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Hon Ian Hunter
Minister for Sustainability, Environment and Conservation,
Water and the River Murray, and Aboriginal Affairs and Reconciliation
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Dear Minister,

Thank you for the opportunity to provide advice to you in relation to the Premier's proposed abolition of boards and committees. The following advice was prepared in consultation with a specially convened Board working group and received the endorsement of the full Board at its meeting on 19 August 2014.

SUMMARY

The EPA Board strongly recommends that an exemption be pursued to enable its continuation. It does so on the basis that its statutory function as "the governing body of the Authority" (under s.14B of the Environment Protection Act) is significantly different from the advisory and/or regulatory functions performed by many other boards and committees and is best performed, as the legislation currently provides, by a skills-based body that is independent of Government.

With respect to the specific criteria for determining whether a board or committee should be retained, we believe that there are two in particular that support a case to retain the EPA Board:

Criteria 3: Will the abolition of a board have a negative impact on business or community confidence?

Criteria 2: Is there a case for direct community or sectoral representation through a board?

We believe that abolition of the Board would negatively impact community and industry perceptions of transparency, impartiality and accountability in the delivery by the Authority of its environmental protection functions; and contend that the current skills based Board, provides an effective basis for community and stakeholder engagement and representation that reinforces confidence in the Authority. Having taken the opportunity to carefully consider the governance model prior to this review, the Board also submits for your consideration a number of potential improvements to the governing arrangements.

INDEPENDENT GOVERNANCE FUNCTION

It is widely agreed that the independent, objective exercise and delivery of environmental protection and regulatory functions is desirable. In this context, the merits of having an independent Board providing a level of separation from Government that is critical to the Authority's perceived objectivity must be weighed against an "executive" model of governance in which the Chief Executive is solely responsible. Other jurisdictions within Australia have addressed this issue and largely found in favour of the independent governance model for their EPAs¹.

¹ Only two jurisdictions (Queensland and the ACT) have adopted the executive model of governance under which the Chief Executive is responsible for administration of the relevant environment protection legislation. In WA, Tasmania the NT and NSW (since 2012), there is in each instance a five-member independent Board, whilst in Victoria there is a three-member independent Board but its role is solely of an advisory nature. The argument in favour of an independent governance model is also presented convincingly in the extracts from a paper presented by the senior executives of the Authority to the Board at its May 2014 meeting on the subject of a Value Proposition Statement for the Authority (see Appendix 2)

For example, New South Wales has abandoned an experiment with an “executive” governance model and reverted to its original independent governance model following a serious loss of community and stakeholder confidence in the objectivity and impartiality of the Authority.

We note that the independence of the Board allows it to “flex into” operational space where necessary to ensure continuous improvement while also exercising strategic and policy leadership. For example, the Board has exerted a strong influence on the further development of air quality strategies for the Le Fevre Peninsula and the State, it has championed more effective and streamlined interaction through its review of the EPA’s role in the planning system, and it is currently looking closely at legacy site contamination management issues. Whilst the Board works collaboratively with the Chief Executive and senior staff on such matters, the independence of the Board and its powers under s.14(2) of the Act to direct the Chief Executive in relation to policies and decisions of the Board, afford it a significant level of authority and influence in relation to this flexible, oversight role.

The Board notes that the Commonwealth Government’s 2003 Review of Corporate Governance of Statutory Authorities and Office Holders undertaken by John Uhrig is to be drawn upon in decision making about which boards and committees will be retained. We note in particular the view expressed by Uhrig that a public sector board can only be justified where there has been a full delegation of powers to it. The current powers of the SA EPA Board under the *Environment Protection Act* are very extensive, though not completely “full” insofar as some functions remain with the Minister under the Act. But the powers vested in the Board by virtue of its governance role substantially satisfy the Uhrig test. This is reflected in the fact that the Board has delegated many of its functions and powers to the Chief Executive, whilst also reserving a number of matters for itself which serve to ensure transparency, impartiality and accountability. In particular Strategy Formulation, Policy Making, Monitoring and Supervision and Providing Accountability (see Appendix 1 Corporate Governance Statement p 21 *Matters Reserved for the Board*).

BUSINESS AND COMMUNITY CONFIDENCE

The current governance model has served, in our opinion, to enhance business and community confidence in the Authority. The feedback received at two recent events convened by the Board with industry and community representatives, support this view. At the Board’s May 2014 Summit with Business and Industry, delegates confirmed that the “independence of the EPA” and “consultation and knowledge and direction” were critical to ensuring that their desire to “secure a level playing field and regulatory certainty for industry is satisfied”, thereby also supporting competitiveness within the State.

At the Board’s Forum with Environment Groups and Community convened in June 2014, delegates said that “trust [in the EPA] means independence, being transparent, and communicating early on important issues.” Participants commented that ‘credibility’ and ‘trust’ were considered fundamental in establishing confidence in the EPA from the community. There was a strong feeling from community representatives that a “frank and fearless and courageous” Board was perceived as facilitating separation and independence from the political process. The Board’s Forum with Local Government representatives in July 2014 also highlighted that “independence of government Statutory bodies is very important, particularly the EPA”.

Given the strong views expressed at these events concerning the desirability of having an independent and impartial governance structure for the EPA, we believe that there would be a significant stakeholder back-lash were the Board to be abolished and an executive model of governance established in its place.

EFFECTIVE REPRESENTATION AND ENGAGEMENT

In his review for the Commonwealth Government, Mr Uhrig pointed to a key measure of success for a regulator as being its ability to build and maintain the respect of the community in the way in which it conducts its operations. The current membership of the Board, whilst based on skills-related criteria, comprises individuals who have a substantial level of experience and profile within various stakeholder groups, including industry, local government and community organisations. This engenders stakeholder and community respect for and confidence in the Authority.

