

## LOCAL GOVERNMENT ACT 1999

Central Adelaide Waste and Recycling Authority

### CHARTER 2022

#### THE CITIES OF PORT ADELAIDE ENFIELD AND CHARLES STURT

*resolved to update the Charter of the Central Adelaide Waste and Recycling Authority to come into operation from the date of this Gazette. This regional subsidiary is established pursuant to section 43 of and Schedule 2, Part 2 to the Local Government Act 1999, for the purposes of providing and exploring options to deliver waste management and recycling services including, without limitation, by establishing, operating and maintaining a Materials Recovery Facility (MRF) to provide services to the Constituent Councils (and, beyond in the circumstances provided for in the Charter) in accordance with the objects, functions and powers conferred by this Charter. An update of this Charter has been provided in line with the provision set out in 1.3.4 below.*

*The Charter of the Central Adelaide Waste and Recycling Authority is set out below.*

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#### CENTRAL ADELAIDE WASTE AND RECYCLING AUTHORITY CHARTER

##### PART I: GENERAL

##### 1. PRELIMINARY

##### 1.1. Dictionary

In this Charter:

- 1.1.1 **Act** means the *Local Government Act 1999*;
- 1.1.2 **Authority** means the Central Adelaide Waste and Recycling Authority;
- 1.1.3 **Board** means the board of management of the Authority;
- 1.1.4 **Board Member** means at any time a member of the Board;
- 1.1.5 **Budget** means a budget consistent with clause 7.4 and last adopted by the Board;
- 1.1.6 **Business Plan** means a Business Plan that conforms to clause 7.3 and last adopted by the Board;
- 1.1.7 **Executive Officer** means at any time the executive officer of the Authority and includes that person's deputy or a person acting in that position;
- 1.1.8 **Constituent Council** means at any time a Constituent Council of the Authority, which, at the date of publication of this Charter in the Gazette, means the City of Port Adelaide Enfield or the City of Charles Sturt;
- 1.1.9 **Financial Year** means 1 July in each year to 30 June in the subsequent year;
- 1.1.10 **Independent Board Member** (which includes the Chair) means a Board Member of the Authority who is not a member or officer of a Constituent Council; and
- 1.1.11 **Unanimous Decision** means a decision in the same terms made by the Constituent Councils (at any one time) voting in the same manner.

## 1.2 Interpretation

In this Charter:

- 1.2.1 a reference to the approval, consent or agreement of the Constituent Councils requires a Unanimous Decision;
- 1.2.2 the singular includes the plural and vice versa;
- 1.2.3 words importing a gender include other genders;
- 1.2.4 words importing natural persons include corporations;
- 1.2.5 reference to a section(s) is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; and
- 1.2.6 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 something being done, it may not be done;
  - (b) if the Act requires something to be done, the Board recognises this and the Executive Officer is authorised to take the action necessary to achieve it; and
  - (c) if a provision of this Charter is or becomes inconsistent with the Act, the provision must, to the extent of the inconsistency, be read down or failing that, be considered to be severed from this Charter.
- 1.3.4 This Charter may not be amended except as agreed by the Constituent Councils. An amendment is not effective unless and until notice of it is published in the *Gazette*.
- 1.3.5 For the purposes of clause 19(5)(b) of Schedule 2 to the Act, the Chief Executive Officers of the Constituent Council have determined that a copy of the Charter, must be published on the website of the Authority.
- 1.3.6 A review of the Charter must be completed within two years from the date it is published in the *Government Gazette*. Thereafter the Charter may be reviewed by the Constituent Councils at any time but must be reviewed as required by the Act.
- 1.3.7 This Charter must be read in conjunction with Schedule 2 to the Act. The Authority shall conduct its affairs in accordance with Schedule 2 to the Act except as modified by this Charter (where such modification is permitted by Schedule 2 to the Act).

## **PART II: GOVERNANCE**

### **2. THE AUTHORITY**

#### **2.1 Establishment**

The Authority is a body corporate in the nature of a regional subsidiary established under the Act.

