



The Murraylands and Riverland  
Local Government Association

**CHARTER**

**OF THE**

**MURRAYLANDS AND RIVERLAND**

**LOCAL GOVERNMENT ASSOCIATION (REGIONAL**

**SUBSIDIARY)**

**Under the provisions of the Local Government Act, 1999.**

## MURRAYLANDS AND RIVERLAND LOCAL ASSOCIATION

### LOCAL GOVERNMENT ACT 1999

#### CHARTER

#### 1. INTRODUCTION

##### 1.1 Name

The name of the subsidiary is the Murraylands and Riverland Local Government Association (referred to as 'the Subsidiary' in this Charter).

##### 1.2 Definitions

'**absolute majority**' means a majority of the whole number of the Board Members;

'**the Act**' means the *Local Government Act 1999* and includes all regulations made thereunder;

'**Annual General Meeting**' means the annual general meeting of the Subsidiary held in accordance with Clause 3.8;

'**Board**' means the Board established under Clause 3;

'**Board Member**' means a person who has been appointed to the Board by a Constituent Council in accordance with Clause 3.4;

'**Budget**' means the annual budget adopted by the Subsidiary pursuant to Clause 5.1;

'**Annual Business Plan**' means the business plan adopted by the Subsidiary pursuant to Clause 6.2;

'**Chairperson**' means the member of the Board appointed pursuant to Clause 3.6 and referred to as the President;

'**Chief Executive Officer**' means the person appointed pursuant to Clause 4 as the Chief Executive Officer of the Subsidiary;

'**Constituent Councils**' means those Councils identified at Clause 1.4;

'**Council**' means a Council constituted under the Act;

'**Financial Statements**' has the same meaning as in the Act;

'**Financial Year**' means 1 July in each year to 30 June in the subsequent year;

**'Long Term Financial Plan'** means the long term financial plan prepared by the Subsidiary and approved by the Constituent Councils pursuant to Clause 5.3;

**'Principal Members'** means the principal member of each Constituent Council under the Act.

**'Region'** means the collective geographical areas of the Constituent Councils;

**'MRLGA CEO Network Group'** means the group established pursuant to Clause 7.11;

**'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;

**'Strategic Plan'** means the strategic plan adopted by the Subsidiary pursuant to Clause 6.1.

### 1.3 Interpretation

In this Charter, unless the context otherwise requires:

- 1.3.1 headings do not affect interpretation;
- 1.3.2 singular includes plural and plural includes singular;
- 1.3.3 words of one gender include any gender;
- 1.3.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.3.5 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.3.6 an unenforceable provision or part of a provision of this Charter may be severed, and the remainder of this Charter continues in force, unless this would materially change the intended effect of this Charter;
- 1.3.7 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- 1.3.8 a reference to a 'Clause' means a Clause of this Charter.

### 1.4 Establishment

The Subsidiary is a regional subsidiary established by the following Councils pursuant to section 43 and Schedule 2 of the Act:

- 1.4.1 The Berri Barmera Council,
- 1.4.2 The Coorong District Council,
- 1.4.3 The District Council of Karoonda East Murray,

- 1.4.4 District Council of Loxton Waikerie,
- 1.4.5 The Mid Murray Council,
- 1.4.6 The Rural City of Murray Bridge,
- 1.4.7 The Renmark Paringa Council, and
- 1.4.8 The Southern Mallee District Council,

Together the councils are known as the Constituent Councils.

The Subsidiary is subject to the direction of the Constituent Councils

## 1.5 **Local Government Act 1999**

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

## 1.6 **Objects and Purposes**

The Subsidiary is established to:

- 1.6.1 work with the Local Government Association of South Australia in achieving its aims and objectives;
- 1.6.2 provide strong advocacy speaking with one voice on what matters most to the communities of the Constituent Councils;
- 1.6.3 work together to make the best use of available resources;
- 1.6.4 build partnerships with those who can contribute to stronger and more sustainable communities;
- 1.6.5 develop and implement a robust Annual Business Plan consistent with the intent of the Strategic Plan;
- 1.6.6 to undertake coordinating, advocacy and representational roles for its Constituent Councils at a regional level;
- 1.6.7 to facilitate and coordinate activities of local government at a regional level on behalf of our Constituent Councils;
- 1.6.8 to develop, encourage, promote, foster and maintain consultation and cooperation and to strengthen the representation and status of local government;
- 1.6.9 to develop further cooperation between its Constituent Councils for the benefit of the communities in the region;
- 1.6.10 to develop and manage policies which guide the conduct of programs and projects in the region;

- 1.6.11 to undertake projects that benefit the region and its communities;
- 1.6.12 to facilitate and coordinate collaborative procurement activities for the collective benefit of the Constituent Councils [*and other non-Constituent Councils*];
- 1.6.13 to maximize the benefits of collaborative procurement through developing and implementing procurement policies and procedures; and
- 1.6.14 to improve financial sustainability of the Constituent Councils by improvement of operational efficiency in procurement and process management.

