



The Murray and Mallee
Local Government Association

**CHARTER
OF THE
MURRAY AND MALLEE
LOCAL GOVERNMENT ASSOCIATION
(REGIONAL SUBSIDIARY)**

Under the provisions of the Local Government Act, 1999.

MURRAY AND MALLEE LOCAL GOVERNMENT

ASSOCIATION

CHARTER FOR A REGIONAL SUBSIDIARY

Under the provisions of the Local Government Act, 1999.

1. INTRODUCTION

1.1 Name

The name of the subsidiary is the Murray and Mallee Local Government Association (referred to as "the Subsidiary" in this Charter).

1.2 Definitions

In this Charter:-

- 1.2.1 "absolute majority" means a majority of the whole number of the Board members;
- 1.2.2 "Act" means the Local Government Act 1999 and all relevant Regulations made thereunder;
- 1.2.3 "Board" means the Board of Management established under Clause 4;
- 1.2.4 "Board member" means a person who has been appointed to the Board by a Constituent Council in accordance with Clause 4.2.1;
- 1.2.5 "Chairperson" means the person elected as Chairperson of the Board pursuant to Clause 4.4.1 and includes a person authorised by this Charter to act in place of the Chairperson;
- 1.2.6 "Constituent Council" means those Councils named in Clause 1.3;
- 1.2.7 "Council" means a Council constituted under the Local Government Act, 1999;
- 1.2.8 "deliberative vote" means a vote cast by each member of the Board (including the Chairperson) for the purpose of deciding a matter under deliberation;
- 1.2.9 "elected member" means a Mayor, Chairman or Councillor of a Council;
- 1.2.10 "financial year" means a year beginning on 1 July in each year and ending on 30 June of the following year;
- 1.2.11 "meeting" includes both ordinary and special meetings of the Board;
- 1.2.12 "Minister" means the Minister for the time being responsible for the administration of the Local Government Act 1999;
- 1.2.13 "Regional Local Government Association" means a grouping of Councils which share a common geographic region and which have formed a body recognised under a law of the State of South Australia;
- 1.2.14 "the region" means the geographic area represented by proclaimed boundaries of the Constituent Councils; and
- 1.2.15 "special resolution" means a resolution passed by a two thirds majority of all Board members present at a meeting and entitled to vote on the issue.

1.3 Establishment

The Subsidiary is a regional subsidiary established pursuant to Section 43 of the Act by the following Councils:

- 1.3.1 The Berri Barmera Council,

- 1.3.2 The Coorong District Council,
- 1.3.3 The District Council of Karoonda East Murray,
- 1.3.4 District Council of Loxton Waikerie,
- 1.3.5 The Mid Murray Council,
- 1.3.6 The Rural City of Murray Bridge,
- 1.3.7 The Renmark Paringa Council, and
- 1.3.8 The Southern Mallee District Council.

1.4 **Local Government Act 1999**

This Charter must be read in conjunction with Parts 2 and 3 of Schedule 2 to the Act. The Subsidiary shall conduct its affairs in accordance with Schedule 2 to the Act except as modified by this Charter in a manner permitted by Schedule 2.

1.5 **Objects and Purposes**

The Subsidiary is established to:

- 1.5.1 work with the Local Government Association of South Australia in achieving its aims and objectives;
- 1.5.2 assist in the coordination of resource sharing between Constituent Councils, other Councils, State Government Departments and Agencies to reduce costs and increase operational efficiencies;
- 1.5.3 associate, collaborate and work in conjunction with other local government bodies for the advancement of matters of common interest;
- 1.5.4 undertake coordination, advocacy and representation roles for its Constituent Councils at a regional level;
- 1.5.5 facilitate and coordinate activities of local government at a regional level related to community and economic development with the object of achieving continual improvement for the benefit of the communities of the Constituent Councils;
- 1.5.6 develop, encourage, promote, foster and maintain consultation and cooperation with other levels of government, private enterprise and the community;
- 1.5.7 strengthen the representation and status of local government when dealing with other levels of government, private enterprise and the community;
- 1.5.8 develop further cooperation between the Constituent Councils for the benefit of the communities of the region;
- 1.5.9 develop and manage policies which guide the conduct of programs and projects in the region with the objective of securing the best outcomes for the communities of the region; and
- 1.5.10 undertake projects that benefit the region and its communities.

