

LOCAL GOVERNMENT ACT 1999

NOTICE OF APPROVAL OF A REGIONAL SUBSIDIARY

Council Solutions Regional Authority

THE ADELAIDE CITY COUNCIL, CITY OF CHARLES STURT, CITY OF MARION, CITY OF SALISBURY, CITY OF TEA TREE GULLY and CITY OF ONKAPARINGA have resolved to establish a regional subsidiary pursuant to Section 43 of the Local Government Act 1999, for the purposes of promoting procurement and service delivery amongst the constituent councils.

Pursuant to Clause 17 of Part 2 of Schedule 2 of the Local Government Act 1999, I approve the establishment of the Council Solutions Regional Authority which will formally come into operation on this date of publication.

The Charter of the Council Solutions Regional Authority is set out below.

RUSSELL WORTLEY, Minister for State/Local Government Relations

LOCAL GOVERNMENT ACT 1999

COUNCIL SOLUTIONS REGIONAL AUTHORITY

Regional Subsidiary Charter 2012

THE CITIES OF ADELAIDE, CHARLES STURT, MARION, ONKAPARINGA, SALISBURY and TEA TREE GULLY have resolved to establish the Council Solutions Regional Authority to come into operation from the date of Gazettal of this Charter.

This subsidiary is established pursuant to Section 43 of the *Local Government Act 1999*, for the purposes of establishing a centre of excellence in procurement and to provide services to and on behalf of the Constituent Councils consistent with the Objects, Functions and Powers conferred by this Charter.

The Charter of the Council Solutions Regional Authority is set out below.

Council Solutions Regional Authority Charter

1. PRELIMINARY

1.1 Dictionary

In this Charter:

Absolute Majority means a majority of the whole number of the Constituent Councils.

Act means the *Local Government Act 1999*.

Authority means the Council Solutions Regional Authority.

Board means the board of management of the Authority.

Board Member means at any time a member of the Board.

Borrowings Limit means at any time the amount authorised in the current Annual Plan and Budget of the Authority.

Budget means a budget consistent with Clause 7.4 and last adopted by the Board.

Business Plan means a Business Plan that conforms to Clause 7.3 and last adopted by the Board.

Executive Officer means at any time the executive officer of the Authority and includes that person's deputy or a person acting in that position.

Constituent Council means at any time a constituent council in relation to the Authority and on the date of publication of this Charter in the *Gazette* means Adelaide City Council, City of Charles Sturt, City of Marion, City of Onkaparinga, City of Salisbury and City of Tea Tree Gully.

Financial Year means 1 July in each year to 30 June in the subsequent year.

Simple Majority means a majority of the Board Members present at a Board Meeting and entitled to vote, or a majority decision of the Constituent Councils as the case may be.

Unanimous Decision means a decision made by all of the Constituent Councils voting in the same manner.

1.2 Interpretation

In this Charter: the singular includes the plural and *vice versa* and words importing a gender include other genders; words importing natural persons include corporations; reference to a section(s) is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; headings are for ease of reference only and do not affect the construction of this Charter.

1.3 About this Charter

1.3.1 This Charter is the charter of the Authority.

1.3.2 This Charter binds the Authority and each Constituent Council.

1.3.3 Despite any other provision in this Charter:

- (a) if the Act prohibits a thing being done, the thing may not be done;
- (b) if the Act requires a thing to be done, Board approval is given for that thing to be done; and
- (c) if a provision of this Charter is or becomes inconsistent with the Act, that provision must be read down or failing that severed from this Charter to the extent of the inconsistency.

1.3.4 This Charter may not be amended except as all the Constituent Councils may agree by Unanimous Decision in the same terms. An amendment is not effective unless and until published in the *Gazette*.¹

¹ Schedule 2, Clause 19(5) of the Act requires a copy of the amended charter be given to the published in the *Gazette*.

1.3.5 The Constituent Councils may review this Charter at any time, but must in any event review it at least once in every 4 years.²

1.3.6 Notwithstanding Clause 1.3.5, the first review of this Charter is to be completed within two years from the date of Gazettal of the Charter.