## 2. POWERS AND FUNCTIONS

The powers, functions and duties of the Subsidiary are to be exercised in the performance of the Subsidiary's objects and purposes, comprise:

### 2.1 Functions and Powers

In addition to those specified in the Act, the functions and powers of the Subsidiary are:

- 2.1.1 subject to Clause 2.4 becoming a member of or co-operating or contracting with any other association or organisation, which shares similar objects and purposes to those of the Subsidiary
- 2.1.2 subject to Clause 2.4 entering into contracts or arrangements with any Government agency or authority;
- 2.1.3 subject to Clause 2.4 appointing, employing, remunerating, removing or suspending the Chief Executive Officer;
- 2.1.4 subject to Clause 2.4 entering into contracts with any person for the acquisition and/or supply of goods and services;
- 2.1.5 raising revenue through subscriptions and levies from Constituent Councils, by arrangements with sponsor organisations, by arrangement or contract with any other person and by any other means not inconsistent with the objects and purposes of the Subsidiary;
- 2.1.6 printing and publishing any newspapers, periodicals, books, leaflets, or other like writing;
- 2.1.7 appointing persons or committees to oversee the management of the Subsidiary, to steer projects or to pursue geographic or functional interests of Constituent Councils or specific groups of Constituent Councils;
- 2.1.8 subject to Clause 2.4 employing staff of, and employing, engaging or retaining professional advisors to, the Subsidiary;

- 2.1.9 subject to Clause 2.4 instituting, initiating and carrying on legal proceedings;
- 2.1.10 making submissions for and accepting grants, subsidies and contributions to further its objects and purposes;
- 2.1.11 subject to Clause 2.4 acquiring, holding, dealing with and disposing of any real or personal property;
- 2.1.12 with the prior approval of the Constituent Councils purchasing, selling or otherwise acquiring, disposing of or encumbering any real property or interests therein;
- 2.1.13 opening and operating bank accounts;
- 2.1.14 accumulating surplus funds for investment purposes;
- 2.1.15 investing any of the funds of the Subsidiary in any investment provided that:
  - 2.1.15.1 in exercising this power of investment the Subsidiary must exercise the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and
  - 2.1.15.2 the Subsidiary must avoid investments that are speculative or hazardous in nature;
- 2.1.16 borrowing money and incurring expenditure in accordance with an approved Annual Business Plan;
- 2.1.17 giving security for the discharge of liabilities of the Subsidiary; and
- 2.1.18 doing all other things that are incidental or conducive to the attainment of the objects and purposes of the Subsidiary.

## 2.2 Duties

The Subsidiary has the following duties:

- 2.2.1 to exercise the functions and powers of the Subsidiary only in the performance and furtherance of the Subsidiary's objects and purposes;
- 2.2.2 to comply with this Charter, the Act, all other applicable law and any lawful direction of the Constituent Councils.

## 2.3 Other Powers, Functions and Duties

The Subsidiary may exercise such other functions, powers and duties as are delegated to the Subsidiary or authorised by the Constituent Councils from time to time.

## 2.4 Borrowings and Expenditure

2.4.1 The Subsidiary has the power to incur expenditure as follows:

- 2.4.1.1 in accordance with an Annual Business Plan adopted by the Subsidiary and approved by the Constituent Councils as required by the Act or this Charter; or
- 2.4.1.2 with the prior approval of the Constituent Councils; or
- 2.4.1.3 in accordance with the Act, in respect of expenditure not contained in a budget adopted by the Subsidiary for a purpose of genuine emergency or hardship.

2.4.2 The Subsidiary has the power to borrow up to \$100,000 in order to manage projected cash flow shortages from time to time either: :

- 2.4.2.1 in accordance with a Annual Business Plan adopted by the Subsidiary as required by the Act or this Charter; or
- 2.4.2.2 in accordance with a Budget (or amended Budget) adopted by the Subsidiary.

## 2.5 Property

2.5.1 All property held by the Subsidiary is held by it on behalf of the Constituent Councils.

2.5.2 No person may sell, encumber or otherwise deal with any property of the Subsidiary without the prior approval of the Constituent Councils and the approval of the Subsidiary by resolution of the Board.

## 2.6 Delegation by the Subsidiary

2.6.1 The Subsidiary may in accordance with this Charter and the Act by resolution delegate to a committee of the Subsidiary, an employee of the Subsidiary, a Constituent Council or to a person for the time being occupying a particular office or position with the Subsidiary any of its powers and functions under this Charter or the Act but may not delegate:

- 2.6.1.1 the power to impose charges;
- 2.6.1.2 the power to borrow money or obtain any other form of financial accommodation not contained in a Budget adopted by the Subsidiary;
- 2.6.1.3 the power to approve expenditure of money on the works, services or operations of the Subsidiary not contained in a Budget adopted by

the Subsidiary and approved by the Constituent Councils;

2.6.1.4 the power to approve the reimbursement of expenses or payment of allowances to Board Members;

2.6.1.5 the power to adopt or revise a Budget, Annual Business Plan, Strategic Plan or Long Term Financial Plan of the Subsidiary;

2.6.1.6 the power to adopt or revise financial estimates and reports.