1.6 **Powers Functions and Duties**

The powers, functions and duties of the Subsidiary are to be exercised in the performance of the Subsidiary's Objects and Purposes. The Subsidiary shall have those powers and functions delegated to it by the Constituent Councils from time to time which include but are not limited to:

- 1.6.1 becoming a member of or cooperating or contracting with any other association or organisation, whether within or outside of the area of the Constituent Councils, which shares similar objects and purposes to those of the Subsidiary;
- 1.6.2 entering into contracts or arrangements with any Government agency or authority that are incidental or conducive to the attainment of the Objects and Purposes and the exercise of the powers of the Subsidiary;
- 1.6.3 entering into contracts with any person or body for the acquisition or supply of goods and services;

- 1.6.4 appointing, employing, remunerating, removing or suspending officers, managers, employees and agents subject to Clause 6;
- 1.6.5 raising revenue by:
 - 1.6.5.1 charging the Constituent Councils fees incurred by the Subsidiary in undertaking and carrying out its Objects and Purposes;
 - 1.6.5.2 arrangements with sponsor organisations;
 - 1.6.5.3 arrangements or contracts with any other person or body; and
 - 1.6.5.4 any other means not inconsistent with the Objects and Purposes of the Subsidiary;
- 1.6.6 printing and publishing any newspapers, periodicals, books, leaflets, or other like writing;
- 1.6.7 appointing such committees as it deems necessary and to define the duties of such committees provided that the acts of any such committee shall be submitted before execution or discharge for the approval of the Subsidiary and appointing persons to committees which may consist partly of persons who are not representatives of Constituent Councils;
- 1.6.8 delegating any of the Subsidiary's powers and functions to persons or committees and altering or revoking such delegations;
- 1.6.9 co-opting to any duly appointed committee, any elected representatives, any officer of a Constituent Council, or any other appropriate person as deemed desirable for the efficient function of that committee;
- 1.6.10 subject to Clause 8.9, acquiring, holding, dealing with and disposing of any real or personal property of the Subsidiary;
- 1.6.11 opening and operating bank accounts;
- 1.6.12 investing monies in any security in which trust moneys may, by Act of Parliament, be invested or in any other manner approved by the Constituent Councils;
- 1.6.13 borrowing money in accordance with an approved Business Plan;
- 1.6.14 giving security for the discharge of liabilities of the Subsidiary; and
- 1.6.15 doing all other things that are necessary or convenient for or incidental or conducive to the attainment of the Objects and Purposes, and the exercise, performance or discharge of the powers, functions and duties of the Subsidiary.

2. STRUCTURE OF THE SUBSIDIARY

- 2.1 The Subsidiary is a body corporate and, subject to the Act, is governed by its Charter. Its Board has responsibility for the management of the business and other affairs of the Subsidiary ensuring that the Subsidiary acts in accordance with this Charter, with any relevant legislation and with any conditions attached to grants received from the Commonwealth or South Australian Government or other parties.
- 2.2 All meetings of the Subsidiary shall be meetings of the Board.
- 2.3 The Board will be entitled to make decisions in accordance with the powers and functions of the Subsidiary established in this Charter.

3. MEMBERSHIP

3.1 Constituent Councils

All of the Constituent Councils listed at Clause 1.3 are the Members of the Subsidiary.

3.2 New Members

Subject to the provisions of the Act, including but not limited to Ministerial approval, this Charter may be amended by a resolution of the Constituent Councils to provide for the admission of a new Constituent Council or Councils, with or without conditions of membership, such conditions to be determined by the Board.

3.3 Withdrawal

- 3.3.1 A Constituent Council may not withdraw from the Subsidiary except with the approval of the Minister and subject to the Act and this Charter.
- 3.3.2 A Constituent Council which intends to withdraw from the Subsidiary shall give to the Chief Executive Officer of the Subsidiary written notice of such intention, specifying the date of intended withdrawal. The notice shall be a minimum of three months.
- 3.3.3 The withdrawal of the Constituent Council does not extinguish the liability of that Constituent Council to make payment of its budgeted contribution for the financial year in which it gives notices and in respect of any other amounts outstanding.

3.4 Equity Shares

- 3.4.1 Upon establishment of the Subsidiary, each initial Constituent Council will have an equity share in the Subsidiary as set out in the table contained in Schedule 1 to this Charter.
- 3.4.2 The equity share of the Constituent Councils in the Subsidiary may vary where a new Constituent Council is admitted to or an existing Constituent Council withdraws from the Subsidiary in accordance with this Charter.