1.4 This Charter must be read in conjunction with Schedule 2 of the Local Government Act 1999. The Authority shall conduct its affairs in accordance with Schedule 2 of the Act except as modified by this Charter as permitted by Schedule 2 of the Act.

2. THE AUTHORITY

2.1 Establishment

The Authority is a regional subsidiary established under the Act.

2.2 Name

The name of the Authority is the Council Solutions Regional Authority trading as 'Council Solutions'.

2.3 Corporate Status

The Authority is a body corporate.

3. OBJECTS, FUNCTIONS AND POWERS

3.1 Objects and Purposes

The Authority is established with the following purposes:

3.1.1 To meet and exceed a level of efficiency gains that achieves a benchmark for SA councils;

3.1.2 To improve financial sustainability of the Constituent Councils by improvement of operational efficiency in procurement and process management;

3.1.3 To provide opportunities for staff of the Constituent Councils to learn and develop new skills in working beyond their Council boundaries in the pursuit of professional development and collaborative working relationships with staff of other Constituent Councils;

3.1.4 To promote the pursuit by the Constituent Councils of a procurement centre of excellence in securing best value and value for money in procurement activities and the delivery of services;

3.1.5 To source, negotiate and enter into contracts for the provision of services or works and/or the delivery of goods for the collective benefit of the Constituent Councils;

3.1.6 To source, negotiate and enter into contracts for the provision of services or works and/or the delivery of goods for the benefit of councils other than the Constituent Councils;

3.1.7 To source, negotiate and enter into contracts of or above a value determined by the Constituent Councils for the provision of services or works and/or the delivery of goods for the individual benefit of one or more Constituent Councils unless any Constituent Council objects to the Authority entering into such contract;

3.1.8 To achieve optimum outcomes through the benefits of collaborative procurement through procurement policies, practices and procedures directed towards obtaining value in the expenditure of public funds, the ethical and fair treatment of participants in such processes and ensuring probity, accountability and transparency in procurement processes;

3.1.9 To operate as a central purchasing body to procure services, works and/or goods on behalf of the Constituent Councils through joint procurement activities;

3.1.10 To investigate and to provide for any two or more of the Constituent Councils to undertake other service activities through the pooling of resources, people, assets and equipment for the purpose of maximising efficiency, effectiveness or reducing resources and the reduction of cost, risk; and

3.1.11 To be financially self sufficient.

3.2 Area of Interest

The Authority may only undertake its activities outside the areas of the Constituent Councils where that activity has been approved by Unanimous Decision of the Constituent Councils as being necessary or expedient to the improved performance by the Authority of its functions and is an activity included in the Business Plan of the Authority.

3.3 Powers and Functions

Subject to Clause 4.4 the following powers and functions of the Authority are to be exercised for the purpose of performing its Objects and Purposes:

² Schedule 2, Clause 19(4) of the Act requires this.

- 3.3.1 Entering into contracts or arrangements for the acquisition or provision of services, works or goods including with any third party whether they are governmental or private in nature including with councils other than the Constituent Councils;
- 3.3.2 Entering into contracts or arrangements with any one or more of the Constituent Councils in the exercise of powers conferred under this Charter;
- 3.3.3 Through the Executive Officer (consistent with Clause 6.3 of this Charter but within budgetary constraints set by the Board) employing, remunerating, managing, suspending and dismissing other staff of the Authority;
- 3.3.4 Employing, engaging or retaining professional advisors to the Authority subject to the endorsed budget;
- 3.3.5 Charging whatever fees the Authority considers appropriate for services rendered to any person, body or council;
- 3.3.6 To raise revenue, where necessary, through contributions from the Constituent Councils;
- 3.3.7 To accumulate surplus funds for investment or distribution reserve purposes;
- 3.3.8 The power to invest any of the funds of the Authority in any manner consistent with section 139 of the Act
- 3.3.9 To open and operate bank accounts;
- 3.3.10 To borrow funds and incur expenditure in accordance with the Business Plan and Budget and delegations of the Authority;
- 3.3.11 To invest any of the funds of the Authority in any manner consistent with section 139 of the Act;
- 3.3.12 To enter into contracts to purchase or sell real property or interests therein provided that it shall be a condition precedent that in any such transaction the Authority will obtain the prior written approval of an Absolute Majority of the Constituent Councils;
- 3.3.13 To lease, hire, rent real property ;
- 3.3.14 To provide a forum for the discussion and consideration of topics related to the Constituent Councils obligations and responsibilities in respect of the delivery of services or the undertaking of procurement activities;
- 3.3.15 To adopt and use the trading name 'Council Solutions' provided that the Authority shall first register the trading name with the Office of Consumer and Business Affairs in accordance with the requirements of the Business Names Act 1996;
- 3.3.16 To commence legal proceedings provided that any legal proceedings seeking urgent relief be the subject of an urgent report to the Constituent Councils; and
- 3.3.17 To do anything else necessary or convenient for or incidental to the exercise, performance or discharge of its powers or functions or the attainment of its Objects and Purposes.