2.6.2 A delegation is revocable at will and does not prevent the Subsidiary from acting in a matter.

2.6.3 Where a power or function is delegated to an employee, or a person occupying a particular office or position, that employee or person is responsible to the Chief Executive Officer for the efficient and effective exercise or performance of that power or function.

### 3. **BOARD OF MANAGEMENT**

#### 3.1 **Structure**

3.1.1 The Subsidiary is a body corporate and is governed by the Act and this Charter.

3.1.2 The Board is the Subsidiary's governing body and has the responsibility for the administration of the affairs of the Subsidiary ensuring that the Subsidiary acts in accordance with this Charter and all relevant legislation including the Act.

#### 3.2 **Functions of the Board**

3.2.1 In addition to the functions of the Board set out in the Act, the functions of the Board include:

3.2.1.1 the formulation of strategic plans and strategies aimed at achieving the objects and purposes of the Subsidiary;

3.2.1.2 the preparation and development of an Annual Business Plan to be considered in consultation with the Constituent Councils;

3.2.1.3 providing effective governance and developing such policies and procedures as give effect to good governance and administrative practices;

3.2.1.4 to providing input and policy direction to the Subsidiary;



- 3.2.1.5 monitoring, overseeing and evaluating the performance of the Chief Executive Officer of the Subsidiary;
- 3.2.1.6 ensuring that ethical behaviour and integrity is established and maintained by the Subsidiary, the Board and Board Members in all activities undertaken by the Subsidiary;
- 3.2.1.7 subject to Clause 3.7 ensuring that the activities of the Subsidiary are undertaken in an open and transparent manner; and
- 3.2.1.8 exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons.

### **3.3 Propriety of Members of the Board**

- 3.3.1 The principles regarding conflict of interest prescribed in the Act apply to all Board Members in the same manner as if they were elected members of a Council.
- 3.3.2 The Board Members are required to submit returns in compliance with Division 2, Chapter 5 (Register of Interests) of the Act.
- 3.3.3 The Board Members will at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the performance and discharge of official functions and duties as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Part 2 of Schedule 2 to the Act.

### **3.4 Membership of the Board**

- 3.4.1 The Board shall consist of all of the Principal Members of the Constituent Councils.
- 3.4.2 Each Constituent Council may appoint two persons, who must be elected members, to act as deputy Board Members. A deputy Board Member will act for a Constituent Council when the Principal Member is not present at a meeting of the Board
- 3.4.3 Each Constituent Council shall, following every periodic Local Government election and as necessary , give notice in writing to the Chief Executive Officer of the Subsidiary, of those persons who are its Board Members and deputy Board Members. .

### 3.5 Termination of Membership of the Board

- 3.5.1 The appointment of Board Members or deputy Board Members shall terminate upon any of the grounds set out at Clause 20(3) of Schedule 2 to the Act arising, or otherwise;
- (a) upon the Council which appointed him/her ceasing to be a Constituent Council;
  - (b) if the Board are elected members of a Constituent Council, upon ceasing to be an elected member; or
  - (c) in respect of any Board appointment, upon the happening of any other event through which the Board Members would become ineligible to remain as a member of the Board.
- 3.5.2 The Board may, by special resolution, make a recommendation to the Constituent Council which appointed Board Members under Clause 3.4 requesting the Constituent Council to terminate the appointment of Board Members for:
- 3.5.2.1 any behaviour of the Board Members which in the opinion of the Board amounts to impropriety;
  - 3.5.2.2 serious neglect of duty in attending to his/her responsibilities as Board Members;
  - 3.5.2.3 breach of fiduciary duties to the Subsidiary or the Constituent Council(s);
  - 3.5.2.4 breach of the duty of confidentiality to the Subsidiary and the Constituent Council(s);
  - 3.5.2.5 breach of the conflict of interest provisions; or
  - 3.5.2.6 any other behaviour which may discredit the Subsidiary or the Constituent Councils.
- 3.5.3 Notwithstanding any other Clause of this Charter, Board Members may be removed from office as Board Members by special resolution of the Board prior to the expiration of a term of appointment.
- 3.5.4 If any vacancy occurs in the membership of the Board it must be filled by either:
- 3.5.4.1 a deputy Board Member (appointed under Clause 3.4.2) of the Board Member removed from office; or
  - 3.5.4.2 if the Board Member removed from office is no longer the Principal Member of the relevant Constituent Council, the incoming or acting

Presiding Member of the relevant Constituent Council.

- 3.5.5 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.

### **3.6 Chairperson and Deputy Chairperson of the Board**

- 3.6.1 The Chairperson of the Board shall be appointed by the Board at its Annual General Meeting from amongst its members and subject to Clause 3.6.4 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. The Chairperson shall be referred to as President of the Subsidiary;
- 3.6.2 There shall also be a Deputy Chairperson of the Board appointed by the Board from amongst its members who subject to Clause 3.6.4 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. The Deputy Chairperson shall be referred to as Vice President of the Subsidiary;
- 3.6.3 The Chairperson and Deputy Chairperson shall be eligible for re-appointment upon their term of office expiring;
- 3.6.4 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 Clauses 3.6.1 and 3.8.1.5;
- 3.6.5 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.
- 3.6.6 The Chairperson shall preside at all meetings of the Board and, in the event of the Chairperson being absent from a meeting, the Deputy Chairperson shall preside and in the event of the Chairperson and Deputy Chairperson being absent from a meeting, the Board Members present shall appoint a Board Member from amongst them, who shall preside for that meeting or until the Chairperson or Deputy Chairperson is present.

