

# Local Government Association of South Australia

## Constitution and Rules

effective 8 January 2020

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# I Preliminary

## 1. Association

The Association is the "Local Government Association of South Australia" ("**LGA**") which is constituted as a body corporate and a public authority pursuant to the *Local Government Act 1999* for the purpose of promoting and advancing the interests of local government in South Australia.

## 2. Constitution

2.1 This Constitution is binding:

2.1.1 as between the LGA and each Member; and

2.1.2 as between each Member and each other Member.

2.2 This Constitution may be altered only:

2.2.1 by resolution:

a. passed at a General Meeting of which at least 30 days' notice has been given to Members; and

b. passed by at least 75% of the votes cast by Members at that General Meeting;

and

2.2.2 with approval of the Minister under subclause 1(4) of Schedule 1 of the *Local Government Act 1999*.

2.3 In any circumstances in which this Constitution is silent, incapable of taking effect or being implemented according to its strict provisions, the Board of Directors may determine what action may be taken to ensure the effective administration of the LGA.

2.4 Despite any other provision of this Constitution, the Board of Directors may as it thinks fit suspend or modify the operation of any provision of this Constitution in order to provide for a matter related or ancillary to a proclamation made by the Governor under Part 1 of Chapter 3 of the *Local Government Act 1999*.

## 3. Interpretation

3.1 In this Constitution, unless the contrary intention is apparent:

**"Annual General Meeting"** means a meeting of Members described in clause 9.

**"Audit Committee"** is the committee established by the Board of Directors in accordance with clause 24.3.1.

**"Board of Directors"** means the persons appointed as the governing body of the LGA in accordance with this Constitution as described in clause 21.

“**Chair**” means the person referred to in clause 14.

“**CEO Advisory Group**” means the committee established in accordance with clause 24.3.2.

“**Close of Nominations**” means the date and time at which nominations for the office of President close under clause 28.7.

“**Casual Vacancy**” means a vacancy in the office of a member of the Board of Directors due to a circumstance contemplated in clause 31.1.

“**Community Council**” means the governing entity for each of (a) the Anangu Pitjantjatjara Community; (b) the Maralinga Tjarutja Community; (c) the Yalata Community; (d) the Nepabunna Community; (e) the Gerard Community; and (f) the Outback Communities Authority.

“**Council**” means a Council constituted under the *Local Government Act 1999*.

“**Council Member**” means a member of the governing body of a Member.

“**Chief Executive**” means the Chief Executive of the LGA and, where the context allows, includes a person acting in that position.

“**Delegate**” means a person appointed to represent a Member at a General Meeting pursuant to clause 12.1.

“**Director**” means a member of the Board of Directors.

“**Fees**” means moneys payable by a Member to the LGA from time to time, including annual subscriptions, special purpose levies and services charges.

“**GAROC**” means the “Greater Adelaide Regional Organisation of Councils” described in clause 19.

“**GAROC Terms of Reference**” means the terms of reference for GAROC referred to in clause 19.4.

“**General Meeting**” means a meeting of the Members of the LGA being an Annual General Meeting, an Ordinary General Meeting or a Special General Meeting.

“**Immediate Past President**” means the person who is the immediately preceding President of the LGA.

“**LGA**” means the Local Government Association of South Australia.

“**LGA Office**” means the resources engaged by the Chief Executive to ensure that the LGA is enabled to adequately perform its functions.

“**Member**” means a Council or a Community Council which has applied for, been granted and retains membership in accordance with this Constitution and the Membership Proposition.

“**Membership Proposition**” means the terms of membership of the LGA endorsed by the Members.

“**Misconduct**” means being:

- (a) found guilty of an offence involving dishonesty or other offence which the Board of Directors resolves to be an offence which, committed by a Director, would bring the LGA or local government into disrepute;
- (b) being absent from 3 successive meetings of the Board of Directors without leave of the Board of Directors; or
- (c) engaging in conduct which the Board of Directors resolves to be conduct likely to bring the LGA or local government into disrepute.

“**Object**” is the object of the LGA as set out in clause 4.

“**Ordinary General Meeting**” is a meeting of Members convened under clause 10.1.1.

“**President**” means at any time the person holding office as LGA President.

“**Presiding Member**” means the presiding member of a Council or Community Council.

“**Regional Groupings of Members**” means the regional groups described in clause 19.3.

“**Regional Organisation of Councils**” means either SAROC or GAROC as described in clause 19 and “**Regional Organisations of Councils**” means both SAROC and GAROC.

“**Register of Delegates**” means the register maintained by the LGA in accordance with clause 12.3.

“**SAROC**” means the “South Australian Regional Organisation of Councils” as described in clause 19.

“**SAROC Terms of Reference**” means the terms of reference for SAROC referred to in clause 19.4.

“**Special General Meeting**” means a meeting of Members described in clause 10.1.2.

- 3.2 In this Constitution, unless the contrary intention is apparent:
  - 3.2.1 words importing the singular include the plural and *vice versa*;
  - 3.2.2 a power to appoint includes a power to dismiss; and
  - 3.2.3 a reference to any document, including legislation, is a reference to that document as amended or replaced from time to time.

