

LOCAL GOVERNMENT ACT 1999
FLEURIEU REGIONAL WASTE AUTHORITY
REGIONAL SUBSIDIARY
Charter 2021

1. PRELIMINARY

1.1. Name

The name of the subsidiary is Fleurieu Regional Waste Authority (referred to as '**the Authority**' in this Charter).

1.2. Dictionary

In this Charter

- 1.2.1. **Act** means the Local Government Act 1999;
- 1.2.2. **Authority** means the Fleurieu Regional Waste Authority;
- 1.2.3. **Board** means the board of management of the Authority;
- 1.2.4. **Board Member** means at any time a member of the Board;
- 1.2.5. **Budget** means a budget consistent with clause 7.5 and last adopted by the Board;
- 1.2.6. **Business Plan** means a Business Plan that conforms to clause 7.4 and last adopted by the Board;
- 1.2.7. **Executive Officer** means at any time the executive officer of the Authority and includes that person's deputy or a person acting in that position;
- 1.2.8. **Constituent Council** means at any time a Constituent Council of the Authority, which, at the date of publication of this Charter in the Gazette, means the Alexandrina Council, the City of Victor Harbor, the District Council of Yankalilla and the Kangaroo Island Council;
- 1.2.9. **Financial Year** means 1 July in each year to 30 June in the subsequent year;
- 1.2.10. **Independent Board Member** (which includes the Chair) means a Board Member of the Authority who is not a member or officer of a Constituent Council; and
- 1.2.11. **Unanimous Decision** means a decision in the same terms made by the Constituent Councils (at any one time) voting in the same manner.

1.3. Interpretation

In this Charter:

- 1.3.1. a reference to the approval, consent or agreement of the Constituent Councils requires a Unanimous Decision;
- 1.3.2. the singular includes the plural and vice versa;
- 1.3.3. words importing a gender include other genders;

- 1.3.4. words importing natural persons include corporations;
- 1.3.5. reference to a section(s) is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; and
- 1.3.6. headings are for ease of reference only and do not affect the construction of this Charter.

1.4. About this Charter

- 1.4.1. This Charter is the charter of the Authority.
- 1.4.2. This Charter binds the Authority and the Constituent Councils.
- 1.4.3. Despite any other provision in this Charter:
 - 1.4.3.1. if the Act prohibits something being done, it may not be done;
 - 1.4.3.2. if the Act requires something to be done, the Board recognises this and the Executive Officer is authorised to take the action necessary to achieve it; and
 - 1.4.3.3. if a provision of this Charter is or becomes inconsistent with the Act, the provision must, to the extent of the inconsistency, be read down or failing that, be considered to be severed from this Charter.
- 1.4.4. This Charter may not be amended except as agreed by the Constituent Councils. An amendment is not effective unless and until notice of it is published in the Gazette.
- 1.4.5. For the purposes of clause 19(5)(b) of Schedule 2 to the Act, the Chief Executive Officers of the Constituent Council have determined that a copy of the Charter, must be published on the website of the Authority.
- 1.4.6. This Charter will be reviewed by the Constituent Councils acting in concurrence at least once in every four years and may be amended by Unanimous Decision of the Constituent Councils.
- 1.4.7. This Charter must be read in conjunction with Schedule 2 to the Act. The Authority shall conduct its affairs in accordance with Schedule 2 to the Act except as modified by this Charter (where such modification is permitted by Schedule 2 to the Act).

PART I: CORPORATE GOVERNANCE

2. THE AUTHORITY

2.1. Establishment

- 2.1.1. The Authority is a regional subsidiary established pursuant to section 43 of and Schedule 2 to the Act by the:
 - 2.1.1.1. Alexandrina Council;
 - 2.1.1.2. City of Victor Harbor;
 - 2.1.1.3. District Council of Yankalilla; and
 - 2.1.1.4. Kangaroo Island Council.