### **3.7 Proceedings of the Board**

#### Board Meetings

- 3.7.1 Meetings of the Board shall take place at such times and places as may be fixed by the Subsidiary.
- 3.7.2 A meeting of the Board will constitute a meeting of the Subsidiary. The Board shall administer the business of the Subsidiary at the meetings.
- 3.7.3 For the purposes of this subclause, the contemporary linking together by telephone, audio-visual or other instantaneous means ('telecommunications meeting') 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 the 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.
- 3.7.4 A proposed resolution in writing and given to all Board Members in accordance with procedures determined by the Board will be a valid decision of the Board and will constitute a valid decision of the Subsidiary where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the Chief Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the Chief Executive Officer. The resolution will be deemed a resolution of the Board and will be as valid and effective as if it had been passed at a meeting of the Board duly convened and held.
- 3.7.5 Meetings of the Board will be open to the public unless the Board resolves to exclude the public pursuant to section 90 of the Act. Chapter 6 Part 3 of the Act extends to the Subsidiary as if the Subsidiary were a Council and the Board Members were members of the Council.

#### Notice of Meetings

- 3.7.6 Except as otherwise provided in this Charter, notice of meetings will be forwarded by the Chief Executive Officer of the Subsidiary to the Board Members at least 28 days prior to the date of the meeting by email.
- 3.7.7 The Chief Executive Officer must, in relation to a notice of a meeting of the Board for the purpose of considering the making of a recommendation to the Constituent Councils to wind up the Subsidiary, provide the notice to all Board Members at least four (4) months before the date of the meeting.
- 3.7.8 Notice of a meeting of the Board must:
- 3.7.8.1 be in writing; and

- 3.7.8.2 set out the date, time and place of the meeting.
- 3.7.9 A special meeting of the Board may be held at any time and may be called at the request of the Chairperson or three (3) Board Members made by delivering a written request to the Chief Executive Officer. The request to the Chief Executive Officer requiring a special meeting to be held must be accompanied by the agenda for the meeting and any written reports intended to be considered at the meeting and if an agenda is not provided the request is of no effect.
- 3.7.10 On receipt of the request pursuant to Clause 3.7.9 the Chief Executive Officer must send a notice of the special meeting to all Board Members at least twenty four (24) hours prior to the commencement of the special meeting.
- 3.7.11 The Chief Executive Officer must, insofar as is reasonably practicable:
- 3.7.11.1 supply to Board Members at least 7 days prior to a meeting an agenda for the meeting and a copy of any documents or reports that are to be considered at the meeting (so far as this is practicable).
  - 3.7.11.2 ensure that items on an agenda given to Board Members are described with reasonable particularity and accuracy; and
- 3.7.12 A notice that is not given in accordance with this Charter is taken to have been validly given if the Chief Executive Officer considers it impracticable to give the notice in accordance with this Charter and takes action the Chief Executive Officer considers reasonably practicable in the circumstances to bring the notice to the attention of the Board Member.
- 3.7.13 The Chief Executive Officer must give notice to the public of the times and places of meetings of the Board at least five (5) clear business days prior to the holding of the meeting by causing the notice and agenda for the meeting to be placed on public view on the Subsidiary's website.
- 3.7.14 Subject to Clause 3.7.16, the Chief Executive Officer must also ensure that any document or report supplied to Board Members for consideration at a meeting of the Board are available for inspection by members of the public:
- 3.7.14.1 at the principal office of the Subsidiary and on a website determined by the Chief Executive Officer as soon as practicable after the time when the document or report is supplied to Board Members; or

3.7.14.2 in the case of a document or report supplied to Board Members at the Board Meeting, at the meeting as soon as practicable after the time when the document or report is supplied to Board Members.

3.7.15 The Chief Executive Officer may indicate on a document or report provided to Board Members under Clause 3.7.14.2 any information or matter contained in or arising from a document or report that may, if the Board determines, be considered in confidence in accordance with Clause 3.7.5 provided that the Chief Executive Officer at the same time specifies the basis on which an order could be made pursuant to the provisions of Chapter 6 Part 3 of the Act.

3.7.16 Clause 3.7.14 does not apply to a document or report:

3.7.16.1 that is subject to the operation of Clause 3.7.15;  
or

3.7.16.2 that relates to a matter dealt with by the Board on a confidential basis in accordance with Clause 3.7.5 and Chapter 6 Part 3 of the Act.

3.7.17 The Chief Executive Officer must maintain a record of all notices of Board meetings given Board Members.

#### Quorum

3.7.18 A meeting of the Board must not commence until a quorum is present and a meeting must not continue if there is not a quorum of Board Members present. A quorum of Board Members will comprise one half of the Board Members in office, ignoring any fraction, plus one. If a quorum is not present within 30 minutes of the scheduled starting time of a meeting of a Board, that meeting is cancelled.

