delegated powers.

As a consequence, the individual Directors have no individual authority to participate in the day-to-day management of the Corporation, including making any representations or agreements with related corporations, suppliers, customers, employees or other parties or organisations.

The exception to this principle occurs where the Board by resolution expressly delegates an authority to a Director individually. Additionally, it is recognised that all executive Directors will carry significant delegated authority by virtue of their management position. Committees and their members require specific delegations from the Board as a whole and these will be contained in the charter for each Committee.

In general, the Board delegates all powers and authorities to carry out the Corporation's business effectively and efficiently to the CEO and Board committees, except where specific authority is retained.

All matters relating to the delegation of powers are outlined in Policy 1.40 Delegation of Authority.

14. Board Meetings

a) Holding Meetings

Board meetings must be held at times and places determined by the Board.

The Board will meet as often as appropriate to enable it to discharge its duties to the Corporation, but not less than six times a year (section 28(2) of the GTE Act).

A special meeting of the Board:

- May be convened by the Chairperson at any time; and
- Must be convened by the Chairperson if two or more directors request the Chair to do so.

The Board may conduct meetings in person, by telephone or videoconference, or by any other means of communication.

b) Leave of Absence

In accordance with Section 22 of the GTE Act, the Board may grant a Director a leave of absence for a period not exceeding one (1) month, on the terms and conditions that it considers appropriate.

With the prior approval of the Portfolio Minister, the Board may grant a Director a leave of absence for a period exceeding one (1) month, on the terms and conditions that it considers appropriate.

Leave of absence requests must be made in writing and addressed to the Board Chairperson.

c) Meeting Agenda

The meeting agenda and Board papers are provided to Directors no less than seven [7] calendar days prior to a scheduled meeting.

The agenda for Board meetings will be prepared by the Company Secretary and CEO and approved by the Chairperson.

The agenda will include those items required by the Charter, an activity calendar (the Calendar) and any other items as are requested by the Directors and management, and which are approved by the Chairperson.

d) Minutes

Minutes of the proceedings and resolutions of Board meetings must be kept.

Minutes are circulated in draft by the CEO to the Chairperson for comment as soon as reasonably possible, but within 7 days after the relevant meeting.

Minutes are distributed to the Board within 14 days of the board meeting, for confirmation at the next meeting.

e) Board Calendar

In order to provide an even distribution of work over each financial year, the Board has adopted a twelve-month Board calendar, which includes all scheduled Board and committee meetings as well as major Aqwest and Board activities (e.g., Board evaluation, Director induction).

15. Performance Evaluation

a) Board and Director Evaluation

Section 24 of the GTE Act requires the Board to give the Minister an annual report on its assessment of its performance over the year which must include an assessment of the Board's performance:

- That references both the Corporation's statement of expectations and annual performance statement; and
- On both an individual and collective level referencing self-assessment criteria agreed by the Board and Minister.

Section 25 of the GTE Act requires the Board to arrange an external review of its performance and that report must be given to the Minister. The Board's performance must be externally reviewed in accordance with section 25 of the GTE Act once every 3 years.

b) Review of the CEO

The CEO is the key employee of the Corporation and of the Board. The GTE Act requires the Board to review the CEO's performance at least annually.

The Board Chairperson is responsible for supervising the evaluation process in respect of the CEO and the CEO is responsible for the evaluation process of direct reports.

16. Director Protection

a) Director Protection Overview

As a general rule, a Director has two key areas of protection – the right to information and the ability to insure against specific risks of being a Director. Section 55 of the GTE Act also provides limited protection for Directors who have acted honestly in the discharge of their duties but have nonetheless been subject to a claim of breach of duty.

In addition, the Corporation executes deeds of indemnity, insurance and access in favour of each Director.

b) Access to Information and Records

Subject to the Director's Deed of Indemnity, Insurance and Access, each Director has right of access to all records in the control of the Corporation.

c) Independent Professional Advice

Each Director may obtain independent professional advice at the Corporation's expense to assist the director in the proper exercise of powers and discharge of duties as a Director or as a member of a committee.

Directors are entitled to reimbursement of all reasonable costs where a request for reimbursement of the cost of such advice is approved by the Chairperson. In the case of a request made by the Chairperson, approval is required by the Chair of the Audit & Risk Committee.

17. Board Code of Conduct

The Board has adopted a Code of Conduct (see **Appendix 1**):

- To guide the Directors and promote high ethical and professional standards and
- Responsible decision-making; and
- Which sets out the minimum acceptable standards of behaviour expected of the Directors of the Corporation.

Directors must comply with all codes of conduct adopted by the Board.