#### **2.2 Name**

The name of the Authority is the Central Adelaide Waste and Recycling Authority trading as Central Adelaide Waste and Recycling Authority.

### **3. PURPOSE, FUNCTIONS AND POWERS**

#### **3.1 PURPOSE & FUNCTIONS**

3.1.1 The Authority is established for the purpose of managing waste, including receiving, processing and disposing of recyclable and other waste materials collected, primarily within the areas of the Constituent Councils and has the following functions in this regard:

- (a) to provide waste management and recycling services whether in or (so far as the Act and this Charter allows) outside the area of any of the Constituent Councils in an environmentally responsible, effective, efficient, economic and competitive manner;
- (b) to operate a facility to receive and (so far as is practicable) recycle waste materials, noting that the Constituent Councils in establishing the Authority commit all of their kerbside collected recyclable waste materials to the Authority (excluding kerbside collected food and green organics);
- (c) to facilitate the provision of a stable and reliable recycling processing service to the Constituent Councils and build confidence in recycling;
- (d) to improve waste management practices in the development of and support for a circular economy including by facilitating the buy-back of recycled goods;
- (e) to optimise the financial sustainability of the Constituent Councils;
- (f) to secure best value in the negotiation of outcomes that improve and enhance the circular economy;
- (g) to explore and implement technology to reduce disposal of waste to landfill;
- (h) to keep the Constituent Councils informed about emerging opportunities, trends or issues in waste management, including to assist the Constituent Councils in achieving their objective of reducing and, to the extent possible, eliminating the exportation of recyclable waste;
- (i) to conduct its activities in compliance with all regulatory requirements and in a manner that minimises risks to the Constituent Councils; and
- (j) to be fully self-funding to the extent that this can be achieved.

- 3.1.2 The following functions may be undertaken by the Authority where required or directed by either or both of the Constituent Councils or as agreed with a Client Council and charged directly to the relevant Council:
- (a) to procure and manage waste and recycling services or functions on its or their behalf;
  - (b) to review and design waste and recycling services to meet current and future needs in collaboration with the relevant Councils;
  - (c) to provide specialist advice to the relevant Councils;
  - (d) to promote the minimisation of waste and the improved use of waste and recycling services in the areas of the relevant Councils;
  - (e) to promote the recycling of recyclable materials in the areas of the Constituent Councils;
  - (f) in the common interest of the Constituent Councils and on their behalf or on its own behalf, to liaise with other councils, the State of South Australia and the Commonwealth of Australia and their respective instrumentalities in relation to waste management;
  - (g) as considered necessary to carry out its functions:
    - (i) to make application for grants and other funding (including from the State of South Australia and the Commonwealth of Australia and their respective instrumentalities); and/or
    - (ii) to liaise with relevant State Government agencies; and
  - (h) to perform and/or monitor the effectiveness and application of funding arrangements agreed by the Constituent Councils for waste management.

### 3.2 Powers

Subject to this Charter, the Authority may exercise the following powers<sup>1</sup> in the performance or discharge of its functions or, the attainment of its purposes:

- 3.2.1 entering into contracts or arrangements for the acquisition or provision of services, works or goods including with any third party whether they are governmental or private and including with councils other than the Constituent Councils;
- 3.2.2 entering into contracts or arrangements with either or both of the Constituent Councils in the exercise of powers conferred under this Charter;
- 3.2.3 through the Executive Officer (but within budgetary constraints set by the Board) employing, remunerating, managing, suspending and dismissing other staff of the Authority;
- 3.2.4 employing, engaging or retaining professional advisors to the Authority subject to the endorsed Budget;
- 3.2.5 charging whatever fees (including that may be on a differential basis) that the Authority considers appropriate for services rendered to any person,

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<sup>1</sup> The Authority may delegate a power or function conferred on it in accordance with clause 36 of Schedule 2 to the Act.

body or council;