#### Voting

3.7.19 Unless otherwise required at law or this Charter, all matters for decision of a meeting of the Board shall be decided by a simple majority of the Board Members present and entitled to vote. All Board Members, including the Chairperson are entitled and required to vote. All Board Members including the Chairperson are entitled to a deliberative vote and if the votes are equal the Chairperson or other Board Member presiding does not have a second or casting vote and the matter will be deemed to have lapsed and may be considered at some later time.

3.7.20 Subject to Chapter 5, Part 4 of the Act, each Board Member validly present at a meeting must vote on a question arising for a decision at the meeting.

3.7.21 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.

### Confidentiality

- 3.7.22 All Board Members must keep confidential all documents and any information provided to them for their consideration prior to a meeting of the Board that is provided to them in confidence and is subject to the operation of Clause 3.7.15 or that relates to a matter dealt with by the Board on a confidential basis in accordance with Clause 3.7.5 and Chapter 6, Part 3 of the Act;

### Minutes

- 3.7.23 The Chief Executive Officer must cause accurate minutes to be kept of the proceedings at every meeting of the Board and ensure that the minutes are presented at the next ordinary meeting of the Board for verification. Where the Chief Executive Officer is absent or excluded from attendance at a meeting of the Board, the person presiding at the meeting shall cause the minutes to be kept.
- 3.7.24 Subject to the Act, a copy of the minutes of a meeting of the Board must be placed on public display on the Subsidiary's website within five (5) business days after the meeting.
- 3.7.25 Subject to the Act, a person is entitled, on payment of a fee fixed by the Board, to obtain a copy of any documents placed on public display.
- 3.7.26 Subject to this Charter and to any direction of the Constituent Councils the Board may determine its own procedures to apply to proceedings at and conduct of meetings of which must be fair and contribute to free and open decision making where the Board has not determined a procedure and the procedure is not specified in this Charter, the procedures specified in Part 2 of the Local Government (Procedures at Meetings) Regulations 2013 will apply.

## **3.8 Annual General Meeting**

- 3.8.1 The Annual General Meeting will:
- 3.8.1.1 be held not later than 30 September in each calendar year;
  - 3.8.1.2 receive the Annual Business Plan and Budget and acknowledge the appointment of Board Members;
  - 3.8.1.3 elect the Chairperson and Deputy Chairperson in accordance with Clause 3.6;
  - 3.8.1.4 appoint representatives to other organisations; and

- 3.8.1.5 consider any other business requiring consideration by the Board Members.

#### 4. CHIEF EXECUTIVE OFFICER

- 4.1 The Board shall appoint a Chief Executive Officer of the Subsidiary to manage the affairs of the Subsidiary on terms agreed between the Chief Executive Officer and the Board.
- 4.2 The Chief Executive Officer is responsible to the Subsidiary for the implementation of the decisions of the Subsidiary and will work collaboratively with the Subsidiary's CEO Network Group.
- 4.3 The terms and conditions of the engagement and remuneration of the Chief Executive Officer shall be reviewed annually according to any employment agreement that may be in place with the Chief Executive Officer.
- 4.4 The Chief Executive Officer shall cause records to be kept of all activities and financial affairs of the Subsidiary in accordance with this Charter.
- 4.5 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.
- 4.6 The Board shall delegate responsibility for the day to day management of the Subsidiary to the Chief Executive Officer, 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.
- 4.7 The functions of the Chief Executive Officer shall be specified in the terms and conditions of appointment and shall include but are not limited to:
- 4.7.1 attending at all meetings of the Board unless excluded by resolution of the Board;
  - 4.7.2 ensuring that the decisions of the Board are implemented in a timely and efficient manner;
  - 4.7.3 providing information to assist the Board to assess the Subsidiary's performance against its Strategic and Business Plans;
  - 4.7.4 appointing, managing, suspending and dismissing employees of the Subsidiary;
  - 4.7.5 determining the conditions of employment of employees of the Subsidiary, within budgetary constraints set by the Board;
  - 4.7.6 providing advice and reports to the Board on the exercise and performance of its powers and functions under this Charter or any Act;
  - 4.7.7 ensuring that the Subsidiary is at all times complying with the Act;



- 4.7.8 co-ordinating and initiating proposals for consideration of the Board including but not limited to continuing improvement of the operations of the Subsidiary;
  - 4.7.9 ensuring that the assets and resources of the Subsidiary are properly managed and maintained;
  - 4.7.10 ensuring that records required under the Act or any other legislation are properly kept and maintained;
  - 4.7.11 ensuring that the Subsidiary's Annual Report is distributed to the Constituent Councils in time to be incorporated in their annual reports;
  - 4.7.12 exercising, performing or discharging other powers, functions or duties conferred on the Chief Executive Officer by or under the Act or any other Act, and performing other functions lawfully directed by the Board; and
  - 4.7.13 achieving financial outcomes in accordance with adopted plans and budgets of the Subsidiary.
- 4.8 The Chief Executive Officer may delegate or sub-delegate to:
- 4.8.1 a committee;
  - 4.8.2 an employee of the Subsidiary;
  - 4.8.3 an employee of a Constituent Council; or
  - 4.8.4 a person for the time being occupying a particular office or position of a Constituent Council,

any power or function vested in the Chief Executive Officer. Such delegation or sub-delegation may be subject to any conditions or limitations as determined by the Chief Executive Officer is revocable at will and does not prevent the Chief Executive Officer from acting in relation to a matter.