Each Director shall be familiar with and behave in accordance with the policies and process listed below:

Board Policies

- Policy 1.40 Delegation of Authority
- Policy 4.37 Fraud and Misconduct Control

Internal Management Processes

- Manage Related Party Disclosures
- Disclose and Manage Public Interest Matters
- Manage Conflicts of Interest
- Gift and Entertainment Register

18. Director Induction and Development

a) Director Induction

All new Directors appointed to the Board are to undertake an induction program coordinated by the CEO, to assist them in fulfilling their duties and responsibilities.

b) Director Development

The CEO is responsible for coordinating appropriate professional development opportunities for Directors to develop and maintain the skills and knowledge needed to perform their role as Directors effectively.

The Board allocates an annual budget to encourage Directors to participate in training and professional development programs to enable them to discharge their responsibilities.

19. Review and Publication of Charter

The Board will review the Charter every two years, or earlier if required, to ensure that it meets best practice standards, which comply with relevant standards of corporate governance and meet the needs of the Corporation, the Minister, the GTE Minister and the Board.

The Charter will be accessible through the Aqwest website.

Appendix 1: Code of Conduct for Aqwest Board Directors

1. Application of the Code

The Code of Conduct for Aqwest Board Directors (“The Code”) applies to Board Directors both during and (where practicable) following their appointment.

Where a Director acts improperly, there may be penalties (including fines and imprisonment) under the *Government Trading Enterprises Act 2023*. Aqwest may also choose to undertake civil action to recover losses resulting from improper behaviour.

2. Required Behaviours

a) Personal Behaviour

- (i) A Director must act honestly, in good faith and in the best interest of Aqwest as a whole.
- (ii) A Director has a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office.
- (iii) A Director must use the powers of office for a proper purpose, in the best interest of Aqwest as a whole.
- (iv) A Director must recognise that the primary responsibility is compliance with the WCA and to have regard for the interest of all stakeholders of Aqwest.
- (v) A Director has an obligation to be independent in judgement and action and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Board of Aqwest.
- (vi) A Director should not engage in conduct likely to bring discredit upon Aqwest.
- (vii) A Director has an obligation, at all times, to comply with the spirit, as well as the letter, of the law and with the principles of this Code.

b) Communication and Official Information

- (i) A Director must adhere to applicable legal requirements, policies and all other lawful directives regarding communication with Parliament, Ministers, ministerial staff, lobbyists, the media and members of the public.
- (ii) A Director must only make public comment on behalf of the Board to the media or outside organisations when authorised to do so.
- (iii) A Director must understand how we may use social media in an official capacity, if at all.

c) *Fraudulent or Corrupt Behaviour*

- (i) A Director must not engage in any fraudulent or corrupt behaviour.
- (ii) A Director must report any information about actual or potentially fraudulent, corrupt or illegal activities to the Board Chairperson or, if necessary, the Corruption and Crime Commission.
- (iii) A Director must report suspected breaches of the Code of Conduct.
- (iv) A Director must abide by our Board's risk management plan, applicable corruption resistance policies and accountability requirements.

d) *Use of Public Resources*

- (i) A Director must use the resources of the State, funds, employees and equipment effectively and economically, only for Board business.
- (ii) A Director must comply with applicable legislation, whole of government requirements and Board policies when using public resources.
- (iii) A Director must not use public resources for personal financial gain or party political work.
- (iv) A Director must operate equipment and property in accordance with the manufacturer's specifications, maintain it in good condition and store it securely.
- (v) A Director must report any damage to, or loss of, property or equipment immediately to the Board (or other responsible person).
- (vi) A Director must ensure requests by an external party, such as a charitable organisation, to use Board facilities are referred to the board for approval.

e) *Record Keeping and Use of Information*

- (i) A Director must not make improper use of information acquired as a Director.
- (ii) Confidential information received by a Director in the course of the exercise of Board Directorship duties remains the property of Aqwest and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by Aqwest, or the person from whom the information is provided, or required by law.

f) *Conflicts of Interest and Gifts and Benefits*

A Director must not allow personal interests, or the interests of any associated person, to conflict with the interests of Aqwest.

g) *Reporting Suspected Breaches of the Code*

What is a Public Interest Disclosure (PID)?

The Chief Executive Officer is the PID Officer, i.e., the person who receives public interest disclosures. Alternatively, disclosures can be made directly to the Public Sector Commission or the Corruption and Crime Commission.

3. Prohibited Conduct

Under the *Government Trading Enterprises Act 2023*, Part 5 Division 6, Directors are prohibited from engaging in certain types of conduct, which includes:

- a) Requesting, accepting or approving a loan, guarantee or security for a related party.
- b) Requesting, accepting or approving indemnification against or exemption from a liability incurred as a Director other than as specifically allowed for under the Act.

Further, under section 49 of the *Government Trading Enterprises Act 2023*, Directors are prohibited from furnishing, making available, authorising, or otherwise permitting the release of information that is materially false, misleading or omits material information. This includes information about the state of knowledge of the Director with regards to the material.