## 4. Object

The object of the LGA is to achieve public value through the promotion and advancement of the interests of local government by:

- 4.1 advocating to achieve greater influence for local government in matters affecting councils and communities;
- 4.2 assisting Members to build capacity and increase sustainability through integrated and coordinated local government; and

- 4.3 advancing local government through best practice and continuous improvement.

## 5. Functions

The LGA must undertake its functions for the purpose of achieving the Object. The functions of the LGA are to:

- 5.1 advocate and provide leadership for local government in South Australia, leading to strong engaged communities served by efficient and collaborative Councils and Community Councils;
- 5.2 advocate for an autonomous, effective and democratic system of local government in South Australia to meet contemporary community needs;
- 5.3 encourage and promote an efficient, effective and sustainable system of local government in South Australia;
- 5.4 promote and protect the interests of local government and its Members and the communities they represent;
- 5.5 encourage and help local government to engage with, and respond to, the needs of the community;
- 5.6 develop and maintain consultation and co-operation between local government and the State and Commonwealth governments and their agencies;
- 5.7 assist Members to develop and maintain their financial sustainability and for the advancement of local government;
- 5.8 undertake any business activity which contributes to the Object;
- 5.9 represent Members of the LGA and local government to the public and the State and Commonwealth governments;
- 5.10 act as an advocate for Members and the local government community to address contemporary needs;
- 5.11 facilitate engagement and collaboration by and between Members as to their common interests;
- 5.12 encourage, assist, promote and foster the achievement and maintenance of the highest levels of integrity, justice, competence, effectiveness and efficiency of local government;
- 5.13 undertake or promote any activity which the Board of Directors determines to be for the benefit or interest of Members and local government in South Australia; and
- 5.14 undertake any function as may be vested in the LGA by statute.

## 6. Powers

For the purposes of fulfilling the Object and undertaking its functions, the LGA has the power to:

- 6.1 acquire, hold, deal with, and dispose of, any real or personal property;
- 6.2 administer any property on trust;
- 6.3 operate accounts with any financial institution including the Local Government Finance Authority;
- 6.4 levy annual subscriptions, special purpose levies and service charges upon Members;
- 6.5 accept gifts of money or property;
- 6.6 invest money in any way considered prudent by the Board of Directors, including with the Local Government Finance Authority;
- 6.7 borrow and raise money as required by the LGA having regard to the financial sustainability of the LGA;
- 6.8 give security for the discharge of liabilities incurred by the LGA;
- 6.9 make application to, and accept grants and loans from, the State government and the Commonwealth government for the benefit of any Member or the LGA;
- 6.10 determine remuneration for Directors or members of committees established under this Constitution;
- 6.11 employ a Chief Executive and the staff of the LGA Office;
- 6.12 engage professional advisors;
- 6.13 appoint agents to transact any activities of the LGA;
- 6.14 insure against any risk;
- 6.15 enter into any contract it considers necessary or desirable;
- 6.16 subject to the *Corporations Act 2001* (Cth), establish or dissolve incorporated subsidiaries and determine policies and procedures to apply to subsidiaries;
- 6.17 advocate for changes to State government and Commonwealth government legislation;
- 6.18 provide services to Members with or without reward;
- 6.19 publish material of interest to Members and for the purpose of promoting the LGA and the system of local government;
- 6.20 enter into any arrangements or obtain any privileges and concessions which the LGA considers to be desirable for the LGA on behalf of Members;
- 6.21 mediate disputes between Members or within a Member's governing entity;
- 6.22 instigate or defend legal proceedings;
- 6.23 manage any dispute to which it is party, including by referral to, and participation in, mediation, conciliation or arbitration;
- 6.24 provide resourcing for the LGA Office;

- 6.25 establish and maintain policies, procedures, terms of reference, membership conditions and guidelines as contemplated by this Constitution or as are conducive to the achievement of the Object;
- 6.26 associate or collaborate with other associations and organisations having objects consistent with, or complementary to, the Object, including by way of incorporated or unincorporated joint venture or other form of alliance;
- 6.27 exercise any other power vested in the LGA by statute; and
- 6.28 do any other thing which is related, incidental or conducive to the attainment of the Object,

provided that the LGA may not distribute its assets to Members other than in the circumstances stated in clause 7.2.

## **7. Dissolution**

- 7.1 The LGA may be dissolved by resolution:
  - 7.1.1 passed at a General Meeting of which at least 30 days' notice has been given; and
  - 7.1.2 passed by at least 75% of the votes cast by Members entitled to vote on the resolution.
- 7.2 In the event of dissolution, and after payment of all debts and liabilities, any surplus assets shall be returned to Members in proportion to the annual subscription paid in the financial year prior to the passing of the resolution to dissolve.
- 7.3 In the event of a dissolution where there are insufficient funds to pay all debts and liabilities of the LGA, a levy on Members shall be determined to cover the deficiency, such levy being in proportion to the annual subscription paid in the financial year prior to the passing of the resolution to dissolve.

# **II Membership of the LGA**

## **8. Membership**

- 8.1 Each Council and Community Council is entitled to apply in writing to the Board to be a Member of the LGA, except as provided in clause 8.2.
- 8.2 A Council or Community Council which has had its membership application rejected or membership revoked under this clause 8 may not reapply for membership for the same financial year that the membership the subject of the application or revocation would have operated, unless otherwise determined by the Board of Directors.
- 8.3 Membership operates for a 12 month period commencing on 1 July.
- 8.4 A Member must provide to the LGA such information and support as the LGA reasonably requests to carry out the Object.