- 4.9 A written record of all delegations and sub-delegations must be kept by the Chief Executive Officer at all times.

## 5. FINANCIALS

### 5.1 Budget

- 5.1.1 The Subsidiary must before 31 May of each year prepare and submit a draft Budget to the Board of the Subsidiary for the ensuing Financial Year (or, if appropriate, part Financial Year) in accordance with the Act.
- 5.1.2 The Subsidiary must adopt after 31 May but before 30 September, a Budget in accordance with the Act for the ensuing Financial Year.
- 5.1.3 The Subsidiary may in a Financial Year, after consultation with the Constituent Councils, incur spending before adoption of its Budget for

the year, but the spending must be provided for in the appropriate Budget for the year.

- 5.1.4 The Subsidiary must each Financial Year provide a copy of its adopted Budget to the Constituent Councils within five (5) business days after the adoption of the Budget by the Subsidiary.
- 5.1.5 Quarterly reports summarising the financial position and performance of the Subsidiary against the Budget must be prepared and presented to the Board at each ordinary meeting of the Board and copies provided to the Constituent Councils.
- 5.1.6 The Subsidiary must reconsider its Budget in accordance with the Act in a manner consistent with the Act and may with the approval of the Constituent Councils amend its Budget for a Financial Year at any time before the year ends.
- 5.1.7 The contents of the Budget must be in accordance with the Act.
- 5.1.8 The Subsidiary must submit to each Constituent Council for approval, any proposed amendment to the budget that provides for an additional contribution by the Constituent Councils.

## **5.2 Financial Standards and Reporting**

- 5.2.1 The Subsidiary must ensure that the Financial Statements of the Subsidiary for each Financial Year are audited by the Subsidiary's auditor.
- 5.2.2 The Financial Statements must be finalised and audited in sufficient time to be included in the Annual Report to be provided to the Constituent Councils pursuant to Clause 6.3.3.

## **5.3 Long Term Financial Plan**

- 5.3.1 The Subsidiary must prepare and submit to the Constituent Councils for their approval, prior to its adoption, a Long Term Financial Plan covering a period of at least five (5) years in a form and including such matters which, as relevant, is consistent with Section 122 of the Act and the Local Government (Financial Management) Regulations 2011 as if the Subsidiary were a Council.
- 5.3.2 The Subsidiary may at any time review the Long Term Financial Plan but must undertake a review of the Long Term Financial Plan as soon as practicable after the annual review of its Business Plan and concurrently with any review of its Strategic Plan.
- 5.3.3 In any event, the Subsidiary must undertake a comprehensive review of its Long Term Financial Plan every five (5) years.
- 5.3.4 The Long Term Financial Plan will be taken to form part of the Subsidiary's Strategic Plan.

## 5.4 Financial Management

- 5.4.1 The Subsidiary shall keep proper books of accounts in accordance with the requirements of the Act and Local Government (Financial Management) Regulations 1999.
- 5.4.2 The Subsidiary must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- 5.4.3 The Subsidiary will develop and maintain appropriate policies and procedures for all financial transactions including in relation to signing cheques and electronic funds transfer.
- 5.4.4 The Chief Executive Officer must act prudently in the handling of all financial transactions for the Subsidiary.

## 5.5 Levies

- 5.5.1 The Subsidiary may levy Constituent Councils or any of them for a specified purpose or purposes.
- 5.5.2 A levy must be imposed at a meeting of the Board.
- 5.5.3 The Chief Executive Officer must give notice of the levy to all affected Constituent Councils.
- 5.5.4 A levy will not be binding on Constituent Councils until the expiration of one calendar month from the date of the notice.
- 5.5.5 A Constituent Council which objects in writing to the imposition of the levy within one month of the date of the notice shall be exempt from payment of the levy until its objection is considered at a meeting of the Board.
- 5.5.6 The Subsidiary must, after consideration of the objection of one or more Constituent Councils to a levy, confirm or vary the levy on that Council or exempt that Council from payment of the levy.
- 5.5.7 The Chairperson may convene an urgent meeting to consider an objection to a levy.

## 6. MANAGEMENT FRAMEWORK

### 6.1 Strategic Plan

Consistent with the Long Term Financial Plan set out above, the Subsidiary must:

- 6.1.1 prepare and adopt a Strategic Plan with a minimum operational period of five (5) years which sets out the goals, objectives, strategies and priorities of the Subsidiary over the period of the Strategic Plan;
- 6.1.2 submit the Strategic Plan to the Constituent Councils for their approval prior to its adoption.

## 6.2 **Annual Business Plan**

The Subsidiary shall:

- 6.2.1 prepare an Annual Business Plan linking 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;
- 6.2.2 consult with the Constituent Councils prior to adopting or amending the Annual Business Plan; and
- 6.2.3 ensure contents of the Annual Business Plan is in accordance with the Act.

