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SOUTH AUSTRALIAN  
WATER CORPORATION

23 July 2014

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The Hon Ian Hunter MLC  
Minister for Water and the River Murray  
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Dear Minister

I am writing in response to a letter received from the Premier dated 7 July 2014 advising of his recent decision to review the need for the current 440 boards and committees under public sector control. The Board of SA Water fully supports reviewing the need for individual boards and their governance arrangements, to ensure they remain relevant and do not hinder the efficient and timely workings of Government.

The decision on whether to adopt a board-based governance arrangement as opposed to managing the operation via a government department is clearly a Government decision and there is no single correct answer: both models can be successfully applied and indeed have been over the decades. Several eminent Australians have considered this issue and tried to put some structure to the debate.

For example, in 2002 John Uhrig AC was appointed by the Australian Government to review the corporate governance of Commonwealth statutory authorities and office holders. The objective was to identify issues surrounding governance arrangements and to provide options for Government to improve the performance and get the best from statutory authorities and office holders.

Uhrig drew a useful distinction between statutory bodies based on their objectives: regulatory, service provision or commercial. He found that statutory authorities with primarily regulatory and service provision functions, and where the head of the authority reports directly to the Minister, would not need statutory boards; good governance arrangements could be established at the administrative level by requiring, for example, a Statement of Expectation issued by the Minister and a Statement of Intent provided by the statutory authority.

On the other hand, Uhrig considered that statutory authorities whose major activities were commercial in nature would generally be better suited to operating under a board. This was based on the view that these boards would need to have powers similar to boards of publicly listed corporations and would provide 'entrepreneurial skill, objectivity and wisdom gained through appropriate experience, including in exercising authority and judgement'.



Government  
of South Australia

In many respects, Uhrig's views are encapsulated in the *South Australian Water Corporation Act 1994* (the Act) under which the Board of SA Water is established. For example, the Act makes the Corporation commercial in nature by requiring the Corporation to be subject to the *Public Corporations Act 1994* and requires SA Water to perform its commercial operations in accordance with prudent commercial principles and to achieve a level of profit consistent with these functions.

Under the Act, the board's membership must include persons who together have the breadth of abilities and experience necessary for the effective performance and management of a corporation. As you will be aware, the corporation is one of the State's largest public corporations with annual revenues of \$1.4bn and infrastructure assets valued at \$13.5bn.

In addition to this congruency with Uhrig's views, there are other arguments for the operations of SA Water to be subject to a statutory board and these are outlined here:

- A multi-skilled board is more equipped to perform the functions of SA Water than an individual, either the Chief Executive or Minister. The collective experience of the Directors far exceeds that which would be available if it had to be provided through the employment of Advisors in a Minister's Office or a layer of bureaucracy specifically employed to scrutinise the plans and proposals of an Agency as large, complex and fundamental as SA Water. It is not a simple question of whether the Board of SA Water could be removed; it is as well a question of what could replace it to provide the same level of governance that the board currently provides.
- The extent, complexity and breadth of functions undertaken by the board are substantial. The board thus alleviates an additional and onerous workload falling on the Minister and his Advisors. The size of SA Water and its capital intensive nature means that there is a significant volume of projects to be reviewed and approved each year. In 2013-14 the board and the board committees formally considered approximately 1,500 separate documents, many of which sought endorsement of capital expenditure, at 28 separate board or committee meetings.
- The range of skills on the seven-person board (which includes the Chief Executive) ensures that a high standard of commerciality is applied to the oversight of the corporation. Independent directors also are able to challenge management when reviewing proposals, in a way which might not always be possible in an employer-employee relationship that would apply if decisions were always referred to a Chief Executive or Ministerial office.
- The board provides a level of independence in SA Water's operations consistent with the competition objectives of the *Water Industry Act 2012* and the competitive neutrality principles of the National Competition Policy of which South Australia is a signatory. This separation and independence are not easily demonstrated when operating as a department reporting to the Minister.

While not an argument itself for SA Water to have a statutory board, the fact that all major water utilities in Australia, including the state-wide authorities equivalent to SA Water in Western Australia and the Northern Territory, are governed by boards appointed by the

relevant Government, clearly shows an acceptance that this model is appropriate for the management of water utilities across Australia.

The direct cost of the operations of the SA Water Board and its Committees in 2013-14 was \$340,000; this includes all payments to Directors (excluding the Chief Executive) and costs of travel and consumables. The indirect costs of board support (eg the cost of management time in preparing board papers and attending board meetings) have not been estimated, as it is assumed that similar effort would be required in supporting the governance arrangements under a departmental structure (assuming the same level of governance would be expected by the Auditor-General and Minister). The cost of the board is a small part of the overall operational cost of managing a business as large and complex as SA Water, and well below the cost of employing senior experienced staff to undertake the independent scrutiny and challenge of the complex business proposals associated with the water utility business.

There are several intangible benefits that flow from a board structure with independent directors, including the influence independent directors have in explaining the business agenda and imperatives to their business contacts and external stakeholder organisations, the comfort to government and the Minister that proposals have been subjected to a broad and critical evaluation before approaching government, and the ability to access expert advice at minimal cost through the experience and contacts of directors. These intangible benefits should not be underestimated.

As stated at the outset, the Board of SA Water is supportive of the need to review the operational model and to justify whether this remains the most appropriate model for governance of the State-owned water and wastewater business in South Australia. On behalf of the board, I have set out above our views on the criteria that justify a statutory board-based model relative to a departmental model, and believe these are sufficient to justify a continuation of the decision of government in 1994 to adopt a corporate model for SA Water. We are of the opinion that the size, complexity and need for independence of SA Water to comply with National Competition Principles, justifies the relatively small expenditure of a board-based operation, and that the benefits far outweigh the costs.

If there is any additional information you require, I will be pleased to provide it on request. A copy of this letter is being forwarded to the Premier for his information.

Yours sincerely



Lewis W Owens  
Chair, on behalf of the SA Water Board