3.5 Funding

- 3.5.1 Each Constituent Council shall be liable to contribute funds to the Subsidiary each financial year in accordance with the amount specified in the budget adopted under Clause 7.4 and in proportion to its equity share.
- 3.5.2 Such funds will be due and payable within one month of the date that the budget is adopted.
- 3.5.3 If Constituent Council status is granted to a Council after the first day of July in any year the Subsidiary may, with the approval of the Constituent Councils, amend its budget to provide for the contribution of funds by that Council, provided that the funds to be contributed shall not exceed the equity share of that Council and shall be calculated on a pro-rata basis according to the number of full months remaining in the financial year.

4. BOARD OF MANAGEMENT

The Board shall have the responsibility to manage the business and other affairs of the Subsidiary ensuring that the Subsidiary acts in accordance with this Charter.

4.1 Functions of the Board

- 4.1.1 The formulation of strategic plans and strategies aimed at improving the activities of the Subsidiary.
- 4.1.2 To provide professional input and policy direction to the Subsidiary.
- 4.1.3 Monitoring, overseeing and evaluating the performance of the Chief Executive Officer of the Subsidiary.
- 4.1.4 Ensuring that ethical behaviour and integrity is established and maintained by the Subsidiary and its Board Members in all activities undertaken by the Subsidiary.
- 4.1.5 Subject to Clause 4.6.11 ensuring that the activities of the Subsidiary are undertaken in an open and transparent manner.
- 4.1.6 The preparation and development of Business Plans to be considered in consultation with the Constituent Councils.

- 4.1.7 Exercising the care, diligence and skill required by the Act and in any event such that a prudent person of business would exercise in managing the affairs of other persons.

4.2 **Membership of the Board**

- 4.2.1 Subject to Clause 4.2.2, the Board shall consist of two (2) persons from each Constituent Council appointed by the Constituent Council.
- 4.2.2 Each Constituent Council shall, following every periodic Local Government election, appoint, and give notice in writing to the Chief Executive Officer of the Subsidiary, of those persons who are its Board members, of whom one shall be an elected member of the Constituent Council and one may be the Chief Executive Officer or other officer of the Constituent Council.
- 4.2.3 Subject to Clause 4.2.4, a Board member shall be appointed for a term not exceeding the term that the Board member continues as an elected member or officer of the Constituent Council or until the conclusion of the next periodic Local Government Election following their appointment, whichever term is the lesser, at which time but subject to satisfying the requirements of this Charter, they shall be eligible to be reappointed by the Constituent Council.
- 4.2.4 Notwithstanding Clause 4.2.3, the Constituent Council may appoint either or both of its Board members for a lesser period by nominating the period in the written appointment provided to the Chief Executive Officer of the Subsidiary. In such circumstances, any continuation of appointment following the expiry of the initial period nominated shall be in writing addressed to the Chief Executive Officer of the Subsidiary.
- 4.2.5 Notwithstanding Clause 4.2.1, each Constituent Council may appoint two persons, at least one of whom must be an elected member, to act as deputy Board member where either or both Board members of that Constituent Council will not be present at a meeting of the Board.
- 4.2.6 Division 2, Part 4, Chapter 5 of the Local Government Act (Register of Interests) does not apply to the Subsidiary.

4.3 **Termination of Membership of the Board**

- 4.3.1 Notwithstanding Clause 4.2.3, the appointment of a Board member shall terminate upon any of the grounds set out at Clause 20(3) of Schedule 2 to the Act arising, or otherwise:
- 4.3.1.1 if the Board member has been appointed under Clause 4.2:
- (a) upon the Council which appointed him/her ceasing to be a Constituent Council; or
 - (b) if the Board member is an elected member of a Constituent Council upon ceasing to be an elected member; or
 - (c) if the Board member is an officer of a Constituent Council, upon ceasing to be employed by the Council which appointed him/her;
- 4.3.1.2 in respect of any Board appointment, upon the happening of any other event through which the Board member would become ineligible to remain as a member of the Board.
- 4.3.2 The Board may, by special resolution, make a recommendation to the Constituent Council which appointed a Board member under Clause 4.2 requesting the Constituent Council to terminate the appointment of that Board member for:
- 4.3.2.1 any behaviour of the Board member which in the opinion of the Board amounts to impropriety;
 - 4.3.2.2 serious neglect of duty in attending to his/her responsibilities as a Board member;

- 4.3.2.3 breach of fiduciary duties to the Subsidiary or the Constituent Council(s);
 - 4.3.2.4 breach of the duty of confidentiality to the Subsidiary and the Constituent Council(s);
 - 4.3.2.5 breach of the conflict of interest provisions; or
 - 4.3.2.6 any other behaviour which may discredit the Subsidiary or the Constituent Councils.
- 4.3.3 Notwithstanding any other Clause of this Charter, a Board member may be removed from office as a Board member by special resolution of the Board prior to the expiration of a term of appointment. If any vacancy occurs in the membership of the Board it must be filled in the same manner as the original appointment under Clause 4.2. The person appointed to the Board to fill a vacancy will be appointed for the balance of the term of the original appointment and at the expiry of that term, subject to satisfying the requirements of this Charter, shall be eligible for re-appointment.