It is important, in this context, to also note the considerable effort that has been made by the Board in recent years to ensure more effective communications and engagement by the Authority. In October 2013, the Board undertook a governance refresh in order to place greater focus on the strategic leadership role of the Board and to elevate its role in stakeholder and community engagement. The Board actively seeks to foster and build community and business confidence in the EPA through its engagement program while also using it to monitor the performance and perceptions of the agency.

In accordance with s. 19 of the *Environment Protection Act 1993*, the EPA Board must hold a single round-table conference annually. To increase the effectiveness of its engagement program, in 2014, the Board built on the approach of previous years by hosting three significant half-day events with senior South Australian leaders and influencers at a Business and Industry Summit, Environment and Community Groups Forum, and Forum with Local Government.

The Board regularly hosts face-to-face meetings with community, industry and local government representatives in both metropolitan areas such as Port Adelaide (December 2013) and Marion (November 2012), and rural regions such as the Clare Valley (April 2013) and an upcoming visit to the Iron Triangle (September 2014). These sessions are publicly advertised and enable participants to directly voice opinions and concerns to members of the Board and to receive feed-back on matters raised by them. In 2013 the Board also introduced a boardroom luncheon series targeting senior leaders in sectors of emerging strategic importance and interest to the EPA such as the mining and resources sector (April 2014).

In addition, the Board actively championed the development of a Communications and Engagement Framework for the Authority. This seeks to foster a positive and proactive culture in the organisation; to guide how the agency interacts with its communities and stakeholders; to embed best practice as “business as usual”; and to develop internal capabilities of staff to ensure the Authority delivers on its commitments. The Board is taking an ongoing, active interest in the implementation of the framework.

In summary, we submit that the current composition of the Board and its ongoing commitment to, and direct involvement in, improved communication and engagement strategies and activities have provided effective and widely appreciated modes of engagement.

IMPROVEMENTS TO GOVERNANCE ARRANGEMENTS

The Board also takes this opportunity to identify some potential improvements to the current governance arrangements. In this regard, we recommend consideration of the following amendments of the *Environment Protection Act*:

- The size of the Authority, noting that relevant Boards in other jurisdictions are mostly comprised of five members and the SA EPA Board currently has seven members (maximum of nine) while still covering the skills spectrum;
- Clarification of the criteria and consultation process for appointing the Presiding Member;
- Provision of opportunity for the Board to have some input into the process for the appointment of the Chief Executive, Presiding Member and ordinary Board members;
- Inclusion of a maximum number of terms of service to ensure regular renewal of Board membership;
- Removal of the provision for the annual round-table event (s.19) in favour of alternative, more flexible forms of community engagement such as those already being undertaken by the Board and the Authority;
- Removal of the mandatory requirement for the Board to conduct at least eleven meetings each year (s.16(1));
- Prescribing the functions of the Board in the Act in more detail, emphasizing in particular its role with respect to;
 - Strategic direction of the Authority, including in relation to communications and engagement ;
 - Policy development; and
 - Performance oversight of the operations of the Authority.

Yours sincerely



Mia Handshin

PRESIDING MEMBER On behalf of SA EPA BOARD

Linda Bowes
Allan Holmes
Rob Fowler
Mark Withers
Helen MacDonald
Ros DeGaris

19/08/2014

**APPENDIX 1: CORPORATE GOVERNANCE STATEMENT OF THE ENVIRONMENT PROTECTION
AUTHORITY BOARD**

Environment Protection Authority

Corporate Governance Statement

**Board of the Environment
Protection Authority**

Corporate Governance Statement

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Disclaimer

This publication is a guide only and does not necessarily provide adequate information in relation to every situation. This publication seeks to explain your possible obligations in a helpful and accessible way. In doing so, however, some detail may not be captured. It is important, therefore, that you seek information from the EPA itself regarding your possible obligations and, where appropriate, that you seek your own legal advice.

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Abbreviations

Agency	the administrative unit established under the Public Sector Act 2009 which provides services to the Authority
Australian Standard	AS8000–2003: Good governance principles
Authority	the Environment Protection Authority, established as a body corporate in section 11 of the Environment Protection Act 1993
ESD	ecologically sustainable development
EPA Board, or the Board	Board of the Environment Protection Authority
EPA	the Environment Protection Authority established in section 11 of the Environment Protection Act 1993
EP Act	Environment Protection Act 1993
Minister	the Minister for Environment and Conservation in South Australia
NRM Act	Natural Resources Management Act 2004
PS Act	Public Sector Act 2009
RPC Act	Radiation Protection and Control Act 1982

Summary

The Corporate Governance Statement of the EPA Board defines and details the governance arrangements of the Environment Protection Authority (EPA).

The EPA is a statutory authority, with a Board responsible for the carriage of the *Environment Protection Act 1993* (EP Act). The Board is the governing body of the EPA and comprises between seven and nine members, appointed by the Governor, whose skills, knowledge and experience collectively meet the requirements of Board membership as defined by the EP Act. One member is appointed as Presiding Member of the Board by the Governor. The Board delegates specified powers to others in order to carry out its functions under the EP Act.

In addition to the EPA, there is also an Agency created under the *Public Sector Act 2009*, which is managed by the Chief Executive. The EP Act allows the EPA to make use of the services of the Agency's employees and of its facilities.