- 8.5 Subject to confidentiality requirements as determined by the Board of Directors or in accordance with terms of reference for a committee, each Member is entitled to access approved minutes of General Meetings, the Board of Directors and committees of the LGA.
- 8.6 Each Member will pay to the LGA:
  - 8.6.1 the annual subscription determined by the Board of Directors applicable to that Member by 1 August for the financial year in which the membership will operate (unless otherwise determined by the Board of Directors); and
  - 8.6.2 by the due date for payment, any special purpose levy or service charge relevant to that Member.
- 8.7 The Board of Directors may:
  - 8.7.1 reject an application for membership of any Council or a Community Council; or
  - 8.7.2 revoke the membership of a Council or a Community Council, on a basis provided for in the Membership Proposition.
- 8.8 Membership of the LGA will be automatically revoked for a Member who fails to pay an annual subscription or special purpose levy to the LGA by the due date for payment (or such later date as may be determined by the Board of Directors).
- 8.9 Revocation of a Membership does not:
  - 8.9.1 relieve the former Member from any obligation to pay Fees to the LGA which accrued prior to the date of revocation; or
  - 8.9.2 entitle the former Member to a refund of any Fee previously paid to the LGA.
- 8.10 A Council or a Community Council may resign from the LGA upon giving written notice to the LGA. A resignation takes effect as provided for in the Membership Proposition.
- 8.11 Any Member who resigns its Membership during a financial year:
  - 8.11.1 remains liable to pay:
    - a. the full annual subscription and any annual special purpose levy for the financial year in which the resignation takes effect; and
    - b. any service charges payable for a service provided by the LGA up until the date on which the service ceases; and
  - 8.11.2 is not entitled to refund of any Fee previously paid to the LGA.
- 8.12 The LGA is not obliged to provide any service to a Council or Community Council which is not a Member of the LGA.
- 8.13 The LGA may cease providing a service to a Member if the Member fails to pay a service fee in respect of the services to the LGA by the due date.

## **III Meetings of the LGA**

### **9. Annual General Meeting**

- 9.1 A meeting of the Members of the LGA to be called the “Annual General Meeting” shall be held once in each year, at a time, date and place determined by the Board of Directors.
- 9.2 The Chief Executive shall at least 30 days before the date fixed for the holding of the Annual General Meeting advise each Member of the time, date and place of the meeting and the proposed business of the meeting.

### **10. Other General Meetings**

- 10.1 The Board of Directors of the LGA has the power to call:
  - 10.1.1 an Ordinary General Meeting each year upon at least 30 days’ notice in writing being given to all Members by the Chief Executive; or
  - 10.1.2 Special General Meeting of the LGA for a stated purpose upon at least 7 days’ notice in writing being given to all Members by the Chief Executive.
- 10.2 At least 10 Members may, by a notice in writing to the Chief Executive request a Special General Meeting stating the business to be considered and determined at the Special General Meeting. Within 14 days from the receipt of the notice, the Chief Executive must call a meeting of the Members to be held within 30 days by advising each Member of the time, date and place of the meeting and the stated business of the meeting.
- 10.3 No business other than the stated business may be considered or determined at a Special General Meeting.

### **11. Venue of General Meetings**

The LGA may hold a General Meeting at 2 or more venues using any technology that enables the Members attending each venue to participate in the meeting.

### **12. Appointment of Delegates**

- 12.1 Each Member may appoint a person to act as the delegate for the Member at a General Meeting, and may at any time revoke such appointment and appoint another person as its delegate.
- 12.2 To be eligible for appointment as a delegate, a person must be a Council Member.
- 12.3 Each Member shall give notice in writing to the LGA of the person appointed to act as its delegate and the LGA will maintain a register of delegates.
- 12.4 A Member must notify the LGA in writing if a person’s appointment as a delegate has been revoked by the Member, a person has resigned from the

role of delegate or the person appointed as a delegate ceases to be a Council Member.

- 12.5 If a Delegate is unable to attend a General Meeting, the Member may, by giving written notice to the LGA, appoint another person to act as a substitute for the Delegate at the meeting. The appointment will only be valid for the General Meeting specified in the written notice. A person appointed under this clause 12.5 will be a “Delegate” for the purposes of this Constitution in respect of that General Meeting.

## 13. Quorum

- 13.1 Subject to this clause 13, no business shall be transacted at any General Meeting unless at least half of the Delegates on the Register of Delegates, plus 1 Delegate are present.
- 13.2 A quorum present at the commencement of a General Meeting is taken to be present throughout the meeting unless the Chair of the meeting declares otherwise.
- 13.3 If no quorum is present at a General Meeting within 30 minutes after the time appointed for the commencement of a meeting, the Chair may adjourn the meeting to a determined date, time and place, provided that the date is no earlier than 7 days after the adjourned meeting or in the case of a General Meeting convened to consider a special resolution no earlier than 30 days after the notice of the adjourned meeting is provided to Members.
- 13.4 Notice of an adjourned meeting with the date, time and place at which the meeting will be recommenced must be provided to all Members.
- 13.5 Any business which could have been transacted at a meeting which has been adjourned because of the absence of a quorum under clause 13.3 may be transacted on the recommencement of the meeting as notified under clause 13.4 notwithstanding there is no quorum present at that meeting.