4.4 Chairperson of the Board

- 4.4.1 The Chairperson of the Board shall be appointed by the Board from amongst its members and subject to Clause 4.4.4 shall hold office for a term of one year, unless he/she resigns or is removed from office pursuant to a resolution of the Board or until he/she is no longer eligible to act as a Board member.
- 4.4.2 There shall also be a Deputy Chairperson of the Board appointed by the Board from amongst its members who subject to Clause 4.4.4 shall hold office for a term of one year unless he/she resigns or is removed from office pursuant to a resolution of the Board or until he/she is no longer eligible to act as a Board member.
- 4.4.3 The Chairperson and Deputy Chairperson shall be eligible for re-appointment upon their term of office expiring.
- 4.4.4 The Chairperson and Deputy Chairperson elected in a year immediately preceding the year in which a periodic Local Government election is to be held shall hold office until the conclusion of the next ordinary meeting that is held immediately following the conclusion of the periodic election, at which meeting both the positions of Chairperson and Deputy Chairperson of the Board shall become vacant and be elected afresh in accordance with Clause 4.4.1.
- 4.4.5 If the Chairperson either resigns or is no longer eligible to act as a Board member prior to the expiry of his/her term as Chairperson, the Deputy Chairperson shall act in that office. In the event of the Deputy Chairperson refusing or being unable to act, the Board shall elect from amongst their own number a new Chairperson who shall hold office until the conclusion of the original term.

4.5 Powers of the Chairperson and the Deputy Chairperson

- 4.5.1 The Chairperson shall preside at all meetings of the Board.
- 4.5.2 In the event that the Chairperson is absent from a meeting, the Deputy Chairperson shall preside at that meeting, and in the event that both the Chairperson and Deputy Chairperson are absent from the meeting, the Board shall appoint a member from amongst them who shall preside at that meeting or until the Chairperson or Deputy Chairperson is present.

4.6 Meetings of the Board

- 4.6.1 The Board may determine procedures in addition to but not inconsistent with those specified in this Charter to apply at or in relation to its meetings.
- 4.6.2 The Board shall meet:
 - 4.6.2.1 for ordinary meetings at such times and places as may be fixed by the Board from time to time provided that there will

be not less than four ordinary meetings each financial year;
and

4.6.2.2 for special meetings if demanded in writing by the Chairperson or by both Board members appointed by any three (3) Constituent Councils.

- 4.6.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Subsidiary. The Board shall administer the business of an ordinary meeting.
- 4.6.4 For the purposes of this sub-clause, the contemporary linking together by telephone, audio-visual or other instantaneous means ("telecommunications meeting") of a number of the Board members, provided that at least a quorum is present, is deemed to constitute a meeting of the Board. Each of the Board members taking part in a telecommunications meeting must at all times during the telecommunications meeting be able to hear and be heard by each of the other Board members present. At the commencement of the meeting each Board member must announce his/her presence to all other Board members taking part in the meeting. A Board member must not leave a telecommunications meeting by disconnecting his/her telephone, audio-visual or other communication equipment, unless that Board member has previously notified the Chairperson of the meeting.
- 4.6.5 Except as otherwise provided in this Charter, notice of ordinary meetings will be forwarded by the Chief Executive Officer of the Subsidiary to the Board members and the Chief Executive Officers of the Constituent Councils at least 28 days prior to the date of the meeting, either by post to the Council's address or by post to any other location, or via any other means of giving notice (eg. facsimile or email) as nominated by the Board member and the Chief Executive Officer of a Constituent Council in writing addressed to the Chief Executive Officer of the Subsidiary.
- 4.6.6 Notice of meetings will be sent by the Chief Executive Officer of the Subsidiary to the Board members and the Chief Executive Officers of the Constituent Councils at least twenty eight (28) days prior to the date of the meeting in the manner provided for at Clause 4.6.5. Notice of a meeting for the purpose of making a recommendation to wind up the Subsidiary shall be sent to the Board members and the Chief Executive Officers of the Constituent Councils at least eight (8) weeks before the date of the meeting in the manner provided for at Clause 4.6.5.
- 4.6.7 A majority of the Board members present at a meeting of the Board may adjourn the meeting from time to time and from place to place.
- 4.6.8 Subject to Clause 4.6.11, all meetings of the Board will be conducted in a place open to the public.
- 4.6.9 All Board members must keep confidential all documents and any information provided to them on a confidential basis for their consideration prior to a meeting of the Board.
- 4.6.10 The Board may order that the public be excluded from attendance at any meeting in order to enable the Board to consider in confidence any information or matter listed in Section 90(3) of the Act (after taking into account any relevant consideration under that subsection).
- The exercise of this power does not exclude Board members and any other person permitted by the Board to remain in the room.
- 4.6.11 Where an order is made under Clause 4.6.11, a note must be made in the minutes of the making of the order and of the grounds on which it was made.
- 4.6.12 Where the Board has considered any information or a matter in confidence under Clause 4.6.11 it may subsequently resolve to keep minutes and/or any other documents considered during that part of the meeting confidential in accordance with Section 91 of the Act.
- 4.6.13 The Chief Executive Officer of the Subsidiary must cause minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are