Through the Chief Executive, the Board is able to make use of the resources of the Agency to carry out the policies and decisions of the Board and achieve the aims of the [EPA Strategic Plan](#). This plan is linked to the priorities of South Australia's Strategic Plan and provides a strategic framework for EPA divisions.

This statement forms part of a governance framework for the EPA, which comprises relevant documents including external sources of guidance and procedural manuals internal to the EPA.

1 Introduction

The Environment Protection Authority (EPA) is South Australia's primary environmental regulator, responsible for the protection of air and water quality, and the control of pollution, waste and noise through the administration of the *Environment Protection Act 1993* (EP Act). The Agency is also responsible for radiation protection and control through administration of the *Radiation Protection and Control Act 1982* (RPC Act).

The EPA's vision is a better environment protected for all South Australians .

2 Functions and purpose of the EPA

The EPA's functions are defined in section 13 of the EP Act. In summary, these are:

- administering and enforcing the EP Act, and advising the Minister on administration of the EP Act and of other legislation that may affect the environment
- preparing draft environment protection policies, contributing to National Environment Protection Measures, regularly reviewing the effectiveness of policies, regulations, measures and practices, and advising the Minister
- facilitating the pursuit of the Objects of the EP Act by the government, private sector and public, by advising on, and assisting with, the development of best environmental management practices
- regulating, controlling and/or monitoring activities through an authorisation system for controlling and minimising pollution and waste, and by investigation, compliance assessment, environmental monitoring and evaluation, and enforcement.

The EPA's core business is to manage and influence human activities to protect, restore and enhance the environment, including human well-being. Key programs and activities are summarised below:

- licensing (authorisations)
- assessment of development applications referred under the *Development Act 1993*
- enforcement
- environment protection policies (development and review)
- National Environment Protection Measures
- general policy advice to government
- environmental monitoring and evaluation
- advocacy programs: ESD and pollution prevention
- community engagement and behaviour change roles.

Radiation protection and control activities are undertaken by the Agency in accordance with the RPC Act. Advisory functions are the role of the Radiation Protection Committee, chaired by the Chief Executive EPA, and regulatory functions of the Minister for Environment and Conservation, who delegates administration of the RPC Act to the Chief Executive. The Board is not responsible for any aspect of administration of the RPC Act.

The Board develops the [EPA Strategic Plan](#) which outlines the organisational goals, strategies and priorities of the EPA in undertaking its functions under the EP Act. The EPA Strategic Plan guides EPA policy and operations and is intended to contribute to achieving the objectives of *South Australia's Strategic Plan*¹. The Corporate Plan and directorate business plans are developed by EPA Executive and Directors to reflect the priorities of the EPA Strategic Plan.

¹ South Australia's Strategic Plan can be viewed in its entirety at www.stateplan.sa.gov.au.

3 Role and function of the Board

Board role

The Board is the governing body of the EPA for matters related to the *Environment Protection Act 1993* (EP Act) and provides strategic direction, develops environmental policy and monitors performance.

The Board is a statutory body, established under the [*Environment Protection Act 1993*](#), with expertise in:

- environment protection and natural resource management
- business and industry
- environmental conservation and advocacy
- waste industry
- environmental law
- local government
- management.

Its statutory role is to provide strategic direction, and to make key decisions on significant environmental issues under the Act.

Board members are appointed by the Governor for their practical knowledge and commitment to protecting South Australia's environment.

Board Committees

Section 17 of the EP Act provides that the Board must establish committees and subcommittees as required by the Regulations, and may establish others as the Board thinks fit. Committees and subcommittees are established with the purpose of advising the EPA on any aspect of its functions, or assisting the EPA in the performance of its functions.

The Board selects members of each committee, which may, but need not, include Board members. The procedures observed in conducting the business of a committee may be prescribed by regulation, or determined by the Board. If not defined by regulation or by the Board, procedures are determined by the committee.

The Board also establishes, from time to time, working groups of Board members as required to assist in the development of policy.

Stakeholder engagement

The Board has a significant role in consultation and engagement with key stakeholders as outlined under part 9 of this statement.

4 Membership and performance of the Board

Board membership

Environmental issues are often complex and multi-dimensional. The breadth and depth of expertise represented on the Board provides capacity to make prudent decisions on these issues. The EP Act specifies the number of Board members (between seven and nine), and the attributes that the Board must collectively possess. These attributes are:

- qualifications and experience relevant to environmental protection and management or natural resources management
- practical knowledge of, and experience in, industry, commerce or economic development
- practical knowledge of, and experience in, environmental conservation and advocacy on environmental matters on behalf of the community
- practical knowledge of, and experience in, the reduction, reuse, recycling and management of waste or the environmental management industry
- legal qualifications and experience in environmental law
- qualifications and experience relevant to management generally and public sector management
- practical knowledge of, and experience in, local government.

The Chief Executive EPA is a member of the Board ex officio.

Presiding Member

One Board member is appointed as Presiding Member of the Board by the Governor. The Presiding Member of the Board is responsible for chairing meetings and promoting the smooth functioning of the Board. The Presiding Member ensures that the Board restricts itself to discussing matters relevant to its functions, and that its policies and decisions are clearly expressed and communicated to the Chief Executive EPA. The Presiding Member will be the spokesperson of the Board in conveying to the Minister any advice which the Board has determined to proffer on the administration and enforcement of the EP Act and other environmental legislation.

The role of the Presiding Member is to lead the Board. The Presiding Member is both the leader and the servant of the Board and the Board has a collective and collegial responsibility for corporate governance obligations.

Section 16(2a) of the EP Act provides that the Governor may also appoint a Board member as Deputy Presiding Member to preside over Board meetings in the absence of the Presiding Member.