3. PURPOSE, FUNCTIONS AND POWERS

3.1. Purpose and Functions

- 3.1.1. The Authority is established for the purpose of managing, collecting and receiving waste and reducing the impact of the communities of its Constituent Councils on the environment, including by:
- 3.1.1.1. educating, engaging and motivating those communities to achieve the practical reduction of waste through recycling and the circular use of resources;
 - 3.1.1.2. providing and operating services at a place or places for the management of waste by or on behalf of the Constituent Councils and/or any other approved councils;
 - 3.1.1.3. providing a forum for discussion and/or research for the ongoing improvement of management of waste and the circular use of resources;
 - 3.1.1.4. fulfilling, on behalf of the Constituent Councils, any ongoing obligation in relation to rehabilitation and monitoring of waste management facilities under its control;
 - 3.1.1.5. securing best value and value for money in waste management activities and services;
 - 3.1.1.6. developing or facilitating activities or enterprises that result in a beneficial and circular use of waste and other resources;
 - 3.1.1.7. developing or facilitating activities or enterprises that result in a beneficial use of sites under the control of the Authority;
 - 3.1.1.8. keeping the Constituent Councils informed about relevant emerging opportunities, trends or issues in waste management; and
 - 3.1.1.9. having regard in the performance of its functions to sustainable, environmentally efficient practices of waste management and the use of resources.
- 3.1.2. The Authority must in the performance of its role and functions and in all of its plans, policies and activities:
- 3.1.2.1. operate in a sustainable manner by giving due weight to economic, social and environmental considerations; and
 - 3.1.2.2. conduct its activities in compliance with all regulatory requirements and in a manner that minimises risk to the Constituent Councils.

3.2. Powers

Subject to this Charter, the Authority may exercise the following powers in the performance or discharge of its functions or, the attainment of its purposes:

- 3.2.1. entering into contracts or arrangements for the acquisition or provision of services, works or goods including with any third party whether they are governmental or private and including with councils other than the Constituent Councils;

- 3.2.2. entering into contracts or arrangements with any or all of the Constituent Councils in the exercise of powers conferred under this Charter;
- 3.2.3. through the Executive Officer (but within the Budget set by the Board) employing, remunerating, managing, suspending and dismissing other staff of the Authority;
- 3.2.4. employing, engaging or retaining professional advisors to the Authority, subject to the endorsed Budget;
- 3.2.5. charging whatever fees (including on a differential basis) that the Authority considers appropriate for services rendered to any person, body or council;
- 3.2.6. raising revenue, where necessary, through contributions from the Constituent Councils;
- 3.2.7. accumulating surplus funds for investment or distribution purposes;
- 3.2.8. investing any of the funds of the Authority in any manner consistent with section 139 of the Act and with the Local Government Finance Authority only;
- 3.2.9. opening and operating bank accounts;
- 3.2.10. borrowing funds and incurring expenditure in accordance with the Business Plan and Budget and delegations to the Authority;
- 3.2.11. entering into contracts to purchase or sell real property or interests therein provided that it shall be a condition precedent that in any such transaction the Authority must obtain the prior approval of all Constituent Councils;
- 3.2.12. entering into contracts for the supply of goods or services to the Authority;
- 3.2.13. leasing, hiring, renting real property;
- 3.2.14. providing a forum for the discussion and consideration of topics related to the Constituent Councils obligations and responsibilities in respect of waste management activities;
- 3.2.15. adopting and using for trading purposes, the business name Fleurieu Regional Waste Authority provided that it shall first register the business name in accordance with the Business Names (Commonwealth Powers) Act 2012 with the Australian Securities and Investment Commission;
- 3.2.16. establishing an advisory or other committee to provide expert industry advice to and otherwise establishing any committee for the purposes of assisting the Board;
- 3.2.17. commencing legal proceedings provided that any legal proceedings seeking urgent relief be the subject of an urgent report to the Constituent Councils; and
- 3.2.18. doing anything else necessary or convenient for or incidental to the exercise, performance or discharge of its functions or, the attainment of its objects and purposes

3.3. Acting Outside Areas of Constituent Councils

The Authority may undertake its activities outside of the areas of the Constituent Councils in accordance with the Act but only where such activities have been approved by the Constituent Councils as being necessary or expedient to the performance by the

Authority of its functions and the activities and is included in the Business Plan of the Authority.

3.4. National Competition Policy

If, the Authority engages in any commercial activity which constitutes a significant business activity of the Authority, it will consider and, as necessary, apply relevant principles of competitive neutrality to that activity.