presented to the next ordinary meeting of the Board for confirmation and adoption.

4.6.14 Where the Chief Executive Officer of the Subsidiary is excluded from attendance at a meeting of the Board pursuant to Clause 4.6.11, the person presiding at the meeting shall cause the minutes to be kept.

4.6.15 The Board may invite any person to attend at a meeting of the Board to act in an advisory capacity.

4.7 **Quorum**

The quorum for any meeting of the Board is a majority of the number of Board members in office, being a number ascertained by dividing the total number of Board members for the time being in office by two (2), ignoring any fraction, and adding one (1). No business will be transacted at a meeting of the Board unless a quorum is present.

4.8 **Voting**

4.8.1 Unless stipulated otherwise in this Charter, questions arising for decision at meetings of the Board will be decided by a simple majority of eligible votes on the basis of one (1) vote per Board member present at the meeting. The Chairperson shall not, in the event of equality of votes, have a second or casting vote. In the event of equality of votes the matter will lapse.

4.8.2 Subject to a conflict of interest, each Board member validly present at a meeting must vote on a question arising for a decision at the meeting. Failure by any Board member to vote will be deemed to be a negative vote in relation to the question for decision.

4.8.3 Subject to any express contrary provision in this Charter, the Local Government (Procedures at Meetings) Regulations 2013 Parts 1, 2 and 4, will apply to all meetings of the Board. Procedures not specifically addressed by those Regulations or by this Charter will be as determined by the Board.

5. **DISQUALIFICATION**

5.1 A Council which fails to make payment of any amount due to the Subsidiary within six months from the date upon which the amount becomes due and payable shall, subject to Ministerial approval, cease to be a Constituent Council.

5.2 The Chief Executive Officer of the Subsidiary will give notice in writing to the Council that its status as a Constituent Council has been terminated. Termination will not be effective until approved by the Minister.

6. **EMPLOYEES OF THE SUBSIDIARY**

6.1 The Board must appoint a Chief Executive Officer of the Subsidiary to manage the business of the Subsidiary on terms agreed between the Chief Executive Officer and the Board. The Chief Executive Officer of the Subsidiary may be a natural person or a body corporate approved by the Board.

6.2 The Chief Executive Officer of the Subsidiary shall cause records to be kept of the business and financial affairs of the Subsidiary in accordance with this Charter, in addition to other duties provided for by this Charter and those specified in the terms and conditions of appointment.

6.3 In the absence of the Chief Executive Officer of the Subsidiary for any period exceeding four weeks a suitable person to act in the position of Chief Executive Officer of the Subsidiary must be appointed by the Board

6.4 The Board shall delegate responsibility for the day to day management of the Subsidiary to the Chief Executive Officer of the Subsidiary, who will ensure that sound business and human resource management practices are applied in the efficient and effective management of the operations of the Subsidiary.

6.5 The functions of the Chief Executive Officer of the Subsidiary shall be specified in the terms and conditions of appointment and shall include but are not limited to:

6.5.1 appointing, managing, suspending and dismissing employees of the Subsidiary;