- 3.2.6 raising revenue, where necessary, through contributions from the Constituent Councils;
- 3.2.7 accumulating surplus funds for investment or distribution reserve purposes;
- 3.2.8 investing any of the funds of the Authority in any manner consistent with section 139 of the Act;
- 3.2.9 opening and operating bank accounts;
- 3.2.10 borrowing funds and incurring expenditure in accordance with the Business Plan and Budget and delegations to the Authority;
- 3.2.11 entering into contracts to purchase or sell real property or interests therein provided that it shall be a condition precedent that in any such transaction the Authority must obtain the prior approval of both Constituent Councils;
- 3.2.12 leasing, hiring, renting real property;
- 3.2.13 providing a forum for the discussion and consideration of topics related to the Constituent Councils obligations and responsibilities in respect of waste management activities;
- 3.2.14 adopting and using for trading purposes, the business name Central Adelaide Waste and Recycling Authority provided that it shall first register the business name in accordance with the *Business Names (Commonwealth Powers) Act 2012* with the Australian Securities and Investment Commission;
- 3.2.15 establishing an advisory or other committee to provide expert industry advice to the Board;
- 3.2.16 making any election for the purpose of any tax or statutory charge;
- 3.2.17 commencing legal proceedings provided that any legal proceedings seeking urgent relief be the subject of an urgent report to the Constituent Councils; and
- 3.2.18 doing anything else necessary or convenient for or incidental to the exercise, performance or discharge of its functions or, the attainment of its objects and purposes.

### 3.3 **Acting Outside Areas of Constituent Councils**

- 3.3.1 The Authority may undertake its activities outside of the areas of the Constituent Councils in accordance with the Act but only where such activities have been approved by both Constituent Councils as being necessary or expedient to the performance by the Authority of its functions;
- 3.3.2 With respect to 3.3.1 above, this requirement is satisfied by the inclusion of the activity in the Business Plan of the Authority, once that Business Plan has been approved by both Constituent Councils.

### 3.4 **National Competition Policy**

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

### **3.5 Liability Guarantee**

- 3.5.1 The Constituent Councils share in the liabilities of the Authority in accordance with their respective interest in the Authority.
- 3.5.2 The Authority must pay an annual liability guarantee fee of an amount as determined by the Constituent Councils (if any) on account of the liability guarantee prescribed by clause 31 of Schedule 2 to the Act;
- 3.5.3 The Board may in with the consent of the Constituent Councils, increase, waive or reduce the liability guarantee fee for any particular year;

## **4. CONSTITUENT COUNCILS**

### **4.1 Obligation to provide recyclable waste**

To assist the Authority to fulfil its purpose and functions, the Constituent Councils commit all of their kerbside collected recyclable waste streams to the Authority (excluding kerbside collected food and green organics).

### **4.2 Incoming Constituent Councils**

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

- 4.2.1 it makes written application to become a Constituent Council and agrees to be bound by this Charter; and
- 4.2.2 the Constituent Councils, by Unanimous Decision, approve the application 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.

### **4.3 Outgoing Constituent Council/s**

- 4.3.1 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 is effective on 30 June next after the expiry of that period; and
  - (b) the Board approves; and
  - (c) the Minister approves.
- 4.3.2 A former Constituent Council remains liable in the same proportion as its equitable interest in the Authority as set out under clause 8.1.1, to contribute to the debts and the liabilities of the Authority incurred whilst it was a Constituent Council and for an equal share of any future losses on contracts entered into whilst it was a Constituent Council.
- 4.3.3 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.

#### **4.4 Evidence of Direction by Constituent Councils**

To be effective, a direction of the Constituent Councils for the purposes of clause 26 of Schedule 2 to the Act must be evidenced by a minute signed by the Chief Executive Officer of each of the Constituent Councils as a true and accurate record of the applicable decision made by the delegate or at the relevant meeting.