4. CONSTITUENT COUNCILS

4.1. Incoming Constituent Councils

A council may, subject to Ministerial approval, become a Constituent Council if:

- 4.1.1. it makes written application to become a Constituent Council and agrees to be bound by this Charter; and
- 4.1.2. the Constituent Councils, by Unanimous Decision, approve the application and the incoming council agrees to be:
 - 4.1.2.1. jointly and severally liable with the other Constituent Councils for the debts and the liabilities of the Authority whether incurred before or after the date it becomes a Constituent Council or as otherwise agreed; and
 - 4.1.2.2. bound by any decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council.

4.2. Withdrawal

- 4.2.1. A Constituent Council may, with the Minister's consent, withdraw from the Authority by giving not less than twelve (12) months written notice of its intention to do so, to the Board and to the other Constituent Councils and subject to Clause 4.2.2.,.
- 4.2.2. In any event, a withdrawal will not become effective until 30 June following the expiry of the twelve (12) months written notice period referred to in Clause 4.2.1. Until a withdrawal becomes effective the Constituent Council proposing withdrawal from the Authority remains liable for all financial contributions up to the date of withdrawal, and through its Board Members and Deputy Board Members retains responsibility for ensuring the continued proper conduct of the affairs of the Authority during that time.
- 4.2.3. Upon withdrawal taking effect and subject to Clause 4.2.4 a Constituent Council will be entitled, at the discretion of the Board, to be paid not more than 80% of the Constituent Council's equity interest in the Net Assets of the Authority at the date of withdrawal. The withdrawing Constituent Council will be entitled to receive that sum by quarterly instalments to be paid over a period of two (2) years with the first instalment being due on the 1st day of January following the date of withdrawal.
- 4.2.4. A Constituent Council withdrawing from the Authority will not be entitled to be paid any amount in respect of any reserve fund established under Clause 3.2.7.
- 4.2.5. The withdrawal of a Constituent Council does not extinguish the liability of that Constituent Council for the payment of its contribution towards any actual or contingent deficiency in the net assets of the Authority at the end of the Financial Year in which such withdrawal occurs.

- 4.2.6. The withdrawal of a Constituent Council does not extinguish the liability of that Constituent Council to contribute to any loss or liability incurred by the Authority at any time before or after the date of withdrawal in respect of any act or omission by the Authority prior to such date.
- 4.2.7. Any payment to be made by the withdrawing Constituent Council to the Authority pursuant to Clause 4.2.2 must be made within twelve months of the date of withdrawal.

4.3. Equitable Interest

- 4.3.1. The equitable interest of the Constituent Councils in the Authority is as follows:
 - 4.3.1.1. Alexandrina Council 48%;
 - 4.3.1.2. Victor Harbor Council 30%;
 - 4.3.1.3. Kangaroo Island Council 12%; and
 - 4.3.1.4. Yankalilla Council 10%.
- 4.3.2. The equitable interest of the Constituent Councils in the Authority as set out at clause 4.3.1 may be varied by agreement of the Constituent Councils and will be varied where a new Constituent Council or Councils is/are admitted or withdraw(s) from the Authority pursuant to clauses 4.1.1 or 4.2.1

5. BOARD OF MANAGEMENT

The Authority is governed by a Board of Management which is responsible for managing the business and other affairs of the Authority and ensuring that the Authority acts in accordance with this Charter and any delegations made to it.

5.1. Functions of the Board

The functions of the Board are to:

- 5.1.1. formulate plans and strategies aimed at improving the business of the Authority;
- 5.1.2. provide professional input and policy direction to the Authority;
- 5.1.3. monitor, oversee and measure the performance of the Executive Officer;
- 5.1.4. assist in the development of the Strategic and Business Plans;
- 5.1.5. exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
- 5.1.6. ensure that the Constituent Councils are advised, as soon as practicable, of any material development that affects the financial or operating capacity of the Authority.