- 6.5.2 determining the conditions of employment of employees of the Subsidiary within the budgetary constraints set by the Board;
- 6.5.3 attending at all meetings of the Board unless excluded by resolution of the Board;
- 6.5.4 ensuring that the decisions of the Board are implemented in a timely and efficient manner;
- 6.5.5 providing information to assist the Board to assess the Subsidiary's performance against its Strategic and Business Plans;
- 6.5.6 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;
- 6.5.7 ensuring that the Subsidiary is at all times complying with Schedule 2 to the Act;
- 6.5.8 ensuring that the Subsidiary's annual report in accordance with Clause 28 to Schedule 2 to the Act is distributed to the Constituent Councils in time to be incorporated in their annual reports;
- 6.5.9 co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the Subsidiary;
- 6.5.10 ensuring that the assets and resources of the Subsidiary are properly managed and maintained;
- 6.5.11 exercising, performing or discharging other powers, functions or duties conferred on the Chief Executive Officer of the Subsidiary by or under the Act or any other Act, and performing other functions lawfully directed by the Board; and
- 6.5.12 inviting any person to attend at a meeting to act in an advisory capacity.
- 6.6 The Chief Executive Officer of the Subsidiary shall provide a report on his/her activities to the Board at every ordinary meeting.

7. MANAGEMENT

7.1 Financial Management

- 7.1.1 The Subsidiary shall keep proper books of accounts in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.
- 7.1.2 The Subsidiary must prepare and consider the following reports:
 - (a) at least twice, between 30 September and 31 May (both dates inclusive) in the relevant financial year (where at least 1 report must be considered before the consideration of the report under (b), and at least 1 report must be considered after consideration of the report under (b)—a report showing a revised forecast of its operating and capital investment activities for the relevant financial year compared with the estimates for those activities set out in the budget presented in a manner consistent with the note in the Model Financial Statements entitled *Uniform Presentation of Finances*; and
 - (b) between 30 November and 15 March (both dates inclusive) in the relevant financial year—a report showing a revised forecast of each item shown in its budgeted financial statements for the relevant financial year compared with estimates set out in the budget presented in a manner consistent with the Model Financial Statements.
- 7.1.3 The Subsidiary's books of account must be available for inspection by any Board member or authorised representative of any Constituent Council at any reasonable time on request.
- 7.1.4 The Subsidiary must establish and maintain a bank account at a bank and with such bank facilities to be determined by the Board.
- 7.1.5 The Subsidiary shall appoint no less than two Board members, the Chief Executive Officer of the Subsidiary, the Chairperson and Deputy Chairperson as

authorised operators of the bank accounts. A minimum of two authorised operators must be required to deal with the bank account at any one time.

7.1.6 All cheques must be signed by two of the persons appointed under or listed at Clause 7.1.5.

7.1.7 Any payments made by electronic funds transfer must be made in accordance with procedures which have received the prior approval of the Auditor.

The Chief Executive Officer of the Subsidiary must act prudently in the handling of all financial transactions for the Subsidiary and must provide quarterly financial and corporate reports to the Board and, if requested, the Constituent Councils.

7.2 **Audit**

7.2.1 The Board shall appoint an auditor in accordance with regulation 20 of the Local Government (Financial Management) Regulations 2011.

7.2.2 The Auditor shall hold office until the appointment is rescinded by a resolution of the Board at an ordinary meeting.

7.2.3 The Auditor will have the same powers and responsibilities as set out in the Act in relation to a Council.

7.2.4 The audit of financial statements of the Subsidiary, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils.

7.2.5 The books of account and financial statements shall be audited at least once per year.

7.2.6 The Subsidiary is not required to establish an audit committee whilst it enjoys the benefit of an exemption as envisaged by clause 30(2) of Schedule 2 to the Act.

7.3 **Business Plan**

7.3.1 The Subsidiary shall prepare a Business Plan every three (3) years.

7.3.2 The Business Plan must:

7.3.2.1 link the core activities of the Subsidiary to strategic, operational and organisational requirements with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the period;

7.3.2.2 include the performance targets of the Subsidiary; and

7.3.2.3 include those measures to be employed to monitor and assess performance and achievement of targets;

7.3.3 The Board shall:

7.3.3.1 compare the Business Plan against performance targets at least twice every Financial Year;

7.3.3.2 review the contents of the Business Plan annually; and

7.3.3.3 undertake reasonable consultation with the Constituent Councils prior to adopting or amending the Business Plan.

7.4 **Annual Program and Budget**

7.4.1 Before 31 May in each Financial Year a proposed annual program and budget detailing the estimated revenues and costs for the forthcoming Financial Year shall be submitted by the Chief Executive Officer of the Subsidiary to the Board.

7.4.2 The proposed annual program and the budget must be referred to the Constituent Councils at the same time as the Chief Executive Officer of the Subsidiary submits them to the Board members.

7.4.3 A Constituent Council may comment in writing to the Chief Executive Officer of the Subsidiary on the annual program and the budget at least three (3) business days before the meeting at which they will be considered by the Board or,

alternatively, may comment through its Board members at the meeting of the Board.