## 6.3 **Annual Report**

- 6.3.1 The Subsidiary must each year, produce an Annual Report summarising the activities, achievements and financial performance of the Subsidiary for the preceding Financial Year.
- 6.3.2 The Annual Report must incorporate the audited financial statements of Subsidiary for the relevant Financial Year.
- 6.3.3 The Annual Report must be provided to the Constituent Councils by 31 October each year.

## 6.4 **Audit**

- 6.4.1 The Subsidiary must cause adequate and proper books of account to be kept in relation to all the affairs of the Subsidiary and must establish and maintain effective auditing of its operations.
- 6.4.2 The Subsidiary must appoint an Auditor in accordance with the Act and on such terms and conditions as determined by the Subsidiary.
- 6.4.3 The audited Financial Statements of the Subsidiary, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils before 30 September in each year.

## 6.5 **Audit Committee**

- 6.5.1 Pursuant to Regulation 18 of the Local Government (Financial Management) Regulations 2011, the Minister for Local Government has granted the Subsidiary an exemption from the requirement to establish an audit committee until 30 June 2021.

## 7. **MISCELLANEOUS**

### 7.1 **New Members**

- 7.1.1 Subject to the provisions of the Act, a council may become a Constituent Council by the unanimous agreement of the Constituent Councils and this Charter may be amended to provide for the

admission of a new Constituent Council or Councils, with or without conditions of membership.

## 7.2 **Subscription**

- 7.2.1 Every Constituent Council shall be liable to contribute monies to the Subsidiary each financial year.
- 7.2.2 The amount of each Constituent Council's subscription will be decided at the Annual General Meeting and will be due and payable within one month of a written request from the Chief Executive Officer for payment.
- 7.2.3 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, and shall be calculated on a pro-rata basis according to the number of full months remaining in the financial year.

## 7.3 **Disqualification**

- 7.3.1 Subject to any legislative requirements, a Council which fails to pay its subscription or any other monies due to the Subsidiary within six months from the date upon which the subscription or other monies become due and payable shall cease to be a Constituent Council or, as the case may be, an Affiliate.
- 7.3.2 The Chief Executive Officer will give notice in writing to the Council that its status as a Constituent Council or, as the case may be, an Affiliate, has been terminated.

## 7.4 **Withdrawal**

- 7.4.1 Subject to the Act and this Charter, a Constituent Council may cease to be a Constituent Council by giving not less than thirty six (36) months' notice in writing of such withdrawal to the Chief Executive Officer provided that its subscription of the current year and other monies outstanding prior to the date of its giving notice of withdrawal have been paid to the Subsidiary.
- 7.4.2 The withdrawal of any Constituent Council does not extinguish the liability of that Constituent Council to contribute to any loss or liability incurred by the Subsidiary at any time before or after such withdrawal in respect of any act or omission by the Subsidiary prior to such withdrawal.

## 7.5 **Insurance and Superannuation Requirements**

- 7.5.1 The Subsidiary shall register with the Local Government Mutual Liability Scheme and Local Government Workers Compensation Scheme and comply with the rules of those Schemes.
- 7.5.2 The Subsidiary shall advise the Local Government Risk Management Services of its insurance requirements relating to Local Government

Special Risks including buildings, structures, vehicles and equipment under the management, care and control of the Subsidiary.

## 7.6 **Subsidiary Winding Up**

- 7.6.1 The Subsidiary may be wound up in accordance with the Act by unanimous resolution of the Constituent Councils.
- 7.6.2 In the event of a winding up, any surplus assets after payment of all expenses shall be returned to each Constituent Councils in proportion to the subscription paid by each Constituent Council in the financial year prior to the passing of the resolution wind up.
- 7.6.3 If there are insufficient funds to pay all expenses due by the Subsidiary on winding up, a levy shall be imposed on all Constituent Councils in proportion to the subscription paid by each Constituent Council in the financial year prior to the passing of the resolution to wind up.

## 7.7 **Non-derogation and Direction by Constituent Councils**

- 7.7.1 The establishment of the Subsidiary does not derogate from the power of any of the Constituent Councils to act independently or jointly in relation to a matter within the jurisdiction of the Subsidiary.
- 7.7.2 Where the Subsidiary is required pursuant to the Act or this Charter to obtain the approval of one or more of the Constituent Councils that approval must only be granted and must be evidenced by a resolution passed by either or all of the Constituent Councils granting such approval.
- 7.7.3 Unless otherwise stated in this Charter where the Subsidiary is required to obtain the consent or approval of the Constituent Councils this means the consent or approval of all of the Constituent Councils expressed in the same or similar terms.
- 7.7.4 For the purpose of Clause 7.7.1, any direction given by the Constituent Councils must be communicated by notice in writing provided to the Chief Executive Officer of the Subsidiary together with a copy of the relevant resolutions of the Constituent Councils.

## 7.8 **Alteration and Review of Charter**

- 7.8.1 This Charter will be reviewed by the Constituent Councils at least once in every four (4) years or in the event of amendments to the Act that may require earlier review.
- 7.8.2 This Charter may be amended by a resolution passed by a simple majority of the Constituent Councils.
- 7.8.3 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendation of the Board.