Term of appointment

The Governor appoints Board members for a term no longer than three years. Members may be re-appointed once a term of appointment expires. Grounds on which a member may be removed from office include misconduct, neglect of duty, and failure or incapacity to satisfactorily carry out the duties of Board membership.

The Board's *Operating Procedures and Protocols* provide a detailed explanation of these requirements and how Board matters are administered.

New EPA Board members receive a comprehensive induction package, which provides information about the structure, functions and activities of the EPA; policies and legislation that underpin the EPA's functions; and relevant administrative information.

Members' responsibilities

EPA Board members must act honestly, exercise reasonable care and skills, be diligent and be aware of and understand the fiduciary duties of their position.

This includes the duty to:

- act bona fide in the interests of the Authority
- exercise care, skill and diligence
- exercise any powers for the purpose for which they were conferred
- avoid conflicts of interest.

Board members acknowledge the need for the highest standard of corporate governance practices and ethical conduct by all members, employees and contractors.

The Board has endorsed a code of conduct, as set out in Appendix 1. This code is informed by the EP Act, Public Sector Act 2009, *Public Sector (Honesty and Accountability) Act 1995* and the *Code of Ethics for the South Australian Public Sector*.

The provisions of the *Whistleblowers Protection Act 1993* apply to EPA Board members and any allegations under this Act will be managed in accordance with established agency whistleblower policies and processes.

Board members are also public officers for the purposes of the *Independent Commissioner Against Corruption Act 2012* and consequently having reporting obligations in relation to corruption, misconduct or maladministration in public administration as outlined in the [Independent Commissioner Against Corruption Directions and Guidelines](#).

Proceedings of the Board

Section 16 of the EP Act provides certain proceedings the Board must follow. These are that:

- The Board must meet at least eleven times each calendar year, or more frequently where necessary for the performance of its functions, and must keep accurate minutes of its proceedings and make them available to all Board members.
- The presiding member will preside at each meeting of the Board, or where she is absent the deputy presiding member will preside (if both are absent at a meeting an appointed member of the Board chosen by members present at the meeting will preside).
- A quorum of the Board consists of one half the total number of its members (ignoring any fraction resulting from the division) plus one (subject to this provision the Board may act notwithstanding vacancies in its membership or a defect in appointment of a member).
- A telephone or video conference between members will be taken to be a meeting of the Board at which the participating members are present.
- A person who is not a member of the Board may be present during a meeting with the consent of the Board but not otherwise.

Subject to these and the decision making provisions below, the Board may determine its own procedures.

Members of the Agency's Executive and staff may be invited to Board meetings when their areas of operational responsibility are considered.

Decision making

Each appointed member present at a meeting of the Board has one vote on a matter arising for decision and, if the votes are equal, the member presiding at the meeting may exercise a casting vote. The Chief Executive of the Authority is not entitled to vote at a meeting of the Board.

A decision carried by a majority of the votes cast by the members present at a meeting is a decision of the Board.

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 -

- notice of the proposed resolution is given to all members in accordance with procedures determined by the Board; and
- a majority of the members express their concurrence in the proposed resolution by letter, telegram, telex, facsimile transmission or other written communication setting out the terms of the resolution.

Public liability

The EPA is a body corporate. It is capable of suing and being sued, and holding, acquiring and dealing with real or personal property.

Board members may be removed from office for misconduct or other failure to satisfactorily carry out their duties. Board members are obligated to act honestly at all times and exercise a reasonable degree of care and diligence in performing their functions. Members may be liable for penalties if culpable negligence is demonstrated.

Performance review

The Board undertakes an annual review of its performance at the end of each calendar year.

This includes an analysis of its effectiveness, governance responsibilities and achievement of strategic objectives. It incorporates evaluation of individual Director and Board performance overall. The mechanisms to undertake this assessment will be determined by the Board but will include a regular external performance review.

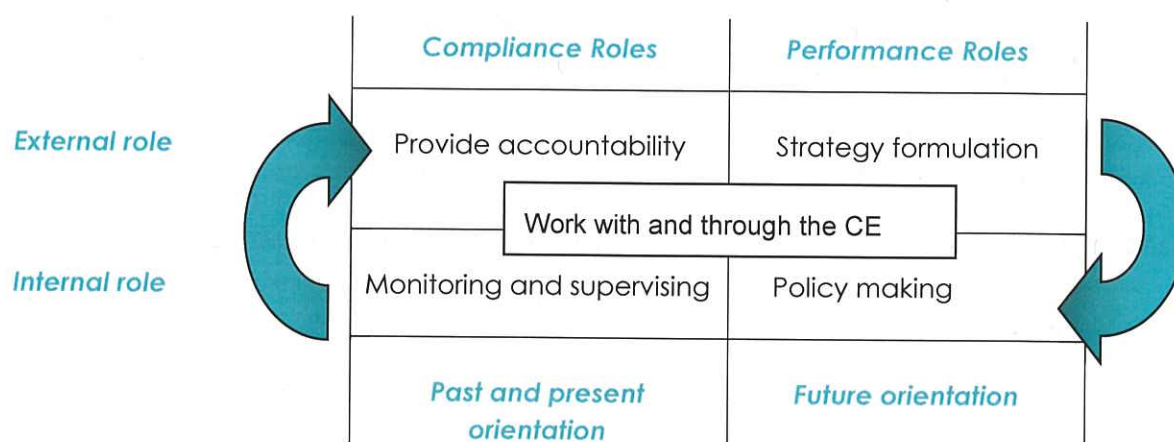
The Board produces the EPA's annual report in accordance with the PS Act and section 111 of the EP Act. Currently, this is the primary means by which the Minister evaluates the Board's performance.