5.2. Membership

- 5.2.1. The Board shall comprise seven members, each appointed as follows:
 - 5.2.1.1. one natural person appointed by each Constituent Council, being either an elected member or a staff member with an interest in waste, a passion to achieve and commercial skills;

- 5.2.1.2. two natural people neither of whom is a member or officer of a Constituent Council but who, in the opinion of the Constituent Councils, has expertise in waste management and/or business. These people will be chosen from a list of persons circulated by the Authority to the Constituent Councils and appointed by a panel comprising the Chief Executive Officer (or nominee) of each Constituent Council;
 - 5.2.1.3. one natural person who is not a member or officer of a Constituent Council but who, in the opinion of the Constituent Councils, has expertise in waste management and/or business. This person will be chosen from a list of persons circulated by the Authority to the Constituent Councils and appointed by a panel comprising the Chief Executive Officer (or nominee) and Mayor from each Constituent Council. This person will be appointed as the chairperson of the Authority.
- 5.2.2. With the exception of the person appointed pursuant to subclause 5.2.1.3, a Board Member shall, subject to this Charter, be appointed for a term not exceeding the term determined by the Constituent Council and specified in the instrument of appointment and, at the expiration of the term of office, will be eligible for re-appointment.
- 5.2.3. There will not be any deputies to a Member of the Board.
- 5.2.4. Any person appointed as a Member of the Board under clause 5.2.1.2 or 5.2.1.3 is eligible for reappointment to the Board at the end of their term provided that no Member appointed under clause 5.2.1.3, is permitted to serve more than three consecutive terms on the Board without the prior approval of the Constituent Councils
- 5.2.5. In addition to the circumstances provided for under clause 20(3) of Schedule 2 to the Act, the office of a Board Member will become vacant upon:
- 5.2.5.1. the Constituent Council (or Constituent Councils as the case may be) responsible for appointing a Board Member providing written notice to the Board Member and to the Board of the decision to remove the Board Member from office. A Board Member appointed under subclause 5.2.1.2 or 5.2.1.3, may only be removed from office by Unanimous Decision of the Constituent Councils; or
 - 5.2.5.2. if the Board Member is an elected member or officer of a Constituent Council, upon ceasing to hold that office or position with the Constituent Council; or
 - 5.2.5.3. if a Board Member has been appointed pursuant to subclause 5.2.5.1, upon the Constituent Council withdrawing from the Authority.
- 5.2.6. The Board may by a two-thirds majority vote of the Board Members present (excluding the Board Member subject to this subclause 5.2.6) make a recommendation to the Constituent Council or Councils requesting the termination of the appointment of the Board Member for:
- 5.2.6.1. any behaviour which, in the opinion of the Board, amounts to impropriety and includes, but is not limited to, a breach of the Member's obligations under the Act;
 - 5.2.6.2. serious neglect of duty in attending to his/her responsibilities as a Board Member;

- 5.2.6.3. breach of fiduciary duty to the Authority;
 - 5.2.6.4. breach of the duty of confidentiality to the Authority; or
 - 5.2.6.5. any other behaviour which, in the opinion of the Board, may discredit the Authority.
- 5.2.7. If a casual vacancy occurs in the membership of the Board it will be filled in the same manner as the original appointment for the balance of the term of the original appointment.

5.3. Propriety of Board Members

In addition to complying with their statutory obligations under the Act, all Board Members who are not an elected member or a prescribed officer of a Constituent Council) are required to complete returns in accordance with Chapter 5, Part 4, Division 2 (Register of Interest) of the Act.

5.4. Board Policies and Codes

- 5.4.1. The Board must, on behalf of the Authority, prepare and adopt and thereafter keep under review policies on:
- 5.4.1.1. procedures for meetings of the Board;
 - 5.4.1.2. contracts and tenders in a manner that is consistent with section 49 of the Act;
 - 5.4.1.3. governance including as concerns:
 - (a) the operation of any financial account;
 - (b) improper assistance to a prospective contract party;
 - (c) improper offering of inducements to Board Members or to staff of the Authority
 - (d) improper lobbying of Board Members or staff of the Authority; and
 - (e) human resource management.
- 5.4.2. The Board must ensure that such policies are complied with in the affairs of the Authority.

5.5. Board Meetings

- 5.5.1. The Board must determine procedures to apply at or in relation to its meetings provided that such procedures may not be inconsistent with any provisions of Schedule 2 to the Act or this Charter.
- 5.5.2. All meetings of the Board must take place at such times and places as are fixed by the Board or by the Executive Officer in consultation with the Chair from time to time and, in any event, the Board must meet not less than 6 times in each Financial Year.
- 5.5.3. An ordinary meeting of the Board will constitute an ordinary meeting of the Authority.