### **5. BOARD OF MANAGEMENT**

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

#### **5.1 Functions of the Board**

The functions of the Board are to:

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

#### **5.2 Membership**

- 5.2.1 The initial Board shall comprise seven members, each appointed as follows:
  - (a) the person, from time to time, occupying the offices of the Chief Executive Officer and the Mayor of each Constituent Council
  - (b) one person appointed for a two-year term by each Constituent Council who the Council considers to have expertise in a field or discipline relevant to the activities of the Authority; and
  - (c) one person appointed by the Constituent Councils (acting jointly) for a three-year term who is not a member or officer of a Constituent Council but who is considered by the Councils, to have expertise in a field or discipline relevant to the activities of the Authority and who, upon appointment, which person will be the Chair of the Authority.
- 5.2.2 The constitution of the Board does not allow for deputies to a Member of the Board to be appointed.
- 5.2.3 Notwithstanding anything else in this Charter, the Authority must, within 12 months of the Gazettal of this Charter , review and recommend to the Constituent Councils the future composition of the Board:
- 5.2.4 Subject to any contrary determination pursuant to clause 5.2.2, a person appointed as a Member of the Board under clause 5.2.1(b) or 5.2.1(c) is

eligible for reappointment to the Board at the end of their term provided that no Member appointed under clause 5.2.1(b), is permitted to serve more than three consecutive terms on the Board without the approval of the Constituent Councils.

- 5.2.5 The office of a Board Member will become vacant:
- (a) in accordance with clause 20(3) of Schedule 2 to the Act; and
  - (b) in the case of a Board Member appointed under clause 5.2.1(b) of this Charter, where the Board resolves to remove either or both of them from the Board; and
  - (c) in the case of a Board Member appointed under clause 5.2.1(a) of this Charter, immediately upon that Board Member ceases to be Mayor or CEO of a Constituent Council.
- 5.2.6 Where a casual vacancy arises in the office of a Member of the Board, it will be filled in the same manner as the original appointment to that office.
- 5.2.7 Only an Independent Board Member is entitled to an allowance as determined by the Board;
- 5.2.8 The Chair shall preside at all meetings of the Board. Where the Chair is not present at a meeting of the Board (or is yet to be appointed), the other Board Members shall choose a person from amongst themselves to chair the meeting.

### 5.3 **Propriety of Board Members**

- 5.3.1 In addition to complying with their statutory obligations under the Act, all Board Members are required to complete returns in accordance with Division 2, Part 4 (Register of Interest) of Chapter 5 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 Board Meetings**

- 5.5.1 The Board must determine procedures to apply at or in relation to its meetings provided that such procedures may not be inconsistent with any provisions of this Charter.
- 5.5.2 All meetings of the Board must take place at such times and places as are fixed by the Board or by the Executive Officer in consultation with the Chair from time to time and in any event the Board must meet not less than 4 times in each Financial Year.
- 5.5.3 An ordinary meeting of the Board will constitute an ordinary meeting of the Authority.
- 5.5.4 For the purposes of this clause 5.6, 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.
- 5.5.5 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.
- 5.5.6 Notice of meetings of the Board must be given by the Executive Officer in a manner determined by the Board. Only the notice of meeting will be available to the public. The Agenda and all supporting reports and documents will be confidential and not available for public inspection unless the Board otherwise determines.
- 5.5.7 Chapter 6, Part 3 of the Act does not apply to the Authority. Meetings of the Board will not be open to the public unless the Board otherwise resolves.
- 5.5.8 The minutes of all Board meetings will be confidential and not available for public inspection unless the Board otherwise resolves.
- 5.5.9 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.

## **5.6 Quorum**

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

## **6. EXECUTIVE OFFICER**

- 6.1 The Board must appoint an Executive Officer of the Authority to manage the business of the Authority on terms 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 responsible (within budgetary constraints set by the Board and with regard to Awards, standards and requirements appropriate to the industry and position) for employing, remunerating, managing, suspending and dismissing other staff of the Authority.
- 6.4 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.

## **PART III: FINANCIAL & BUSINESS REQUIREMENTS**

### **7. MANAGEMENT**

#### **7.1 Financial Management**

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

#### **7.2 Audit**

- 7.2.1 The Authority shall appoint an auditor in accordance with the Local Government (Financial Management) Regulations 2011, on terms and conditions set by the Board.
- 7.2.2 The Auditor will have the same powers and responsibilities as set out in the Act, in relation to a council.
- 7.2.3 The Authority is required to establish an audit committee which will comprise of three members as follows:
  - (a) a person, who will be the Chair, appointed by the Constituent Councils (acting jointly) and who is neither an officer or member of a Constituent Council and who is not a member of the Board; and

- (b) two persons being one person appointed by each Constituent Council who is not a member of the Board and who is considered to have experience relevant to the functions of the Authority or, financial experience relevant to the functions of the audit committee.