3.4 Delegation

The Authority may by resolution delegate any power or functions vested or conferred upon it in a manner that complies with and is otherwise subject to the restrictions set out in section 44 of the Act.

3.5 National Competition Policy

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

3.6 Liability Guarantee

- 3.6.1 Schedule 2 of Clause 31 of the Act provides that liabilities incurred or assumed by the Authority are guaranteed by the Constituent Councils;
- 3.6.2 The Constituent Councils share in the liabilities of the Authority in respect of their respective interest in the Authority.
- 3.6.3 The Authority must pay an annual liability guarantee fee of an amount as determined by the Constituent Councils (if any) on account of the guarantee under Clause 3.6.1;
- 3.6.4 The Board may in its absolute discretion but by Unanimous Decision increase or waive or reduce the liability guarantee fee for any particular year;

4. CONSTITUENT COUNCILS

4.1 Incoming Constituent Councils

A Council may become a Constituent Council if:

- 4.1.1 It makes written application to become a Constituent Council and agrees to be bound by this Charter; and

4.1.2 The Constituent Councils approve the application by Unanimous Decision and the incoming Constituent Council agrees to be:

- (a) jointly and severally liable with the other Constituent Councils for the debts and the liabilities of the Authority whether incurred before or after the date it becomes a Constituent Council or as otherwise agreed; or
- (b) bound by any decision made or step taken by the Board in the affairs of the Authority before it became a Constituent Council.

4.1.3 The Minister approves.

4.2 Outgoing Constituent Council/s

4.2.1 A Constituent Council may resign if and only if:

- (a) the Constituent Council/s gives at least 6 months written notice of a resignation to each Constituent Council which notice will be effective on 30 June next after expiry of that period; and
- (b) the Board by Majority Vote approves; and
- (c) the Minister approves.

4.2.2 A former Constituent Council remains liable to contribute to the debts and the liabilities of the Authority incurred whilst it was a Constituent Council and for a share of any future losses on contracts entered into whilst it was a Constituent Council.

4.2.3 A former Constituent Council:

- (a) is not entitled to any refund for contributions made; and
- (b) remains bound by any separate contract in force between the Authority and the former Constituent Council.

4.3 Personal Membership

Membership to the Authority is personal to the Constituent Council and is not transferrable.

4.4 Constituent Councils May Direct the Authority

4.4.1 The Authority is subject to the joint direction and control of the Constituent Councils;

4.4.2 To be effective, a direction or other decision of the Constituent Councils must be a Unanimous Decision and evidenced by a minute signed by the Chief Executive Officer of the Constituent Councils as a true and accurate record of a decision made by the delegate or at the relevant meeting.

5. BOARD OF MANAGEMENT

The Authority is a body corporate and is governed by a Board of Management which has the responsibility to manage the business and other affairs of the Authority ensuring that the Authority acts in accordance with this Charter.

5.1 Functions of the Board

5.1.1 The formulation of plans and strategies aimed at improving the business of the Authority;

5.1.2 Providing professional input and policy direction to the Authority;

5.1.3 Monitoring, overseeing and measuring the performance of the Executive Officer;

5.1.4 Assisting in the development of the Business Plan;

5.1.5 Exercising the care, diligence and skill that a prudent person of business would exercise in managing the affairs of other persons; and

5.1.6 Ensuring that the Constituent Councils are advised, as soon as practicable, of any material development that affects the financial or operating capacity of the Authority.