## 14. Chair

The President shall preside at all General Meetings and meetings of the Board of Directors, but in his or her absence a member of the Board of Directors chosen by the Board of Directors shall preside at the meeting.

## 15. Adjournments

Subject to clause 13, the Delegates present at any General Meeting may from time to time by resolution adjourn the meeting to a determined date and time.

## 16. Business of General Meetings

- 16.1 The business of a General Meeting will be to consider items of strategic importance to local government and the LGA as recommended by SAROC, GAROC or the Board of Directors and matters which must be determined under this Constitution at a General Meeting.

- 16.2 Any Member may propose an item of business for an Annual General Meeting or an Ordinary General Meeting to SAROC, GAROC or the Board of Directors.
- 16.3 No business shall be brought before a General Meeting of the LGA unless:
  - 16.3.1 it has been placed on the agenda of an Annual General Meeting or an Ordinary General Meeting by SAROC, GAROC or the Board of Directors taking into account the purpose of a General Meeting set out in clause 16.1; or
  - 16.3.2 the business is as stated in the notice of a Special General Meeting, given in accordance with clause 10.

## **17. Voting**

- 17.1 Each resolution considered at a General Meeting will be decided by the majority value of the votes of the Delegates present at the meeting and voting on the resolution.
- 17.2 Votes of Delegates at meetings of the LGA shall have the following values:
  - 17.2.1 Delegates of Members whose areas have populations up to 10,000 people - value of 1 vote;
  - 17.2.2 Delegates of Members whose areas have populations of between 10,001 and 50,000 people - value of 2 votes; and
  - 17.2.3 Delegates of Members whose areas have populations of over 50,001 people - value of 3 votes.
- 17.3 For the purposes of this clause, the population of each Member area shall be the population stated in the latest estimated population figures published by the Australian Bureau of Statistics.

## **18. Procedure at Meetings**

The Board of Directors may, consistent with the Constitution, make, vary or revoke any meeting procedures regulating the mode and conduct of proceedings at any General Meeting and meetings of the Board of Directors, SAROC or GAROC.

## **19. Regional Organisations of Councils**

- 19.1 There are 2 regional organisations of Members:
  - 19.1.1 SAROC; and
  - 19.1.2 GAROC.
- 19.2 The role of SAROC and GAROC is regional advocacy, policy initiation and review, leadership, engagement and capacity building in the regions.
- 19.3 Members will be organised into regional groups for the purpose of participating in the processes for the election of SAROC and GAROC. The Regional Groupings of Members are not formed to undertake any other function.

- 19.4 Terms of reference for SAROC and GAROC as approved by the Board of Directors will:
- 19.4.1 list the Regional Groupings of Members comprising SAROC and GAROC respectively; and
- 19.4.2 provide for:
- (a) the conduct of business including requirements for strategic and annual business planning and budgeting, and reporting requirements;
  - (b) the receipt and consideration of proposals for policy development for the betterment of local government from Members;
  - (c) the referral of proposals to the Board of Directors or General Meetings;
  - (d) the election of members to SAROC and GAROC;
  - (e) the appointment of a chairperson; and
  - (f) any other matters which the Board of Directors considers to be prudent or convenient.
- 19.5 The terms of reference for SAROC and GAROC will be presented to the Members at a General Meeting for ratification annually (or more frequently as determined by the Board).
- 19.6 Each Regional Grouping of Members will elect 2 Council Members as members of SAROC or GAROC (as relevant) provided that each person elected is from a different Member.
- 19.7 In addition to the membership determined under clause 19.6, the Lord Mayor of the City of Adelaide will be a member of GAROC.
- 19.8 The term of office for members of SAROC and GAROC shall commence after the Annual General Meeting of the year in which elected. Each Council Member will serve for a period of 2 years or until a circumstance causing a Casual Vacancy occurs.
- 19.9 SAROC and GAROC will be supported by the LGA Office.

## **20. Annual report**

The LGA will make publicly available on or before 30 November in each year an annual report adopted by the Board of Directors in respect of the operations of the LGA for the preceding financial year.

# **IV The Board**

## **21. Board of Directors**

- 21.1 The Board of Directors is the governing entity of the LGA.

- 21.2 The Board of Directors shall consist of:
- 21.2.1 the President;
  - 21.2.2 the Immediate Past President;
  - 21.2.3 the chairperson of SAROC and the chairperson of GAROC; and
  - 21.2.4 6 additional persons (each of which must be a Council Member) with relevant business and governance experience elected in equal proportions from the Council Members of SAROC (3 persons) and the Council Members of GAROC (3 persons).
- 21.3 The role of the Board of Directors is to oversee corporate governance of the LGA and provide strategic direction and leadership. The Directors do not represent SAROC, GAROC or a specific Member or Members.
- 21.4 Each Director must:
- 21.4.1 undertake his or her role as a Director honestly and act with reasonable care and diligence in the performance and discharge of functions and duties;
  - 21.4.2 not make improper use of information acquired by virtue of his or her position as a Director to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the LGA;
  - 21.4.3 not make improper use of his or her position as a Director to gain, directly or indirectly, an advantage for himself or herself or for another person or to cause detriment to the LGA; and
  - 21.4.4 not act in any matter where the Director has a conflict of interest (provided that an interest shared in common with all or a substantial proportion of the Directors will not be an interest giving rise to a conflict of interest).