5 Governance roles of the Board

The EP Act establishes the Board as the governing body of the EPA. Day-to-day operations and administration are delegated to the Chief Executive by the Board.

Governance approach

The Board has adopted the following corporate governance model to support its key role and functions:



From: Tricker R 1994, *International Corporate Governance*, pg 140.

This model recognises that good corporate governance encompasses both conformance and performance roles, underpinned by effective risk management, and working effectively with and through the CE.

Strategy formulation

The Board's performance role comprises setting the strategic direction for the EPA. It is primarily about leadership but also encompasses elements of stewardship. Strategy defines how the expectations of stakeholders will be addressed and how public value will be delivered by the EPA. Stakeholders for the EPA include government, business and the community.

In this capacity the Board reviews the plans of management and monitors management performance against those plans in achieving the established goals. It has also reserved for itself decision on matters of a sensitive, substantial,* extraordinary or strategic nature, in terms of the implications for the EPA.

Policy making

The internal performance orientation of an organisation is evident in the policies, and culture, that translate the strategy into action. Policies developed by management and approved by the Board provide the main mechanism for the Board to oversee enactment of its strategy.

There are several areas the Board has reserved for itself in relation to key policy making to support its strategic role. Under its Matters Reserved Schedule the Board will:

- Determine the form of the Public Register.
- Prepare draft environmental protection policies for forwarding to the Minister.

- Approve codes of practice, regulations and guidelines for industry.
- Adopt and amend substantial* policies affecting the EPA.
- Approve substantial* EPA communication strategies and policies.

The Board also establishes and annually reviews the effectiveness of the EPA's internal control and risk management processes.

Monitoring and supervision

The role and function of the Board determines the level and extent of its internal role in this area. As outlined in part 7 of this Statement there is a distinction between the role of the Board, which relates to administering and enforcing the EP Act, and the Agency Chief Executive, who is responsible for the leadership and general management of the Agency.

The Board monitors key activity that underpins the pursuit of the legislative objectives. It has also established an Audit and Risk Management Committee with broad terms of reference covering risk, governance and compliance.

As part of its role of monitoring and supervising activity the Board has reserved for itself certain functions, including:

- Establish, and annually review, the effectiveness of, the EPA's internal control and risk management processes.
- Matters impacting on compliance with statutory and regulatory obligations.

Provide accountability

The Board's conformance role is concerned with establishing effective accountability mechanisms for the EPA. Primary accountable for the EPA, as a state instrumentality, is to the government as owner and funder, however as a public authority there are also obligations to deliver on government policies and meet community expectations.

In accordance with section 111 of the EP Act, the EPA must report to the Minister by 30 September in each year, providing information about the administration of the Act during the previous financial year. The EPA annual report provides information about the way the EPA allocates funds from the government, and includes an audited statement of income and expenditure of the Environment Protection Fund. The annual report also outlines any directions given by the Minister to the EPA during that year.

In its accountability capacity the Board also monitors financial performance and approves the end of year financial year statements.

Risk management

Effective risk management underpins the Board's governance approach as indicated above.

The EPA Board must consider both environmental and organisational risks in undertaking its roles under the EP Act. The Board must ensure effective management of identified strategic risks, and support risk management strategies implemented within the EPA.

* Substantial in terms of the financial, economic, environmental, health or reputation ramifications for the EPA. If the significance of a matter is unknown then the Presiding Member must be consulted.

The objectives of the EPA's risk management policy are to:

- establish a culture of risk management practice within all areas of the organisation to underpin the effective functioning of the EPA and support the delivery of EPA's strategic objectives
- provide assurance regarding the achievement of strategic objectives by reducing exposure to significant/ material risks and maximising positive outcomes from potential opportunities
- integrate effective and timely risk management practices into all aspects of the EPA's operations; and
- assign management accountabilities and responsibilities at appropriate levels within the agency.

The policy was developed in consultation with Agency staff, the EPA Audit & Risk Management Committee, EPA Executive and the Board.

Delegated responsibility

Section 115 of the EP Act provides that the EPA may, by an instrument in writing, delegate any of its powers or functions under the EP Act, subject to conditions specified by the EPA. Many of the functions that the EP Act bestows upon the Board are, in practice, delegated to the Chief Executive. Section 115 also provides that powers and functions may be delegated to a public authority, person, or committee of persons.

The EPA Board has delegated the responsibility for the day-to-day activities to the Chief Executive EPA and enabled him to delegate these further as required.

The EPA Board Delegations Instrument lists the areas that the EPA Board does not delegate.

Matters reserved for the Board

For clarity the EPA Board has explicitly reserved a number of matters for decision². These matters are listed in Appendix 2.

The Board will review this list of reserved matters on an annual basis with the advice of the Audit and Risk Committee and may amend it at any time. Any changes to these matters require approval from the Board.

Where a matter reserved for the EPA Board arises as a matter of urgency, such that it cannot be scheduled for the next regular meeting of the EPA Board, a special out of session meeting of the Board will be convened via telephone or video conference. The same rules that apply to a validly constituted meeting of the Board will apply to such out of session meetings in relation to voting practices, quorum etc.

² This list in no way constrains the decision-making authority of the Board over any matter within its authority that it deems necessary.

6 Relationship between the Board and the Minister for Environment and Conservation

Section 11 of the EP Act provides that the EPA is a body corporate, with accompanying legal powers.