5.2 Membership

5.2.1 The Board shall consist of seven members appointed as follows:

- (a) One person appointed by each Constituent Council which person shall be the Chief Executive Officer (or a person acting in that capacity) of that Constituent Council;
- (b) One person appointed by the Board (by Simple Majority) who is not a member or officer of a Constituent Council but who, in the opinion of the Board, has expertise in a field or discipline relevant to the activities of the Authority. This person will hold office for a 24 month term and is eligible for re-appointment;
- (c) The first appointment under this subclause must be made by the Board within 12 months of the Gazettal of this Charter;

5.2.2 The office of a Board Member will become vacant upon any of the circumstances set out at Clause 20(3) of Schedule 2 of Part 2 of the Act occurring as relevantly applies;

- 5.2.3 In addition to the provisions of Clause 5.2.2 the person appointed under subclause 5.2.1(b) may be removed from office by a two-third majority vote of the other Board Members. Where a casual vacancy arises as a result of action under this clause it will be filled in the same manner as the original appointment as a new appointment;
- 5.2.4 Only the Board Member appointed under Clause 5.2.1(b) is entitled to an allowance as determined by the Board;
- 5.2.5 The Chair shall preside at all meetings of the Board. Where the Chair is not present at a meeting of the Board the other Board Members shall choose a person from amongst themselves to chair the meeting until the Chair is present.

5.3 Propriety of Board Members

- 5.3.1 The principles regarding conflict of interest prescribed at Division 3 of Part 4 of Chapter 5 of the Act apply to all Board Members in the same manner as they apply to elected members of a council;
- 5.3.2 All board Members are required to comply separately to any in Council requirements with Division 2, Chapter 5 (Register of Interest) of the Act;
- 5.3.3 Board Members must at all times act in accordance with their duties as required by Part 4, Chapter 5, Division 1 of the Act and Schedule 2 of Part 2 of Clause 23 of the Act;

5.4 Board Policies and Codes

- 5.4.1 The Board must, on behalf of the Authority and in consultation with the Constituent Councils, prepare and adopt and thereafter keep under review policies on:
- (a) Procedures for meetings of the Board;
 - (b) Contracts and tenders in a manner that is consistent with section 49 of the Act;
 - (c) Governance including as concerns:
 - (i) *the operation of any financial account;*
 - (ii) *improper assistance to a prospective contract party;*
 - (iii) *improper offering of inducements to Board Members or to staff of the Authority;*
 - (iv) *improper lobbying of Board Members or staff of the Authority; and*
 - (v) *human resource management;*
- 5.4.2 The Board must ensure that such policies are complied with in the affairs of the Authority.

5.5 Chair of the Board

- 5.5.1 The Chair of the Board shall be the person appointed under Clause 5.2.1(b);
- 5.5.2 The Chair shall be eligible for re-election at the end of his/her 24 month term.

5.6 Board Meetings

- 5.6.1 The Board must determine procedures to apply at or in relation to its meetings provided that such procedures may not be inconsistent with any provisions of this Charter;
- 5.6.2 All meetings of the Board must take place at such times and places as are fixed by the Board or by the Executive Officer in consultation with the Chair from time to time and in any event the Board must meet not less than 4 times per financial year;
- 5.6.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority;
- 5.6.4 For the purposes of this subclause, the contemporary linking together by telephone, audiovisual 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 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, audiovisual or other communication equipment, unless that Board Member has previously notified the Chair of the meeting;
- 5.6.5 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 Authority where a majority of Board Members vote in favour of the resolution by signing and returning the resolution to the Executive Officer or otherwise giving written notice of their consent and setting out the terms of the resolution to the 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;
- 5.6.6 Notice of meetings of the Board must be given by the Executive Officer in a manner consistent with the provisions of the Act for notice of Council meetings. Only the notice of meeting will be available to the public. The Agenda and all supporting reports and documents will be confidential and not available for public inspection unless the Board otherwise resolves.
- 5.6.7 Meetings of the Board will not be open to the public unless the Board otherwise resolves;
- 5.6.8 The minutes of all Board meetings will be confidential and not available for public inspection unless the Board otherwise resolves.
- 5.6.9 The Chair or any two Board Members may by delivering a written request to the Executive Officer require a special meeting of the Board to be held. The request for special meeting and the obligations upon the Executive Officer are the same as those applying to a chief executive officer of a council in relation to special council meetings called under the Act.