### **7.3 Business Plan**

The Authority must:

- 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, in consultation with the Constituent Councils.

### **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 a Budget for the ensuing Financial Year in accordance with the Act.
- 7.4.2 The draft annual Budget must be referred to Constituent Councils with sufficient time to receive any comments from the Councils for consideration by the Board at the time it is considered by the Board for adoption.
- 7.4.3 The Authority must provide a copy of its annual Budget to the Constituent Councils within five business days after adoption by the Board.
- 7.4.4 Reports summarising the financial position and performance of the Authority against the annual Budget must be prepared and presented to the Board at each Board meeting and copies provided to the Constituent Councils upon request.
- 7.4.5 Subject to any other provision of this Charter, an adopted Budget binds the Authority and is authority for the Authority to perform work, incur debts and meet obligations according to its terms without the need for the approval of the Constituent Councils.

### **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.

## **8. MISCELLANEOUS**

### **8.1 Equitable Interest**

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

- (a) City of Charles Sturt: 1/2
- (b) City of Port Adelaide Enfield: 1/2

8.1.2 The equitable interest of the Constituent Councils in the Authority as set out at clause 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 clauses 4.1 or 4.2

## **8.2 Insurance**

8.2.1 The Authority must register with the Local Government Mutual Liability Scheme and comply with the Rules of that Scheme.

8.2.2 The Authority must consider and determine its insurance requirements relating to buildings, structures, vehicles and equipment under the management, care and control of the Authority.

8.2.3 The Authority must 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 On winding up, the surplus assets or liabilities of the Authority shall be distributed between or become the responsibility of the Constituent Councils in the proportions of their equitable interest specified in clause 8.1.

8.3.2 If there are insufficient funds to pay all expenses due by the Authority on winding up (or at any other time there are unfunded liabilities which the Authority cannot meet), a call shall be made upon all of the Constituent Councils in proportion to their equity share for the purpose of satisfying their statutory guarantee of the liabilities of the Authority.

## **8.4 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 or any other person named in the instrument.

8.4.2 The Executive Officer must maintain a register which records the resolutions of the Board giving authority to affix the common seal and details of the documents to which the common seal has been affixed with the particulars of persons who witnessed the fixing of the seal and the date that the seal was affixed.

## **8.5 Principal Office**

The Authority's principal office is at Mill Court, Kilburn or as the Board may otherwise determine.

# **9. DISPUTE RESOLUTION**

## **9.1 About this clause:**

9.1.1 The procedure in this clause must be applied to any dispute that arises between the Authority and a Constituent Council concerning the affairs of

the Authority, or between Constituent Councils concerning the affairs of the Authority, including as to the meaning or effect of this Charter.

9.1.2 The Authority and a Constituent Council must continue to observe and perform this Charter despite the dispute.

9.1.3 This clause does not prejudice the right of a party:

- (a) to require the continuing observance and performance of this Charter by all parties; or
- (b) to institute proceedings to enforce payment due under this Charter or to seek injunctive relief to prevent immediate and irreparable harm.

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

**9.2 Step 1: Notice of dispute:**

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

- (a) of the nature of the dispute, giving reasonable details; and
- (b) what action (if any) the party giving notice thinks will resolve the dispute; but a failure to give such notice does not entitle any other party to damages.

**9.3 Step 2: Meeting of the parties:**

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

**9.4 Step 3: Mediation:**

9.4.1 A dispute that is not resolved within thirty days must be referred to mediation in accordance with this clause 9.4.

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

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

9.4.4 The mediation must take place in a location in Adelaide determined by the mediator; A party in dispute must cooperate in arranging and expediting mediation.

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

**9.5 Step 4: Arbitration:**

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

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

**10. CIRCUMSTANCES NOT PROVIDED FOR**

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.

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