Despite its status, the EPA remains an instrument of the Crown and must work within the established framework of the South Australian government. As it conducts its functions on behalf of the government, the EPA relies on the incumbent government to provide resources to carry out its functions and promote the Objects of the EP Act.

The EPA is subject to the direction of the Minister for Environment and Conservation in exercising its powers, functions and duties. There are some processes in which it is independent, that is not required to accept guidance and direction from the Minister. These areas of independence are outlined in section 11 of the EP Act, and include:

- reports or recommendations that the EPA makes to the Minister
- the performance of the EPA's functions under Part 6 of the EP Act (including environmental authorisations such as licences and responses to planning authorities for development applications referred to it under the Development Act 1993); and
- enforcement of the EP Act.

The Minister may direct the EPA in all other matters under the EP Act. For example:

- the expenditure of the Environment Protection Fund and other monies paid to the EPA under the Act, provided it is for the purposes of the Act
- the making of an environment protection policy under Part 5 of the EP Act
- the granting or renewal of an approval in relation to beverage containers (Part 8 Division 2 of the EP Act); and
- emergency authorisations under Part 12 of the EP Act.

The Board undertakes regular communication with the Minister via discussions with the Presiding Member. It also meets with the Minister from time to time as required.

The Board produces the EPA's annual report in accordance with the PS Act and section 111 of the EP Act. Currently, this is the primary means by which the Minister evaluates the Board's performance.

7 Relationship between the Board and the Chief Executive EPA

Role of the Chief Executive

In addition to the EPA, there is also an administrative unit (the Agency), created under the Public Sector Act 2009, which is managed by the Chief Executive EPA. The EP Act allows the EPA to make use of the services of the Agency's employees and its facilities.

The Chief Executive of the Agency is appointed by the Premier under the PS Act for a period of up to 5 years. This person is also, with the Premier's approval, taken to be the Chief Executive of the EPA. The Chief Executive has responsibility for all staff and resource management matters related to the Agency. These functions, such as staff appointment, occupational health and safety, procurement, financial management, etc are specified through various legislative and administrative instruments, including:

- *Occupational Health, Safety and Welfare Act 1986*
- *Public Sector Act 2009*
- *Public Sector (Honesty and Accountability) Act 1995*
- *Public Finance and Audit Act 1987*
- *State Procurement Act 2004*
- *State Records Act 1997*
- Treasurer's Instructions
- Commissioner for Public Sector Employment Guidelines
- Premier and Cabinet Circulars

Relationship between the Board and the Chief Executive

The Chief Executive is responsible for giving effect to the policies and decisions of the Board. In these circumstances, the Chief Executive is subject to the control and direction of the Board. The Board can expect the Chief Executive to make available the services of the employees and the facilities to be made available, for the performance of those functions. The Chief Executive of the Agency is also subject to the direction of the Minister and the Premier.

The Board will provide an annual report to the Minister regarding the Chief Executive's performance of his responsibilities and obligations as Chief Executive of the statutory authority.

Radiation protection and control activities are undertaken by the Agency in accordance with the RPC Act. Advisory functions are the role of the Radiation Protection Committee, chaired by the Chief Executive, and regulatory functions of the Minister for Environment and Conservation, who delegates administration of the RPC Act to the Chief Executive. The Board is not responsible for any aspect of administration of the RPC Act.

EPA staff

Agency staff are employed under the PS Act and section 14(b) of the EP Act empowers the EPA Board to use the services of Agency staff and facilities to perform its functions. The relationship ensures that the Board is accountable for the EPA's functions.

8 Ethics, values and conflicts of interest

Board members acknowledge the need for the highest standard of corporate governance practices and ethical conduct by all members, employees and contractors.

The Board has endorsed a code of conduct, as set out in Appendix 1. This code is informed by the EP Act, Public Sector Act 2009, *Public Sector (Honesty and Accountability) Act 1995* and the *Code of Ethics for the South Australian Public Sector*.

The following values are the foundations of ethical behaviour in the South Australian Public Sector³:

- Democratic values—helping the government, under the law, to serve the people of South Australia
- Service, respect and courtesy—serving the people of South Australia
- Honesty and integrity—acting at all times in such a way as to uphold the public trust
- Accountability—holding ourselves accountable for everything we do
- Professional conduct standards—exhibiting the highest standards of professional conduct.

These form the basis for the subset of values adopted by the EPA Board as outlined below.

Board values

The EPA Board adopted and practises a set of behaviours in carrying out its functions⁴:

- The Board strives to foster a climate of trust and candour in interactions between members.
- Open debate, dissent and discussion are encouraged as being constructive.
- Members are nominated for demonstrating attributes that are considered valuable for the Board's functions. These attributes represent a collective asset; to ensure the decision-making process is sound and consistent with the requirements of the EP Act.
- Individual members are responsible for their views and actions but the Board is collectively responsible for its decisions.
- The Board is committed to regular review of its performance to ensure continuous governance improvement.

Conflict of interest

Board members operate subject to conflict of interest provisions which apply to similar positions across government under the *Public Sector (Honesty and Accountability) Act 1995*. The Crown Solicitor has noted that the duties and responsibilities of Board members of statutory authorities are derived from public and constitutional law, not company law. Private company Board practices on conflict of interest are generally less onerous than the common law principles which apply to Board members of statutory authorities.

The *Public Sector (Honesty and Accountability Act) 1995* imposes certain duties on Board members who have a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the EPA or the EPA Board. Board members who have such an interest must disclose full and accurate details of the interest to the Board. Disclosures are

3 As outlined in the Code of Ethics for the South Australian Public Sector. This is the code of conduct for the purposes of the Public Sector Act 2009.