## 7.9 Disputes

### 7.9.1 General

7.9.1.1 Where a dispute arises between the Constituent Councils or between a Constituent Council and the Authority (the parties to this Charter) which relates to this Charter or the Authority, ('the Dispute') the parties will use their best endeavours to resolve the Dispute and to act at all times in good faith.

### 7.9.2 Mediation

7.9.2.1 A party 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 7.9.2.

7.9.2.2 If the parties are unable to resolve the Dispute within thirty (30) days, the parties 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 party to the other party that the Dispute be referred for mediation, to:

- (a) a mediator agreed by the parties; or
- (b) if the parties are unable to agree 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.

7.9.2.3 In the event the parties fail to refer the matter for mediation in accordance with Clause 7.9.2.2, one or more of the parties may 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.

7.9.2.4 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 party unless that party has so agreed in writing.

7.9.2.5 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 parties as evidenced by resolutions of each of

the parties, any party may then refer the Dispute to Arbitration in accordance with Clause 7.9.3.

### 7.9.3 **Arbitration**

- 7.9.3.1 An arbitrator may be appointed by agreement between the parties.
- 7.9.3.2 Failing agreement as to an arbitrator the then Chairperson of the South Australian Chapter of the Institute of Arbitrators or his successor shall nominate an Arbitrator pursuant to these conditions.
- 7.9.3.3 A submission to arbitration shall be deemed to be a submission to arbitration within the meaning of the Commercial Arbitration Act 1985 (South Australia).
- 7.9.3.4 Upon serving a notice of arbitration the party serving the notice shall lodge with the arbitrator a deposit by way of security for the cost of the arbitration proceedings.
- 7.9.3.5 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.
- 7.9.3.6 Whenever reasonably possible performance of the obligations of the parties pursuant to this Charter shall continue during the mediation or arbitration proceedings and no payment by or to a party shall be withheld on account of the mediation and arbitration proceedings.

### 7.10 **Committees**

- 7.10.1 The Board may establish a committee of Board Members and/or other persons for the purpose of:
  - 7.10.1.1 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; or
  - 7.10.1.2 exercising, performing or discharging delegated powers, functions or duties.
- 7.10.2 A member of a committee established under this Clause holds office at the pleasure of the Board.



- 7.10.3 The Board may 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 and powers and as detailed in the terms of reference determined by the Board.
- 7.10.4 A member of an advisory committee established under this Clause holds office at the pleasure of the Board.
- 7.10.5 The Chairperson of the Board is an *ex-officio* a member of any committee or advisory committee established by the Board.

#### 7.11 **MRLGA CEO Network Group**

- 7.11.1 The MRLGA CEO Network shall comprise the Chief Executive Officers of the Constituent Councils.
- 7.11.2 A Constituent Council Chief Executive Officer who is a member of the committee may appoint a proxy to attend a meeting of the committee in his/her place, provided the proxy is a member of the relevant Council's executive staff.
- 7.11.3 The MRLGA CEO Network Group will provide high level strategic advice to the Subsidiary about its identified priority issues.
- 7.11.4 The MRLGA CEO Network Group shall assist and advise the Chief Executive Officer in governance and project delivery matters on behalf of the Board.
- 7.11.5 The MRLGA CEO Network Group shall assist and advise the Chief Executive Officer in the development and implementation of the Subsidiary's Annual Business Plan and other plans.
- 7.11.6 The MRLGA CEO Network Group shall share operational information and expertise amongst the Group members.
- 7.11.7 The Chief Executive Officer shall be the convenor. The role of Chairperson shall be allocated to the host Council for each meeting.
- 7.11.8 The MRLGA CEO Network Group will operate on an informal basis, and will not therefore be subject to formal meeting procedures.
- 7.11.9 The Chief Executive Officer will provide executive support to the Group.
- 7.11.10 In addition, the MRLGA CEO Network Group may from time to time establish working groups or appoint individual members to consider and advance work on a particular issue or issues.
- 7.11.11 Pursuant to the Local Government Act 1999 Schedule 2 Clause 36(2)(a) the MRLGA Board may delegate tasks to the committee for action.

7.11.12 The MRLGA CEO Network Group may sub-delegate to the established working groups or newly established working groups as deemed necessary.

7.11.13 The MRLGA CEO Network Group will be responsible for reporting outcomes from its own operations and the working groups to the MRLGA Board.

**7.12 Subsidiary Common Seal**

7.12.1 The Subsidiary shall have a common seal upon which its corporate name shall appear in legible characters.

7.12.2 The common seal shall not be used without the express authorisation of a resolution of the Subsidiary and every use of the common seal shall be recorded in the minute book of the Subsidiary.

7.12.3 The affixing of the common seal shall be witnessed by the Chairperson or a Deputy Chairperson and the Chief Executive Officer or such other person as the Subsidiary may appoint for the purpose.

7.12.4 The common seal shall be kept in the custody of the Chief Executive Officer or such other person as the Subsidiary may from time to time decide.

**7.13 Circumstances Not Provided For**

7.13.1 If any circumstance arises about 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.

7.13.2 The Chairperson shall report any such decision at the next meeting.