5.7 Quorum

The quorum for a meeting of the Board is $\frac{1}{2}$ of its members, ignore the fraction +1.

5.8 Voting

- 5.8.1 Each Board Member, including the Chair, is entitled to 1 deliberative vote on any matter arising for decision at a Board Meeting. The Chair does not have a casting or second vote in the event of an equality of votes.
- 5.8.2 Questions arising for decision at meetings of the Board will be decided by a Simple Majority unless this Charter indicates otherwise.

6. EXECUTIVE OFFICER

- 6.1 The Board must appoint an Executive Officer of the Authority to manage the business of the Authority on terms agreed between the Executive Officer and the Board. The Executive Officer may be a natural person or a body corporate.
- 6.2 The Executive Officer is responsible to the Board for the execution of all decisions made by the Board and for the efficient and effective management of the Authority.
- 6.3 The Executive Officer is subject to the same legislative responsibilities and duties as a chief executive officer of a council including but not limited to those matters set out at Parts 1 and 3 of Chapter 7 of the Act.

7. MANAGEMENT

7.1 Financial Management

- 7.1.1 The Authority shall keep proper books of accounts in accordance with the requirements of the Local Government (Financial Management) Regulations 2011;
- 7.1.2 The Authority's books of account must be available for inspection by any Board Member or authorised representative of any Constituent Council at any reasonable time on request;
- 7.1.3 The Authority must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board;
- 7.1.4 All cheques must be signed by two persons authorised by resolution of the Board;
- 7.1.5 Any payments made by Electronic Funds Transfer must be made in accordance with procedures which have received the prior written approval of the Auditor.

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

7.2 Audit

- 7.2.1 The Authority shall appoint an auditor in accordance with the Local Government (Financial Management) Regulations 2011, on terms and conditions set by the Board;
- 7.2.2 The Auditor will have the same powers and responsibilities as set out in the Local Government Act 1999, in relation to a council;
- 7.2.3 The audit of Financial Statements of the Authority, together with the accompanying report from the Auditor, shall be submitted to both the Board and the Constituent Councils;
- 7.2.4 The books of account and financial statements shall be audited at least once per year;
- 7.2.5 The Authority is required to establish an audit committee which will comprise of 4 members as follows:
- (a) 3 persons who are not members of the Board with 2 of those persons determined by the Board to have experience relevant to the functions of the Authority and the other of those persons determined by the Constituent Councils to have financial experience relevant to the functions of the audit committee; and
 - (b) a further person who is a member of the Board but who is not the Chair of the Board.

7.3 Business Plan

The Authority shall:

- 7.3.1 prepare a three year Business Plan linking the core business activities of the Authority to strategic, operational and organisational requirements with supporting financial projections setting out the estimates of revenue and expenditure as necessary for the period; and
- 7.3.2 review the Business Plan annually; and
- 7.3.3 consult with the Constituent Councils prior to adopting or amending the Business Plan.
(See Schedule 2, Part 2, Clause 24, to the Act for the contents of the Business Plan)

7.4 Annual Budget

- 7.4.1 The Authority shall, after 31 May but before the end of June in each Financial Year, prepare and adopt an annual budget for the ensuing Financial Year in accordance with the Local Government Act 1999;
- 7.4.2 The proposed annual budget must be referred to Constituent Councils at the same time as the Executive Officer submits it to the Board Members;
- 7.4.3 A Constituent Council may comment in writing to the Executive Officer on the budget at least three business days before the meeting at which it will be considered by the Board or, alternatively, may comment through its Board Member at the meeting of the Board;
- 7.4.4 The Authority must provide a copy of its annual budget to the Constituent Councils within five business days after adoption by the Board;

- 7.4.5 Reports summarising the financial position and performance of the Authority against the annual budget shall be prepared and presented to the Board at each Board meeting and copies provided to the Constituent Councils within five days of the Board meeting to which they have been presented.