- 5.5.4. Notice of meetings of the Board must be given by the Executive Officer in a manner determined by the Board. Only the notice of meeting will be available to the public. The Agenda and all supporting reports and documents will be confidential and not available for public inspection unless the Board otherwise determines.
- 5.5.5. Chapter 6, Part 3 of the Act does not apply to the Authority. Meetings of the Board are not be open to the public unless the Board otherwise resolves.
- 5.5.6. The minutes of all Board meetings will be confidential and not available for public inspection unless the Board otherwise resolves.
- 5.5.7. The Chair or any two Board Members may, by delivering a written request to the Executive Officer, require a special meeting of the Board to be held. The request for special meeting and the obligations upon the Executive Officer are the same as those applying to a chief executive officer of a council in relation to special council meetings called under the Act.

5.6. Quorum

The quorum for a meeting of the Board is one-half of the members in office, ignoring any fraction plus one.

6. EXECUTIVE OFFICER

- 6.1. The Board must appoint an Executive Officer of the Authority to manage the business of the Authority on terms determined by the Board, acting reasonably. The Executive Officer may be a natural person or a body corporate.
- 6.2. The Executive Officer shall cause records to be kept of the business and financial affairs of the Authority in accordance with this Charter.
- 6.3. In the absence or likely absence of the Executive Officer for any period exceeding two weeks, a suitable person to act in the position of Executive Officer of the Authority must be appointed by the Executive Officer after consultation with the Chair or, in default, by the Chair.
- 6.4. The Executive Officer is responsible for the day to day management of the Authority and will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the Authority.
- 6.5. The functions of the Executive Officer shall be specified in the terms and conditions of appointment
- 6.6. The Executive Officer may delegate or sub-delegate to an employee of the Authority any power or function vested in the Executive Officer or, in the case of a sub-delegation, any power delegated to the office by the Board provided that the Board has not restricted it from sub delegation. A delegation or sub-delegation by the Executive Officer may be subject to any conditions or limitations as determined by the Executive Officer.
- 6.7. A written record of all delegations and sub-delegations must be kept by the Executive Officer.
- 6.8. The Executive Officer and any other officer declared by the Board to be subject to this provision is required to comply with Division 2 of Part 4 of Chapter 7 (Register of Interests) of the Act. Section 118 (Inspection of Register) of the Act and section

119 (Restrictions on disclosure) of the Act will apply in respect of the returns furnished by officers of the Authority.

PART II FINANCIAL GOVERNANCE

7. MANAGEMENT

7.1. Financial Management

- 7.1.1. The books of account of the Authority must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time.
- 7.1.2. The Authority must establish and maintain a bank account with such banking facilities and at a bank or banks determined by the Board.
- 7.1.3. All payments made by the Authority will be by Electronic Funds Transfer and made in accordance with procedures which have received the prior written approval of the Audit Committee.
- 7.1.4. The Executive Officer must act prudently in the handling of all financial transactions for the Authority and must provide quarterly financial and corporate reports to the Board and if requested, the Constituent Councils.

7.2. Audit

- 7.2.1. The Authority shall appoint an auditor in accordance with the *Local Government (Financial Management) Regulations 2011*, on terms and conditions set by the Board.
- 7.2.2. The Auditor will have the same powers and responsibilities as set out in the Act, in relation to a council.
- 7.2.3. The Authority will establish an audit committee as required by Clause 30 of Schedule 2 to the Act.

7.3. Strategic Plans

The Authority must:

- 7.3.1. subject to Clause 5.1.3 prepare and adopt a Strategic Plan covering a ten (10) year period for the conduct of its business which will identify its objectives over the period of the Strategic Plan and the principal activities that the Authority intends to undertake to achieve its objectives;
- 7.3.2. in consultation with the Constituent Councils, review the Strategic Plan at any time but must undertake a comprehensive review at least once every four years; and
- 7.3.3. submit the Strategic Plan to the Constituent Councils for approval.