- 7.4.4 The Board must provide a copy of the adopted budget to the Chief Executive Officer of each Constituent Council within five (5) business days after the adoption.
- 7.4.5 Reports summarising the financial position and performance of the Subsidiary against the annual budget shall be prepared and presented to the Board every three (3) calendar months and copies provided to the Constituent Councils within five (5) days of the Board meeting to which they have been presented.

7.5 Reporting

- 7.5.1 The Chief Executive Officer of the Subsidiary shall ensure the Chief Executive Officer and the Principal Member of each Constituent Council shall receive within 14 days of a Board meeting a copy of the minutes from that Board meeting for distribution to the elected members of the Constituent Councils.
- 7.5.2 The Board must submit to the Constituent Councils by 31 October in each Financial Year a report in accordance with Clause 28 to Schedule 2 of the Act on the work and operations of the Subsidiary detailing achievement of the aims and objectives of its Business Plan and incorporating the audited Financial Statements of the Subsidiary and any other information or reports required by the Constituent Councils.
- 7.5.3 The Board shall present financial statements in accordance with the Local Government (Financial Management) Regulations 2011 to the Constituent Councils at the end of each Financial Year and before the 31st October of the year.

8. MISCELLANEOUS

8.1 Insurance and Superannuation requirements

- 8.1.1 The Subsidiary shall register with the Local Government Mutual Liability Scheme and comply with the Rules of that Scheme.
- 8.1.2 If the Subsidiary employs any person it shall register with the Local Government Superannuation Scheme and the Local Government Workers Compensation Scheme and comply with the Rules of those Schemes.

8.2 Winding Up

- 8.2.1 The Subsidiary may be wound up by the Minister acting upon a unanimous resolution of the Constituent Councils or by the Minister in accordance with Clause 33(1)(b) of Schedule 2 to the Act.
- 8.2.2 In the event of a winding up of the Subsidiary, any surplus assets after fulfilment of the Subsidiary's liabilities shall be returned to Constituent Councils in proportion to the equity shares of the Constituent Councils prior to the resolution to wind up being passed.
- 8.2.3 If there are insufficient funds to fulfil all of the Subsidiary's liabilities on winding up, a levy shall be imposed on all Constituent Councils in proportion to the equity share of the Constituent Councils in the financial year prior to the resolution to wind up being passed.

8.3 Non-Derogation and Direction by Constituent Councils

- 8.3.1 The establishment of the Subsidiary does not derogate from the power of any of the Constituent Councils to act independently in relation to a matter within the jurisdiction of the Subsidiary.
- 8.3.2 Provided that all of the Constituent Councils have all first agreed on the action to be taken, the Constituent Councils may direct and control the Subsidiary.
- 8.3.3 For the purpose of Clause 8.3.1, any decision of the Constituent Councils under Clause 8.3.2 and/or direction given or control exercised by the Constituent Councils must be given in writing to the Chief Executive Officer of the Subsidiary.

8.4 **Alteration and Review of Charter**

- 8.4.1 This Charter will be reviewed by the Constituent Councils acting in concurrence at least once in every four (4) years.
- 8.4.2 This Charter may be amended by a resolution passed in the same or similar terms by each of the Constituent Councils.
- 8.4.3 The Chief Executive Officer of the Subsidiary must ensure that the amended Charter is published in the Gazette and a copy provided to the Minister and to all the Constituent Councils.

8.5 **Disputes**

8.5.1 **General**

- 8.5.1.1 Where a dispute arises between the Constituent Councils which relates to this Charter or the Subsidiary ("the Dispute") the Constituent Councils will use their best endeavours to resolve the Dispute and to act at all times in good faith.

8.5.2 **Mediation**

- 8.5.2.1 A Constituent Council is not entitled to initiate arbitration or court proceedings (except proceedings seeking urgent equitable or injunctive relief) in respect of a Dispute unless it has complied with this clause 8.5.2.

- 8.5.2.2 If the Constituent Councils are unable to resolve the Dispute within thirty (30) days, the Constituent Councils must refer the Dispute for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated, within seven (7) days of a written request by any Constituent Council to the other Constituent Councils that the Dispute be referred for mediation, to:

- (a) a mediator agreed unanimously by the Constituent Councils; or
- (b) if the Constituent Councils are unable to agree unanimously on a mediator at the time the Dispute is to be referred for mediation, a mediator nominated by the then President of the Law Society or the President's successor.

- 8.5.2.3 In the event the Constituent Councils fail to refer the matter for mediation in accordance with the Mediation Rules of the Law Society of South Australia Incorporated to a mediator nominated by the then President of the Law Society or the President's successor.