(See Clause 25, Part 2, Schedule 2 to the Act and Regulations 7, 8 and 9 to the Local Government (Financial Management) Regulations 2011 for the contents of the budget)

7.5 Reporting

- 7.5.1 The Authority must submit to the Constituent Councils by 30 September in each year in respect of the immediately preceding Financial Year, a report on the work and operations of the Authority detailing achievement of the aims and objectives of its Business Plan and incorporating the audited Financial Statements of the Authority and any other information or reports as required by the Constituent Councils;
- 7.5.2 The Board shall present a balance sheet and full financial report to the Constituent Councils at the end of each financial year;
- 7.5.3 The Board shall present audited financial statements to the Constituent Councils in accordance with the requirements of the Local Government (Financial Management) Regulations 2011.

8. MISCELLANEOUS

8.1 Equitable Interest

- 8.1.1 The equitable interest of the Constituent Councils in the Authority is agreed as follows:

(a)	Adelaide City Council:	1/6 th	
(b)	City of Charles Sturt:	1/6 th ;	
(c)	City of Marion:		1/6 th ;
(d)	City of Onkaparinga:	1/6 th ;	
(e)	City of Salisbury:		1/6 th ;
(f)	City of Tea Tree Gully:	1/6 th ;	

- 8.1.2 The equitable interest of the Constituent Councils in the Authority as set out at subclause 8.1.1 may be varied by agreement of the Constituent Councils and will be varied where a new Constituent Council or Councils is admitted or withdraws from the authority pursuant to Clause 4.

8.2 Insurance and Superannuation Requirements

- 8.2.1 The Authority shall register with the Local Government Mutual Liability Scheme and comply with the Rules of that Scheme.
- 8.2.2 The Authority shall advise 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 Authority.
- 8.2.3 The Authority shall register with the Local Government Workers Compensation Scheme and comply with the Rules of that Scheme.

8.3 Winding Up and Statutory Guarantee

- 8.3.1 The Authority may be wound up by Unanimous Resolution of the Constituent Councils and with the consent of the Minister.
- 8.3.2 On winding up of the Authority, the surplus assets or liabilities of the Authority, as the case may be, shall be distributed between or become the responsibility of the Constituent Councils in the proportions of their equitable interest in the Authority in accordance with Clause 8.1.
- 8.3.3 If there are insufficient funds to pay all expenses due by the Authority on winding up (or at any other time there are unfunded liabilities which the Authority cannot meet), a call shall be made upon all of the Constituent Councils in proportion to their equity share for the purpose of satisfying their statutory guarantee of the liabilities of the Authority.

8.4 Common Seal

- 8.4.1 The Authority will have a common seal, which may be affixed to documents requiring execution under seal and where affixed must be witnessed by two Board Members or where authority has been conferred by instrument executed under the common seal of the Authority, by the Chair of the Board and the Executive Officer.
- 8.4.2 The common seal must not be affixed to a document except to give effect to a resolution of the Board.
- 8.4.3 The Executive Officer must maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which

the common seal has been affixed with the particulars of persons who witnessed the fixing of the seal and the date that the seal was affixed.

8.4.4 The Board may by instrument under seal authorise a person to execute documents on behalf of the Authority.

8.5 Principal Office

The Authority's principal office is at 25 Pirie Street, Adelaide, S.A. 5000 or as the Board may determine otherwise.

8.6 Saving Provision

As a matter of record, Schedule 2, Clause 40 of the Act provides that no act or proceeding of the Authority is invalid by reason of:

8.6.1 a vacancy or vacancies in the membership of the Board; or

8.6.2 a defect in the appointment of a Board Member.

9. DISPUTE RESOLUTION

About this clause:

The procedure in this clause must be applied to any dispute that arises between the Authority and a Constituent Council concerning the affairs of the Authority, or between Constituent Councils concerning the affairs of the Authority, including a dispute as to the meaning or effect of this Charter and whether the dispute concerns a claim in common law, equity or under statute.