4 Adapted from Sonnenfield, J. What makes great boards? Harvard Business Review, September 2002.

recorded in the minutes of each meeting. Board members must not take part in any discussion relating to that matter, must not vote in relation to the matter, and must be absent from the meeting room when any discussion or voting occurs. The disclosure must be reported to the Minister as soon as is reasonably practicable.

'Conflict of interest' is not defined in the legislation, but a widely used definition is:

'A conflict of interest is a set of circumstances that creates a risk that professional judgement or actions regarding a primary interest will be unduly influenced by a secondary interest. *Primary interest* refers to the principal goals of the profession or activity, such as the protection of clients, the health of patients, the integrity of research, and the duties of public office. *Secondary interest* includes not only financial gain but also such motives as the desire for professional advancement and the wish to do favours for family and friends, but conflict of interest rules usually focus on financial relationships because they are relatively more objective, fungible, and quantifiable. The secondary interests are not treated as wrong in themselves, but become objectionable when they are believed to have greater weight than the primary interests. The conflict in a conflict of interest exists whether or not a particular individual is actually influenced by the secondary interest. It exists if the circumstances are reasonably believed (on the basis of past experience and objective evidence) to create a risk that decisions may be unduly influenced by secondary interests.' ⁵

As such it can apply not only to an actual conflict but, in some instances, also to a perceived conflict of interest.

⁵ From Wikipedia at: http://en.wikipedia.org/wiki/Conflict_of_interest, accessed on 17 October 2013.

9 EPA Board public and stakeholder consultation

Engagement

The Board of the EPA undertakes a regular program of stakeholder and community engagement. In consultation with the Agency's Executive, the Board develops an annual calendar of activities including a series of regional engagement/consultation sessions, boardroom lunches and a roundtable conference in Adelaide. The primary purpose of this program of engagement is to assist the EPA to assess its performance in administering the EP Act.

Board engagement is also important for building relationships, trust and rapport with EPA stakeholders and community members. The Board's engagement activities present valuable opportunities for testing perceptions of the EPA generally, identifying specific issues of concern to stakeholders and highlighting possible areas of improvement for the EPA. Board engagement also provides a valuable platform for executive staff, with the support of board members, to promote and raise awareness about the EPA's work as well as a chance for stakeholders to ask questions.

All engagement undertaken by the Board is supported by sound administrative processes to ensure that feedback obtained is duly considered or acted upon and inquiries responded to in a timely manner.

The Board takes an active interest in the implementation of the [EPA's Communications and Engagement Framework](#) and conducts an annual review of the value and effectiveness of its own engagement program and activities.

Round-table

Section 19 of the EP Act requires the EPA to hold a round-table conference at least annually. The conference provides the Board and EPA with a valuable opportunity to gain input from stakeholders on emerging and strategic issues facing South Australia's environment and its management. The round-table is also an opportunity for Board members to meet with people representing a wide range of interests and expertise in relation to matters to be considered, including representatives of the community, industry, and relevant environmental and professional organisations. The format of the annual round-table has varied significantly in recent years, reflecting the different objectives of each of the sessions.

A summary of proceedings from round-table meetings can be obtained from the EPA website at www.epa.sa.gov.au/about_epa/our_organisation/board_consultation_program.

Appendix 1 – Member’s code of conduct



ENVIRONMENT PROTECTION AUTHORITY BOARD

Members’ code of conduct

(Endorsed by the EPA Board at its 3 February 2010 Board meeting)

The objective of the code of conduct is to assist Board members fulfill their role, while respecting the principles of independence, competence, ethics and integrity that are expected of them.

This code applies to an individual’s conduct in their capacity as a member of the EPA Board.

- 1 A member has an obligation to comply with the duties of corporate agency members⁶ under the *Public Sector (Honesty and Accountability) Act 1995* including:
 - the duty to exercise a reasonable degree of care and diligence in the performance of his or her functions (section 4)
 - the duty to act honestly at all times in the performance of the functions of his or her office (section 5)
 - the duty to not be involved in unauthorised transactions with the Agency or a subsidiary of the Agency (section 6)
 - the duty not to have an unauthorised interest in the Agency or a subsidiary of the Agency (section 7)
 - the duty with respect to conflict of interest (section 8)—A member who has a direct or indirect personal or pecuniary interest in a matter decided or under consideration by the Board must disclose to the Board full details of that interest, must not take part in any discussion or vote by the Board relating to the matter and must be absent from the meeting room when any such discussion or voting is taking place.
- 2 A member must ensure they are aware of, properly administer and comply with all legislation and regulations relevant to the performance of their duties.
- 3 A member must not make improper use of information acquired as a Board member.
- 4 A member must use his or her position for a proper purpose, in the best interests of the EPA as a whole.
- 5 A member has an obligation to be independent in judgment and actions and to take reasonable steps to be satisfied as to the soundness of all decisions taken by the Board.
- 6 A member approached by a lobbyist on a matter before the Authority should ensure that the lobbyist complies with the provisions of the SA Government’s Lobbyist Code of Conduct. Under this code, with limited exceptions (primarily for non-profit organisations or persons/organisations lobbying on their own behalf), any lobbyists conducting lobbying activities with the SA Government must be registered on the Lobbyists Register and comply with the requirements of the Lobbyists Code of Conduct, which imposes certain requirements, including that they disclose who they are lobbying on behalf of and that they do not engage in any corrupt or dishonest conduct. Should any such approach occur the Board member concerned must notify the Presiding Member and the Chief Executive.
- 7 In the event of a Board member becoming engaged in a discussion or communication (including on social media) outside of the Board or Agency (including with a representative of any person, or a lobbyist for an industry or other

⁶ ‘Corporate agency member’ means a member of the governing body of a public sector agency that is a body corporate (which the EPA is).

sector), about any matter under the control of or before the Board or Agency, including any matter in which the member is aware that the person may have a direct or indirect personal or pecuniary interest, a member is not to—

- purport to represent, or make any commitment on behalf of, the Board, the EPA or the Agency; or
- disclose the views of other members of the Board expressed during discussion on a particular matter by the Board.