- 8.5.2.4 The role of any mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a decision that is binding on a Constituent Council unless that Constituent Council has so agreed in writing.

- 8.5.2.5 If mediation does not resolve the Dispute within 28 days of referral of the Dispute for mediation or such longer period agreed unanimously by the Constituent Councils as evidenced by resolutions of each of the Constituent Councils, any Constituent Council may then refer the Dispute to Arbitration in accordance with clause 8.5.3.

8.5.3 **Arbitration**

- 8.5.3.1 An arbitrator may be appointed by unanimous agreement between the Constituent Councils.

- 8.5.3.2 Failing agreement as to an arbitrator the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or their successor shall nominate an Arbitrator pursuant to these conditions.

- 8.5.3.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the Commercial Arbitration Act 1985.

- 8.5.3.4 Upon serving a notice of arbitration the Constituent Council serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.
- 8.5.3.5 Upon each submission to arbitration, the costs of and incidental to the submission and award shall be at the discretion of the arbitrator who may in his or her sole discretion determine the amount of costs, how costs are to be proportioned and by whom they are to be paid.
- 8.5.3.6 Whenever reasonably possible performance of the obligations of the Constituent Councils pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by a Constituent Council to the Subsidiary or to a Constituent Council by the Subsidiary shall be withheld on account of the mediation and arbitration proceedings.

8.6 **Committees**

- 8.6.1 The Board may establish a committee of Board members for the purposes of:
 - 8.6.1.1 enquiring into and reporting to the Board on any matter within the Subsidiary's functions and powers and as detailed in the terms of reference given by the Board to the committee;
 - 8.6.1.2 exercising, performing or discharging delegated powers, functions or duties.
- 8.6.2 A member of a committee established under Clause 8.6.1 of this Charter holds office at the pleasure of the Board.
- 8.6.3 The Board may otherwise establish advisory committees consisting of or including persons who are not Board members for enquiring into and reporting to the Board on any matter within the Subsidiary's functions that is not within Clause 8.6.1 and powers and as detailed in the terms of reference.
- 8.6.4 The Chairperson of the Board is an ex-officio member of any committee or advisory committee established by the Board.

8.7 **Common Seal**

- 8.7.1 The Subsidiary shall have a common seal upon which its corporate name shall appear in legible characters.
- 8.7.2 The common seal shall not be used without the express authorisation of a resolution of the Board and every use of the common seal shall be recorded in the minute book of the Subsidiary.
- 8.7.3 The affixing of the common seal shall be witnessed by the Chairperson or the Deputy Chairperson and the Chief Executive Officer of the Subsidiary or such other person as the Board may appoint for the purpose.
- 8.7.4 The common seal shall be kept in the custody of the Chief Executive Officer of the Subsidiary or such other person as the Board may from time to time decide.

8.8 **Standing Orders or Rules**

- 8.8.1 Subject to Clause 21 of Schedule 2 of the Act, to this Charter, and to the direction of the Constituent Councils, the Board may pass, alter or rescind standing orders, policies or rules for the due management and regulation of meetings of the Subsidiary.
- 8.8.2 Standing orders, policies or rules made pursuant to this Clause 8.8 shall be entered in a record which will be kept for the information of the Board members and may be printed and/or circulated at the discretion of the Board.
- 8.8.3 The standing orders, policies and rules in existence shall remain in operation for a period of one (1) year, at which time they shall be reviewed by the Board and confirmed, varied or discontinued by resolution of the Board.

8.9 **Property of the Subsidiary**

- 8.9.1 All property held by the Subsidiary is held for and on behalf of the Constituent Councils in accordance with their respective equity shares.
- 8.9.2 No person may sell, encumber or otherwise deal with any property of the Subsidiary except in accordance with this Charter and with the prior written approval of the Constituent Councils.
- 8.10 **Circumstances not provided for**
 - 8.10.1 If any circumstance arises on which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the Chairperson may decide the action to be taken to ensure achievement of the objects of the Subsidiary and its effective administration.
 - 8.10.2 The Chairperson shall report any such decision at the next general meeting.

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SCHEDULE 1
EQUITY SHARES

Constituent Council	Equity Share
Berri Barmera Council	15.4%
Coorong District Council	10.2%
District Council of Karoonda East Murray	5.4%
District Council of Loxton Waikerie	16.3%
Mid Murray Council	12.2%
Rural City of Murray Bridge	20.4%
Renmark Paringa Council	13.7%
Southern Mallee District Council	6.4%