The Authority and a Constituent Council must continue to observe and perform this Charter despite the application or operation of this clause.

This clause does not prejudice the right of a party:

To require the continuing observance and performance of this Charter by all parties; or

To institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.

Pending completion of the procedure set out in this clause, and subject to this clause, a dispute must not be the subject of legal proceedings between any of the parties in dispute. If legal proceedings are initiated or continued in breach of this provision, a party to the dispute is entitled to apply for and be granted an order of the court adjourning those proceedings pending completion of the procedure set out in this clause.

Step 1: Notice of dispute:

A party to the dispute must promptly notify each other party to the dispute:

The nature of the dispute, giving reasonable details; and

What action (if any) the party giving notice thinks will resolve the dispute;

but a failure to give such notice does not entitle any other party to damages.

Step 2: Meeting of the parties:

A party to the dispute who complies with the previous step may at the same or a later time notify in writing each other party to the dispute that the first party requires a meeting within 14 business days after the giving of such notice. In that case, each party to the dispute must send to the meeting a senior manager of that party with the Board to resolve the dispute and at the meeting make a good faith attempt to resolve the dispute.

Step 3: Mediation:

Despite whether any previous step was taken, a dispute not resolved within 30 days must be referred to mediation, as to which:

The mediator must be a person agreed by the parties in dispute or, if they cannot agree within 14 business days, a mediator nominated by the then President of the of the South Australian Bar Association (or equivalent officer of any successor organisation);

The role of a mediator is to assist in negotiating a resolution of a dispute. A mediator may not make a decision binding on a party unless that party has so agreed in writing;

The mediation must take place in a location in Adelaide agreed by the parties;

A party in dispute must cooperate in arranging and expediting mediation;

A party in dispute must send to the mediation a senior manager with authority to resolve the dispute;

The mediator may exclude lawyers acting for the parties in dispute and may co-opt expert assistance as the mediator thinks fit;

A party in dispute may withdraw from mediation if there is reason to believe the mediator is not acting in confidence, or with good faith or is acting for a purpose other than resolving the dispute;

Unless otherwise agreed in writing:

Everything that occurs before the mediator is in confidence and in closed session;

Discussions (including admissions and concessions) are without prejudice and may not be called into evidence in any subsequent litigation by a party;

Documents brought into existence specifically for the purpose of the mediation may not be admitted in evidence in any subsequent legal proceedings by a party;

The parties in dispute must report back to the mediator within 14 business days on actions taken, based on the outcome of the mediation;

A party in dispute need not spend more than one day in mediation for a matter under dispute;

A party in dispute must bear an equal share of the costs and expenses of the mediator and otherwise bears their own costs.

Step 4: Arbitration:

Despite whether any previous step was taken, a dispute not resolved within 60 days must be referred to arbitration, as to which:

There must be only 1 arbitrator and who is a natural person agreed by the parties or, if they cannot agree within 14 business days, an arbitrator nominated by the then Chairperson of The Institute of Arbitrators and Mediators Australia (South Australian Chapter);

The role of the arbitrator is to resolve the dispute and make decisions binding on the parties;

The arbitration must take place in an agreed location in Adelaide;

A party must cooperate in arranging and expediting arbitration;

A party must send to the arbitration a senior manager with authority to resolve the dispute;

The parties may provide evidence and given written and verbal submissions to the arbitrator within the time set by the arbitrator;

The arbitrator must:

Consider the evidence and submissions;

Decide the dispute; and

Give written reasons to each party;

Subject to this clause, the arbitration must take place under Rules 5 to 18 (inclusive) of the Rules of The Institute of Arbitrators and Mediators for the Conduct of Commercial Arbitrations and the provisions of the Commercial Arbitration Act 1986 (S.A.) and which Rules are taken to be incorporated by reference into this clause OR subject to this clause, the arbitrator must fix the rules of arbitration;

The costs and expenses of the arbitrator and of each party must be borne as the arbitrator decides.

10. CIRCUMSTANCES NOT PROVIDED FOR

If any circumstances arise about which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the Board has the power to consider the circumstance and determine the action to be taken.