## **22. Functions of the Board of Directors**

The functions of the Board of Directors include:

- 22.1 appointing a Chief Executive and superintending his or her performance;
- 22.2 holding the Chief Executive accountable for the performance of the LGA Office;
- 22.3 advocating for the LGA, the Members and the local government community;
- 22.4 superintending the activities of the LGA;
- 22.5 determining matters which may be placed on the agenda of a General Meeting; and
- 22.6 undertaking such other functions as may be provided for, or envisioned by, this Constitution.

## 23. Duties of the Board of Directors

The Board of Directors must ensure that:

- 23.1 the LGA acts in accordance with applicable laws and this Constitution;
- 23.2 the LGA acts ethically and with integrity, respecting diversity and striving for gender balance participation in all activities;
- 23.3 the activities of the LGA are conducted efficiently and effectively and that the assets of the LGA are properly managed and maintained;
- 23.4 subject to any overriding fiduciary or other duty to maintain confidentiality, the affairs of the LGA are undertaken in an open and transparent manner; and
- 23.5 the LGA performs to its business plan and achieves or betters the financial outcomes projected in its budget.

## 24. Powers of the Board of Directors

- 24.1 The Board of Directors may exercise the powers of the LGA.
- 24.2 The Board of Directors also has power to:
  - 24.2.1 establish committees consisting of any person with relevant experience, skill or expertise for any purpose and determine the terms of reference for such committees; and
  - 24.2.2 recommend to the Members at a General Meeting to amend the provisions of the Constitution.
- 24.3 The Board of Directors must establish and maintain:
  - 24.3.1 an audit committee comprising at least 3 persons with appropriate qualifications and experience required to discharge the functions of an audit committee as determined by the Board of Directors; and
  - 24.3.2 an advisory group comprised of at least 8 persons each being a chief executive officer of a Member.
- 24.4 The Board of Directors, the Audit Committee, the CEO Advisory Group and any committee shall cause minutes to be kept of all its proceedings and actions.
- 24.5 The Board of Directors will report the activities of Board of Directors, the Audit Committee, the CEO Advisory Group and any committee to Members at each General Meeting.

## 25. Meetings of the Board of Directors

- 25.1 Meetings of the Board of Directors shall be held at least once in each 2 month period at such times and places as shall be determined by the President or by any 3 members of the Board of Directors.
- 25.2 The Chief Executive shall, at least 7 days before the date fixed for the meeting of the Board of Directors, inform each Director of the date, time and

place of the meeting and the proposed business to be conducted at the meeting.

- 25.3 The President may in cases of urgency direct that a meeting of the Board of Directors be held at any time without the need to give 7 days' notice. If this occurs, the Chief Executive shall if practicable give notice in writing to each Director of the date, time and place of the meeting and the proposed business to be conducted at the meeting.
- 25.4 No business shall be transacted at a meeting of the Board of Directors unless half of the Directors, plus 1 Director are present (providing that at least 1 Director from each of SAROC and GAROC is in attendance) in person or connected using technology which enables all members to communicate with each other as if they were all present in a single place.
- 25.5 All questions arising at a meeting of the Board of Directors shall be decided by a simple majority vote of the Directors present and voting on each question.
- 25.6 The Chair of the meeting has a deliberative vote and, if there are equal numbers of votes on any question, a casting vote.

## 26. Circulating resolutions

- 26.1 Notwithstanding clause 25, the Board of Directors may pass a resolution without a meeting in accordance with this clause 26.
- 26.2 Each member must receive notice of the proposed resolution in identical terms, including by electronic means.
- 26.3 A resolution will remain open for adoption for a period of 5 days (or such longer period as is provided in the notice of the resolution).
- 26.4 A Director may vote for a resolution received under clause 26.2 by responding to the notice confirming that they are in favour of the resolution (**Instrument of Resolution**).
- 26.5 The resolution is passed when the Chief Executive receives by hand delivery, post, email or fax Instruments of Resolution executed by a majority of Directors entitled to vote on the resolution within the time period provided for in clause 26.3.

## 27. Delegations

- 27.1 Subject to this clause 27, the Board of Directors may by resolution delegate any of its powers, functions or duties to any member or members of the Board of Directors, to a committee established by the Board of Directors or to the Chief Executive, excepting that a delegation to certify the audited financial statements in accordance with the Constitution must only be given jointly to the President and Chief Executive.
- 27.2 Where a person is acting in the position of either President or Chief Executive in accordance with this Constitution, that person may exercise powers delegated under this clause to the President or Chief Executive (as relevant).