7.4. Business Plan

The Authority must:

- 7.4.1. prepare a three-year Business Plan linking the core business activities of the Authority to the Strategic Plan and to operational and organisational requirements with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the period; and

- 7.4.2. review the Business Plan annually, in consultation with the Constituent Councils.

7.5. Annual Budget

- 7.5.1. The Authority must, by March 31 of each year, prepare and submit to the Constituent Councils a draft annual budget for the ensuing financial year in accordance with the Act and the *Local Government (Financial Management) Regulations 2011* for approval by the Constituent Councils. The Constituent Councils must notify their approval or otherwise by 1 May in each year.
- 7.5.2. The Authority must adopt after 31 May and before 30 June of each year an annual budget in accordance with the Act and the *Local Government (Financial Management) Regulations 2011* for the ensuing financial year as approved by the Constituent Councils pursuant to Clause 7.5.1.
- 7.5.3. The Authority must provide a copy of its adopted annual budget to each Constituent Council within five (5) business days of adoption.
- 7.5.4. The Authority must, for each financial year, prepare and consider the prescribed reports in accordance with the requirements of the *Local Government (Financial Management) Regulations 2011*.:
7.5.4.1. The Authority may with the unanimous approval of the Constituent Councils amend its annual budget for a financial year at any time before the year ends.

The Authority must provide a copy of the prescribed reports to each Constituent Council within five (5) business days after they have been adopted by the Authority.

7.6. Long Term Financial Plan and Treasury Policy

- 7.6.1. The Authority must prepare and submit to the Constituent Councils for their approval a Long Term Financial Plan covering a period of at least ten (10) years.
- 7.6.2. The Authority must prepare and adopt a Treasury Policy.

7.7. Reporting

- 7.7.1. The Authority must submit to the Constituent Councils by 30 September in each year in respect of the immediately preceding Financial Year, a report on the work and operations of the Authority detailing achievement of the aims and objectives of the Business Plan and incorporating the audited Financial Statements of the Authority and any other information or reports required by the Constituent Councils.
- 7.7.2. The Board must present a balance sheet and full financial report to the Constituent Councils at the end of each Financial Year.
- 7.7.3. Reports summarising the financial position and performance of the Authority against the annual budget shall be prepared and presented to the Board at each ordinary meeting of the Board.

7.8. Borrowings and Expenditure

- 7.8.1. The Authority has the power to incur expenditure as follows:
7.8.1.1. in accordance with a budget adopted by the Authority ; or
7.8.1.2. with the prior approval of all of the Constituent Councils; or

- 7.8.1.3. in accordance with the Act for a purpose of genuine emergency or hardship.
- 7.8.2. Subject to Clause 7.8.3 the Authority has the power to borrow money as follows:
 - 7.8.2.1. in accordance with a budget adopted by the Authority; or
 - 7.8.2.2. in respect of borrowings not contained in a budget adopted by the Authority up to a maximum amount not exceeding the net financial ratio stated in the Authority's Long Term Financial Plan and supported within the Authority's Treasury Policy; or
 - 7.8.2.3. with the prior approval of all the Constituent Councils.
- 7.8.3. Unless otherwise approved by all the Constituent Councils, all borrowings of the Authority:
 - 7.8.3.1. must be from the Local Government Financial Authority or a registered bank or financial institution within Australia; and
 - 7.8.3.2. must be drawn down within a period of 24 months from the date of the approval.

7.9. Financial Contributions

- 7.9.1. The Authority will determine annually and will include within the annual budget the funds required to enable it to operate and to fulfil its objects and purposes.
- 7.9.2. The Authority will determine annually and will include within the budget provided to the Constituent Councils for approval the administrative funds required by the Authority to enable it to function ('Administration Costs').
- 7.9.3. Each Council will contribute monies to the Administration Costs set out in the adopted budget of the Authority on the following basis:
 - 7.9.3.1. 50% of the budgeted Administration Costs split equally between the Constituent Councils; and
 - 7.9.3.2. The remaining 50% allocated on a pro-rated basis reflecting a Constituent Council's use of the Authority's services.
- 7.9.4. The Administration Costs will be paid by each Constituent Council in advance by monthly instalments.
- 7.9.5. The Authority may during any Financial Year for purposes of genuine emergency or hardship determine that additional contributions to the Administration Costs are required for the continuing functioning of the Authority.
- 7.9.6. Any additional contributions to the Administration Costs will be paid in the proportions attributable to each Constituent Council under Clause 7.10.2.2 in the manner and at the time determined by the Board.
- 7.9.7. The Board will determine annually and include in the adopted budget the Operating Costs. Each Constituent Councils will contribute monies towards the Operating Costs on the following basis:
 - 7.9.7.1. through the collection of fees, charges, imposts or levies determined under Clause 7.10, and