In addition to the above, in relation to a matter that is presently the subject of enforcement or compliance action by the EPA, a member-

- may hear complaints or queries from any person (including a person with an interest in the outcome of the matter), but
- should not engage in a discussion about the merits of the matter or make a comment or express a view in relation to the merits of the matter.

- 8 A member may not publicly denigrate the management or administration of the Board or the Agency, or any committee of the EPA established by the Board or Agency.
- 9 A member will stay informed about the business of the EPA, by an appropriate level of contact with the organisation's Chief Executive and Agency executives and periodic visits to the Agency's operations.
- 10 A member should strive to attend most meetings of the Board and spend a reasonable amount of time on preparation to ensure they meet their obligations as a Board member.
- 11 A member will not, for themselves or others, seek or accept gifts or benefits that could be reasonably perceived as influencing them in their role as an EPA Board member.

Appendix 2 – Schedule of matters reserved for the Board



ENVIRONMENT PROTECTION AUTHORITY BOARD

Schedule of matters reserved for the Board

This statement sets out those matters the Environment Protection Authority Board (the Board) has reserved to itself for decision. It is reviewed annually by the Board and can only be amended with the approval of the Board.

This Schedule must be read in conjunction with the current version of the Board's Delegations Instrument.

1 Board responsibility

1.1 Management

The Board is the governing body of the Environment Protection Authority (EPA) in accordance with the Environment Protection Act 1993 (EP Act) and other applicable legislation.

1.2 Board operations

The Board is responsible for ensuring that it has appropriate governance arrangements in place, including a code of conduct and processes for reviewing the performance of the Board, Directors and any Board Committees.

1.3 Delegation

The Board has delegated certain of the EPA's powers and functions to the Chief Executive pursuant to section 115 of the *Environment Protection Act 1993*. However, certain matters are reserved for the collective decision of the Board. The principle underlying this approach is the need to ensure that appropriate matters can be dealt with effectively under delegated authority, while ensuring good corporate governance by retaining Board control over significant decisions.

2 Matters requiring Board approval

The following matters (including changes to any such matters) require approval from the Board, except where they are expressly delegated to the Chief Executive.

2.1 Strategy formulation

- (a) Approve and review the EPA's Strategic Plan.
- (b) Oversee and ensure the EPA's annual operating and capital expenditure budgets are in line with strategic directions.
- (c) Approve the annual Environment Protection Fund budget for forwarding to the Minister.
- (d) Provide advice to the Minister on the funding needs of the EPA and any service level implications of alternative funding models.
- (e) Matters of a sensitive, substantial,* extraordinary or strategic nature, in terms of the implications for the EPA.

2.2 Policy making

- (a) Determine the form of the Public Register.

- (b) Prepare draft environmental protection policies for forwarding to the Minister.
- (c) Approve codes of practice, regulations and guidelines for industry.
- (d) Adopt and amend substantial* policies affecting the EPA.
- (e) Approve substantial* EPA communication strategies and policies.

2.3 Monitoring and supervision

- (a) Monitoring of, and changes to, the powers and functions delegated to the Chief Executive in the EPA Board Delegations Instrument.
- (b) Delegation, or changes to delegation, of powers and functions to local government or any other person or body.
- (c) Establish, and annually review, the effectiveness of, the EPA's internal control and risk management processes.
- (d) Establish Board committees and determine the membership, responsibilities and terms of reference for each committee.
- (e) Matters impacting on compliance with statutory and regulatory obligations.

2.4 Provide accountability

- (a) Approve the EPA's financial statements.
- (b) Approve the EPA's State of the Environment Report, its Corporate Governance Statement, Annual Report and other significant published reports and statements to stakeholders.
- (c) Determine the format and focus of the annual round-table conference (under s19 of the EP Act).
- (d) Approve announcements and press releases concerning matters decided by the Board.

* Substantial in terms of the financial, economic, environmental, health or reputation ramifications for the EPA. If the significance of a matter is unknown then the Presiding Member must be consulted.

APPENDIX 2: Extracts from paper presented by senior executives of the Authority to EPA Board meeting in May 2014

An independent regulator ensures good long term management of environment and health impacts free from short term political influences, particularly where projects have strongly competing costs and benefits for the state. Independence also provides protection for the Government against the perception that decisions made relating to environmental outcomes are compromised, particularly where government itself is a licensee/polluter or has vested interest in the operations of a company.

The trend both nationally and internationally is towards introducing or strengthening independent models whereby a statutory authority has carriage of a range of regulatory functions and is responsible for providing transparent and independent advice to government. This model was introduced in Tasmania (2008) and Northern Territory (2008), expanded in Western Australia (2009) for major planning assessment, consolidated in Victoria (2010) and reintroduced in New South Wales (2012). Overseas counterparts including the United States EPA, Scottish EPA and Irish EPA also function under various independent models (a review of EPA governance arrangements across jurisdictions was considered by the Board in early 2013). Governments can be significantly assisted in their decision making processes by respected independent authorities who provide instructive, balanced comment on the policy process based on science and research.

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