- 27.3 The Board of Directors may not delegate the power to:
- 27.3.1 determine annual subscriptions, special purpose levies or service charges for services provided to Members;
  - 27.3.2 determine a membership application or to determine the continuing membership status of a Member;
  - 27.3.3 borrow money or to obtain other forms of financial accommodation;
  - 27.3.4 adopt or revise a strategic management plan of the LGA;
  - 27.3.5 adopt or revise an annual business plan or budget of the LGA;
  - 27.3.6 determine the remuneration of, or the reimbursement of expenses to, members of the Board of Directors; or
  - 27.3.7 make an application or recommendation, or report or give notice, to the Governor or a Minister where provided for by statute.
- 27.4 A delegation:
- 27.4.1 is subject to conditions and limitations stated in the resolution;
  - 27.4.2 if made to the Chief Executive, authorises the sub-delegation by the Chief Executive in writing of the delegated power or function to any person unless the resolution directs otherwise;
  - 27.4.3 is revocable by resolution of the Board of Directors; and
  - 27.4.4 does not prevent the Board of Directors from exercising the delegated power.
- 27.5 The Board of Directors must cause a separate record to be kept of all delegations under this clause.
- 27.6 The Chief Executive must ensure that sub-delegations are reported to the Board of Directors at least every 3 months.
- 27.7 At least once in every financial year, the Board of Directors must review the delegations and sub-delegations for the time being in force under this clause.
- 27.8 The record of delegations made under this clause must be placed on the LGA's public website.

## **28. Nominations for the Office of President**

- 28.1 The office of President shall be elected by Members biennially.
- 28.2 In the year in which a new President is to be elected, and at least 3 months before the Annual General Meeting, the Chief Executive shall write to all Members calling for nominations for the position of President.
- 28.3 Every Member is entitled to nominate an eligible person to the office of President.
- 28.4 To be eligible for nomination as a candidate for the position of President, a person must be a Council Member.

- 28.5 To be eligible for the position of President, a person must also be a current member of SAROC or GAROC who has undertaken that role for a period of not less than 1 year.
- 28.6 The eligibility for office of President shall rotate each term between a person who is a Council Member of a Member within Regional Groupings of Members in SAROC and a Council Member of a Member within Regional Groupings of Members in GAROC.
- 28.7 A nomination of a person for the office of President shall be by resolution of a Member and must be received by the Chief Executive not later than 5 pm on the day specified for the closure of nominations. A nomination must be signed by the candidate indicating his or her willingness to stand for election and be in the form determined by the Chief Executive.
- 28.8 If no nomination is received for the office of President under clause 28.7, then the Chief Executive shall call for additional nominations from and by the Delegates at the Annual General Meeting and will conduct an election at the meeting.

## **29. Election for office of President**

- 29.1 The Chief Executive shall be the returning officer for any election for the office of President.
- 29.2 After the Close of Nominations, the Chief Executive will notify all Members of the candidates for the office of President.
- 29.3 If only 1 person is nominated for President by the Close of Nominations, the Chief Executive shall declare such person duly elected.
- 29.4 If the number of persons nominated for the office of President by the Close of Nominations exceeds 1 person then an election must be held in accordance with this clause.
- 29.5 In the event of an election being required, the Chief Executive shall conduct the election as follows:
- 29.5.1 at least six weeks before the Annual General Meeting the Chief Executive shall deliver ballot papers to each Member;
- 29.5.2 the ballot papers shall:
- (a) list the candidates for election;
  - (b) specify the day of closure of the election; and
  - (c) be accompanied by an envelope marked "Ballot Paper" and a second envelope marked "Returning Officer";
- 29.5.3 each Member shall determine by resolution the candidate it wishes elected;
- 29.5.4 the Delegate of a Member or in the Delegate's absence, the chair of the meeting for that Member shall mark the ballot paper with an "X" next to the candidate that the Member wishes elected and seal the

ballot paper in the envelope marked "Ballot Paper" inside the envelope marked "Returning Officer". Before sealing the second envelope the Delegate must indicate the Member's name on the inside flap of the envelope. The envelope may then be sealed and delivered to the Returning Officer;

- 29.5.5 on receipt of the envelopes the Chief Executive must:
- (a) open the outer envelope addressed to the "Returning Officer" and record the name of the Member which appears on the inside flap of the envelope on the roll of Member's eligible to vote; and
  - (b) place the envelope marked "Ballot Paper" unopened into the ballot box;
- 29.5.6 the Chief Executive shall nominate the date, time and place for the counting of votes and shall invite each candidate and a person nominated as the candidate's scrutineer to be present;
- 29.5.7 at the counting of the votes the Chief Executive shall produce unopened envelopes marked "Ballot Paper" and if satisfied that all votes are valid, count the number of votes received by each candidate;
- 29.5.8 the candidate with the most votes shall be deemed elected and the Chief Executive shall declare the candidate elected at the Annual General Meeting; and
- 29.5.9 in the case of candidates receiving the same number of votes, the Chief Executive shall draw lots at the counting of the votes and the lot drawn will be the candidate elected.
- 29.6 The Chief Executive may, in his or her discretion, appoint a deputy returning officer and delegate any of his or her powers, functions or duties to that person who shall act accordingly.

## **30. Term of Office of Directors**

- 30.1 The President shall take office after the Annual General Meeting of the year in which elected and shall hold office for 2 years or until any vacancy in that office occurs.
- 30.2 When a new President is elected the person retiring from the Office of President shall hold office as Immediate Past President until his or her successor as President is entitled to assume the office of Immediate Past President.
- 30.3 The term of office of the SAROC and GAROC chairpersons operates for the term of their respective appointments as chairperson.
- 30.4 The term of office of the six persons elected to the Board of Directors by SAROC (3 persons) and GAROC (3 persons) shall commence after the Annual General Meeting of the year in which the person is elected and shall be for 2 years or until a vacancy in that office occurs for any such person.