- 7.9.7.2. to the extent that the Operating Costs are not met under Clause 7.9.7.1. on a pro-rated basis reflecting each Constituent Council's use of the Authority's services.
- 7.9.8. The Board may, during any year for purposes of genuine emergency or hardship, determine that additional contributions to the Operating Costs are required for the continuing function of the Authority. The Constituent Councils shall contribute additional monies to the additional Operating Costs in such amounts as determined by the Authority.
- 7.9.9. Any contributions to Operating Costs shall be made by each Constituent Council within sixty (60) days of notice in writing being given by the Authority to the Chief Executive Officer of the Constituent Council, provided that if the Board so decides such payments must be made in advance by monthly instalments.

7.10. Fees and Charges

The Authority will adopt appropriate procedures and policies to ensure transparency and fairness among the Constituent Councils in the setting of fees, charges, imposts or levies payable for services provided by the Authority.

- 7.10.1. Subject to Clause 7.12.2 the Authority may fix fees, charges, imposts or levies payable for services provided by the Authority, including the collection, treatment, disposal and recycling of waste.
- 7.10.2. Where a Constituent Council or Constituent Councils fix a fee, charge, impost or levy for a service provided by the Authority, the Authority will collect the fee, charge, impost or levy so fixed for that service.

8. MISCELLANEOUS

8.1. Insurance

- 8.1.1. The Authority must register with the Local Government Mutual Liability Scheme and comply with the Rules of that Scheme.
- 8.1.2. The Authority must consider and determine its insurance requirements relating to buildings, structures, vehicles and equipment under the management, care and control of the Authority.
- 8.1.3. The Authority must register with the Local Government Workers Compensation Scheme and comply with the Rules of that Scheme.

8.2. Winding Up and Statutory Guarantee

- 8.2.1. On winding up, the surplus assets or liabilities of the Authority shall be distributed between or become the responsibility of the Constituent Councils in the proportions of their equitable interest specified in clause 4.3.
- 8.2.2. If there are insufficient funds to pay all expenses due by the Authority on winding up (or at any other time there are unfunded liabilities which the Authority cannot meet), a call shall be made upon all of the Constituent Councils in proportion to their equity share for the purpose of satisfying their statutory guarantee of the liabilities of the Authority.

8.3. Common Seal

- 8.3.1. The Authority will have a common seal, which may be affixed to documents requiring execution under seal and where affixed, must be witnessed by two Board Members or where authority has been conferred by instrument executed under the common seal of the Authority, by the Chair of the Board and the Executive Officer or any other person named in the instrument.
- 8.3.2. The Executive Officer must maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with the particulars of persons who witnessed the fixing of the seal and the date that the seal was affixed.

8.4. Principal Office

The Authority's principal office is at 1226 Port Elliot Road, Goolwa or as the Board may otherwise determine.

9. DISPUTE RESOLUTION

9.1. About this clause

- 9.1.1. The procedure in this clause must be applied to any dispute that arises between the Authority and a Constituent Council or between Constituent Councils, concerning the affairs of the Authority, including as to the meaning or effect of this Charter.
- 9.1.2. The Authority and a Constituent Council must continue to observe and perform this Charter despite the dispute.
- 9.1.3. This clause does not prejudice the right of a party:

- 9.1.3.1. to require the continuing observance and performance of this Charter by all parties; or
- 9.1.3.2. to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.
- 9.1.4. Subject to this clause, a dispute must not be the subject of legal proceedings between any of the parties in dispute. If legal proceedings are initiated or continued in breach of this provision, a party to the dispute is entitled to apply for and be granted an order of the court adjourning those proceedings pending completion of the procedure set out in this clause.