- 30.5 Persons elected under clause 30.4 are eligible for re-election for subsequent terms.
- 30.6 Any person appointed to the office of Immediate Past President shall hold office until the retiring President becomes entitled to hold that office under this Constitution.

## **31. Casual Vacancy**

- 31.1 A casual vacancy shall occur in the offices of President or another Director if the person appointed to that office:
  - 31.1.1 dies;
  - 31.1.2 resigns from the office or from SAROC or GAROC (as relevant);
  - 31.1.3 is dismissed by resolution of the Board of Directors from the Board of Directors or SAROC or GAROC (as relevant) for Misconduct; or
  - 31.1.4 ceases to be a Council Member,or an administrator is appointed to administer the affairs of the Member for which the Director is the Council Member.
- 31.2 If there is a Casual Vacancy in the office of President, the Board of Directors shall appoint a member of the Board of Directors to act in the office of President for the balance of the President's term, provided that the position may only be filled by a Director who is a member of the same Regional Organisation of Councils as the President.
- 31.3 If there is a Casual Vacancy in the Board of Directors (other than for the roles of President or Immediate Past President) then the position will be filled for the balance of the Director's term by a person appointed as a replacement by SAROC or GAROC (as relevant to the Director the subject of the Casual Vacancy) taking into account the considerations in clause 21.2.4.
- 31.4 If a Casual Vacancy arises in the office of Immediate Past President then the vacant position on the Board of Directors will be filled by either SAROC or GAROC as determined by reference to whether the Member on which the Immediate Past President served was a member of a Regional Grouping of Members represented by SAROC or GAROC. SAROC or GAROC (as relevant) will elect the person taking into account the considerations in clause 21.2.4 and determining that the person is of such seniority and experience that his or her contribution will be valuable to the Board of Directors and the LGA.

## **32. Leave of absence**

- 32.1 A Director may be granted a leave of absence by resolution of the Board of Directors.
- 32.2 Where a leave of absence is granted to the President, a Director will be selected by the Board of Directors to act in the office of President for the duration of the absence, provided that the position may only be filled by a

Director who is a member of the same Regional Organisation of Councils as the President.

- 32.3 Where a leave of absence is granted to a Director (other than the President) or a Director is appointed to act as the President under clause 32.2, an acting Director will be appointed by SAROC or GAROC (as relevant to the Director the subject of the leave of absence) to serve in place of that Director for the duration of the absence.

### **33. Appointment of a Chief Executive**

- 33.1 The Board of Directors shall appoint a Chief Executive who shall be responsible to the Board of Directors for:
- 33.1.1 the execution of the Board's decisions,
  - 33.1.2 appointing and overseeing the LGA Office on the basis of sound principles of management;
  - 33.1.3 the discharge of duties stated in the Chief Executive's contract of employment;
  - 33.1.4 keeping full and accurate accounts of all monies received and expended on behalf of the LGA;
  - 33.1.5 attending to all correspondence and receiving, giving receipt for, banking and making disbursements of LGA funds;
  - 33.1.6 carrying out the lawful instructions given by the Board of Directors or the Members by resolution passed in General Meeting;
  - 33.1.7 having custody of any books, journals, records or documents belonging to the LGA;
  - 33.1.8 having custody of the seal of the LGA which may not be affixed to any document unless it is affixed in the presence of and attested by 2 members of the Board of Directors;
  - 33.1.9 submitting a duly audited statement of income and expenditure for the previous year ending the 30th day of June to the Annual General Meeting; and
  - 33.1.10 submitting a balance sheet showing the current assets and liabilities of the LGA to the Annual General Meeting.
- 33.2 The performance, remuneration and terms and conditions of the Chief Executive's appointment shall be reviewed annually by the Board of Directors.
- 33.3 If the Chief Executive is on leave, incapacitated or otherwise unable to fulfil his or her role then a person nominated by the Chief Executive shall act in that capacity for the period of the Chief Executive's absence. However, the Board of Directors will appoint an acting Chief Executive if the Chief Executive is unable to determine this appointment.

## 34. Audit

- 34.1 The Board of Directors shall appoint an auditor annually.
- 34.2 A person must not be appointed as the Auditor for a period of more than 5 years.
- 34.3 Prior to each Annual General Meeting, the Auditor shall audit the income and expenditure account and balance sheet for the year ending 30th June and shall if required report its findings to the Annual General Meeting.
- 34.4 If required the Auditor shall report to the Annual General Meeting regarding the audit.

## V. Miscellaneous

### 35. Dispute resolution

- 35.1 A dispute between Members or between a Member and the LGA in respect of a matter under this Constitution will be subject to the process set out in this clause 35.
- 35.2 A Member may notify another Member or the LGA of a dispute in respect of a matter under this Constitution in writing setting out the details of dispute and a proposal for settling the dispute. The parties relevant to the dispute will meet in good faith to discuss the notified dispute and its resolution within 10 days of receiving a notification under this clause 35.2.
- 35.3 If the dispute is unable to be resolved through discussions under clause 35.2 within 20 days (or such longer period as is agreed to by the parties to the dispute), then any party to the dispute may refer the matter to mediation by notifying the other parties to the dispute in writing.
- 35.4 Where a matter has been referred to mediation, a mediator will be selected by agreement of the parties or, if the parties are unable to agree, by the Resolution Institute. A mediator appointed under this clause will conduct the mediation in accordance with the Mediation Rules of the Resolution Institute within 10 days of being appointed (or such longer period as is agreed by the parties to the dispute).
- 35.5 The costs of the mediator will be shared equally by the parties to the dispute. Each party to a dispute will bear its own costs of participating in the mediation.