9.2. Step 1: Notice of dispute:

- 9.2.1. A party to the dispute must promptly notify each other party to the dispute:
 - 9.2.1.1. of the nature of the dispute, giving reasonable details; and
 - 9.2.1.2. what action (if any) the party giving notice thinks will resolve the dispute; but a failure to give such notice does not entitle any other party to damages.

9.3. Step 2: Meeting of the parties:

A party to the dispute which complies with the previous step may at the same or a later time notify in writing each other party to the dispute that the first party requires a meeting within fourteen business days after the giving of such notice. In that case, each party to the dispute must send to the meeting a senior manager of that party (which person for a Constituent Council will be the CEO unless the CEO is a Board member in which case it will be a second tier officer of the Constituent Council and which person for the Authority will be its Executive Officer or nominee) to resolve the dispute and at the meeting make a good faith attempt to resolve the dispute.

9.4. Mediation:

- 9.4.1. A dispute that is not resolved within thirty days must be referred to mediation in accordance with this clause 9.4.
- 9.4.2. The mediator must be a person agreed by the parties in dispute or, if they cannot agree within fourteen business days, a mediator nominated by the then President of the South Australian Bar Association (or equivalent officer of any successor organisation).
- 9.4.3. The role of a mediator is to assist in negotiating a resolution of a dispute. A mediator may not make a decision binding on a party unless that party has so agreed in writing;
- 9.4.4. The mediation must take place in a location in Adelaide determined by the mediator; A party in dispute must cooperate in arranging and expediting mediation.
- 9.4.5. A party in dispute must send to the mediation a senior manager with authority to resolve the dispute.
- 9.4.6. The mediator may exclude lawyers acting for the parties in dispute and may co-opt expert assistance as the mediator thinks fit.

- 9.4.7. A party in dispute may withdraw from mediation if there is reason to believe the mediator is not acting in confidence, or with good faith or is acting for a purpose other than to resolve the dispute.
- 9.4.8. Unless otherwise agreed in writing:
 - 9.4.8.1. everything that occurs before the mediator is confidential and will occur in closed session;
 - 9.4.8.2. discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent arbitration or litigation by a party; and
 - 9.4.8.3. documents brought into existence specifically for the purpose of the mediation may not be admitted in evidence in any subsequent arbitration or legal proceedings by a party;
- 9.4.9. The parties in dispute must report back to the mediator within fourteen business days on actions taken, based on the outcome of the mediation.
- 9.4.10. A party in dispute need not spend more than one day in mediation for a matter under dispute.
- 9.4.11. A party in dispute must bear an equal share of the costs and expenses of the mediator and otherwise bears their own costs.

9.5. Step 4: Arbitration:

- 9.5.1. A dispute not resolved within sixty days must be referred to arbitration in accordance with this clause 9.5.
- 9.5.2. There must be only one arbitrator who must be a natural person agreed by the parties or, if they cannot agree within fourteen business days, an arbitrator nominated by the then Chairperson of the Resolution Institute.
- 9.5.3. The role of the arbitrator is to resolve the dispute and make decisions binding on the parties; The arbitration must take place in a location in Adelaide determined by the arbitrator.
- 9.5.4. A party must cooperate in arranging and expediting arbitration.
- 9.5.5. A party must send to the arbitration a senior manager with authority to resolve the dispute.
- 9.5.6. The parties may provide evidence and given written and verbal submissions to the arbitrator within the time set by the arbitrator.
- 9.5.7. The arbitrator must:
 - 9.5.7.1. consider the evidence and submissions, decide the dispute; and
 - 9.5.7.2. give written reasons to each party.
- 9.5.8. Subject to this clause, the arbitration must take place in accordance with the *Commercial Arbitration Act 2011* (S.A.) or subject to this clause, the arbitrator must fix the rules of arbitration.
- 9.5.9. The costs and expenses of the arbitrator and of each party must be borne as the arbitrator decides.

10. CIRCUMSTANCES NOT PROVIDED FOR

- 10.1 If any circumstances arise about which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the Chair may decide the action to be taken to ensure achievement of the objects and purposes of the Authority and its effective administration.
- 10.2 The Board shall report any such decision to the Constituent Councils.