### 36. Administration

- 36.1 Subject to clause 36.2, an administrator appointed to administer the affairs of the Member may exercise the rights and satisfy the obligations of the administered Member under this Constitution.
- 36.2 An administrator is ineligible to be a member of the Board of Directors, SAROC or GAROC.

## 37. Curing of irregularities

- 37.1 An act done by a Director is effective even if his or her appointment, or the continuance of his or her appointment, is invalid.
- 37.2 A proceeding under this Constitution is not invalidated because of any procedural irregularity unless a Court of competent jurisdiction is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court, and by order declares the proceeding to be invalid.
- 37.3 In this clause, a reference to a “procedural irregularity” includes a reference to:
- 37.3.1 a defect, irregularity or deficiency of notice or time;
  - 37.3.2 the accidental omission to give notice of any meeting under this Constitution or the non-receipt by any person of notice of the meeting;
  - 37.3.3 the absence of a quorum at any meeting under this Constitution; or
  - 37.3.4 a vote cast at a General Meeting by or for a person under this Constitution not entitled to vote at the meeting or on the matter, or not entitled to vote to the extent or in the way they voted.

## VI. Transitional provisions

### 38. Interpretation

- 38.1 Transitional arrangements associated with this Constitution are set out in this Part VI.
- 38.2 In Part VI:
- “**Adoption Date**” means the date on which both of the following criteria have been satisfied (regardless of the order in which the criteria are satisfied):
- (a) this Constitution has been adopted by the Members; and
  - (b) the Minister responsible for the *Local Government Act 1999* has approved the revocation of the Previous Constitution.
- “**Effective Time**” means immediately after the Annual General Meeting held following the Adoption Date.
- “**LGA Board**” means the governing body of the LGA formed under Part 13 of the Previous Constitution.
- “**Previous Constitution**” means the *The Constitution* (effective 6 December 2015).
- “**Transition Period**” means the time period between the Adoption Date and the Effective Time.
- 38.3 In the event of an inconsistency between Part VI of this Constitution and another provision of this Constitution, Part VI will to the extent of the

inconsistency prevail.

## **39. Membership of the LGA**

- 39.1 A Council which is a member of the LGA in accordance with the Previous Constitution as at the Effective Time will be deemed to be a Member under the terms of this Constitution.
- 39.2 Any liabilities owing by a Council to the LGA prior to the Effective Time will continue notwithstanding the adoption of this Constitution.

## **40. President**

The President of the LGA holding office immediately prior to the Effective Time will become the Immediate Past President under this Constitution at the Effective Time if so eligible.

## **41. SAROC and GAROC**

- 41.1 Terms of reference for SAROC and GAROC adopted by the LGA Board during the Transition Period will continue in operation after the Effective Time as the terms of reference for the purpose of clause 19.4 of this Constitution.
- 41.2 As at the Effective Time:
  - 41.2.1 the chairs of SAROC and GAROC appointed during the Transition Period; and
  - 41.2.2 Directors elected by SAROC and GAROC during the Transition Period,are validly appointed to the Board of Directors.
- 41.3 As at the Effective Time:
  - 41.3.1 the members of SAROC and members of GAROC will be deemed to be validly appointed for the purposes of clause 19.6; and
  - 41.3.2 their respective terms of office will be deemed to commence at the Effective Time and will expire at the Annual General Meeting held 2 years after the Effective Time or when a Casual Vacancy arises.

## **42. Resolutions**

Resolutions passed at a General Meeting or by the LGA Board under the Previous Constitution remain valid after the Effective Time.

## **43. Delegations**

- 43.1 Delegations granted under clause 86 of the Previous Constitution will continue in operation after the Effective Time as if the delegation was validly granted under clause 27 of this Constitution.
- 43.2 For the purpose of giving effect to clause 43.1, clause 27.3 will not operate to invalidate a delegation granted validly under the Previous Constitution,

provided that this clause 43.2 will cease to operate on the 30 June next following the end of the Transition Period.

## **44. Audit Committee**

- 44.1 The initial Audit Committee for the purposes of clause 24.3.1 will be the audit committee in existence as at the Effective Time.
- 44.2 Each member of the Audit Committee referred to in clause 44.1 will serve out the balance of his or her term of office.

## **45. Auditor**

An auditor appointed under clause 54 of the Previous Constitution will continue to hold that appointment after the Effective Time, until such time as the Board of Directors replaces the auditor in accordance with clause 34 of this Constitution.

148 Frome St  
Adelaide SA 5000  
GPO Box 2693  
Adelaide SA 5001  
T (08) 8224 2000  
F (08) 8232 6336  
E [lgasa@lga.sa.gov.au](mailto:lgasa@lga.sa.gov.au)

[www.lga.sa.gov.au](http://www.lga.sa.gov.au)