

LOCAL GOVERNMENT ACT 1999

EYRE PENINSULA LOCAL GOVERNMENT ASSOCIATION

Charter

1 INTRODUCTION

1.1 Name

The name of the subsidiary is the Eyre Peninsula Local Government Association (referred to as “the EPLGA” in this Charter).

1.2 Establishment

1.2.1 The EPLGA was established in 2002 as a regional subsidiary of the councils listed below under Section 43 and Part 2 of Schedule 2 of the Local Government Act 1999 (“the Act”).

1.2.2 The Constituent Councils at the date of this amendment to the Charter are as follows:

The District Council of Ceduna;
The District Council of Cleve;
The District Council of Elliston;
The District Council of Franklin Harbour;
The District Council of Kimba;
District Council of Lower Eyre Peninsula;
The City of Port Lincoln;
The District Council of Streaky Bay;
The District Council of Tumby Bay;
The Corporation of the City of Whyalla; and
Wudinna District Council
(referred to collectively as “the Constituent Councils” in this Charter)

1.2.3 This Charter governs the affairs of the EPLGA.

1.2.4 The EPLGA is subject to the joint direction of the Constituent Councils.

1.2.5 This Charter must be read in conjunction with Schedule 2 to the Act. The EPLGA will conduct its affairs in accordance with Schedule 2 to the Act except as modified by this Charter as permitted by Schedule 2.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

“absolute majority” means a majority of the whole number of the members of the Board or Constituent Councils, as the case may be.

“Act” means the Local Government Act 1999, as amended from time to time.

“Board” means the board of management of the EPLGA.

“Board Member” means at any time a member of the Board and, where the context so admits, includes a Deputy Board Member.

“Budget” means a budget that conforms to Clause 25 of Schedule 2 to the Act and last adopted by the Board.

“Business Plan” means a business plan that conforms to Clause 24 of Schedule 2 to the Act and last adopted by the Board.

“Constituent Council” means any Council that is from time to time a member of the EPLGA.

“Council” means a council as constituted under the Act.

“Deputy Board Member” means at any time a person appointed and holding office as a Deputy to a Board Member.

“EPLGA” means the Eyre Peninsula Local Government Association.

“Executive Officer” means at any time a person appointed and holding office as Executive Officer of the EPLGA and includes that person’s deputy or a person acting in that position.

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

2.2 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 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.

3 PURPOSE OF THE EPLGA

- 3.1 To work collaboratively with the LGA to achieve the aims and objectives of the LGA.
- 3.2 To encourage, promote, protect and foster an efficient and effective autonomous, democratic system of local government elected by and responsible to local communities.
- 3.3 To act as a forum for discussion and consideration of matters relating to the powers, functions and duties of the Constituent Councils under the Act and other statutory provisions in relation to the region.

- 3.4 To identify available resources within the region and to co-ordinate or assist in co-ordinating the management of these resources for the betterment of the region's community.
- 3.5 To encourage, assist, seek out, determine, assess and respond to the needs and aspirations of the region's constituents.
- 3.6 To develop, encourage, promote, foster and maintain consultation and co-operation between local government authorities, State and Commonwealth Governments and their instrumentalities.
- 3.7 To develop, encourage, promote, foster and maintain the financial and economic wellbeing and advancement of the region and if desirable for such purpose to undertake, establish, acquire, conduct or dispose of any business, enterprise, undertaking or venture which in the opinion of the EPLGA is necessary, desirable or convenient.
- 3.8 To effectively liaise and work with the State and Commonwealth Governments and their instrumentalities on a regional basis for the general enhancement of the region.

4 POWERS

The EPLGA will have the following powers (in addition to and without prejudice to any other powers herein expressed or implied or by virtue of any other legislation applicable):

- 4.1 To subscribe to, become a member of and/or co-operate with any other association or organisation whose purposes are wholly or in part similar or complementary to those of the EPLGA and on such terms as the EPLGA deems appropriate.
- 4.2 To enter into any arrangements with any Government or Authority that are incidental or conducive to the attainment of the purposes and the exercise of the powers of the EPLGA.
- 4.3 To raise revenue through subscriptions or levies from Constituent Councils.
- 4.4 To apply for grants from Government Agencies and to seek sponsorship from business enterprises.
- 4.5 To print or publish any newspapers, periodicals, books, leaflets or other writing that the EPLGA may think desirable for the promotion of its purposes.
- 4.6 To acquire, deal with and dispose of real and personal property and rights in relation to real and personal property.
- 4.7 To enter into any kind of contract or arrangement.
- 4.8 To invest funds in a manner consistent with Section 139 of the Act.
- 4.9 To establish committees for the following purposes:

- 4.9.1 inquiring into and reporting on any matter within the terms of reference determined by the Board;
 - 4.9.2 exercising, forming and discharging delegated powers, functions or duties of the EPLGA; or
 - 4.9.3 investigating opportunities for resource sharing within the region and implementing strategies to take advantage of such opportunities.
- 4.10 To delegate any function or duty except for any of the powers set out in Section 44 of the Act (where such powers are applicable to a subsidiary).
- 4.11 To do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties.

5 SOURCES OF REVENUE

The sources of revenue of the EPLGA may include:

- 5.1 Subscriptions to be applied equitably to Constituent Councils under such terms and conditions determined by the Board.
- 5.2 Service charges for services to Constituent Councils under such terms and conditions determined by the Board.
- 5.3 Grants from Government Agencies and the EPLGA.
- 5.4 Sponsorship from business enterprises.
- 5.5 Loan funds or overdrafts on such conditions as the EPLGA sees fit for the purposes of the EPLGA, provided that:
 - 5.5.1 a proposal for borrowing by the EPLGA must be provided to each Constituent Council.
 - 5.5.2 the proposal to borrow must be approved by an absolute majority of the Constituent Councils in writing before it can be considered by the Board.
 - 5.5.3 an order to borrow must be approved by an absolute majority of the Board.
- 5.6 Interest from the investment of funds held by the EPLGA.

6 THE BOARD – ROLE AND MEMBERSHIP

- 6.1 The EPLGA will be governed by a Board.
- 6.2 The Board is responsible for the administration of the affairs of the EPLGA.
- 6.3 The Board must ensure, insofar as it is practicable:

- 6.3.1 that the EPLGA observes the purposes set out in this Charter;
- 6.3.2 that information provided to the Constituent Councils is accurate; and
- 6.3.3 that Constituent Councils are kept informed of the solvency of the EPLGA as well as any material developments which may affect the operating capacity and financial affairs of the EPLGA.

6.4 Membership

- 6.4.1 Each of the Constituent Councils will be entitled to appoint one person to the Board, with that person being either an elected member or an officer of the Constituent Council.
 - 6.4.2 Each Constituent Council may appoint either an elected member or an officer as a Deputy Board Member who may attend Board meetings in the place of that Council's Board Member who is absent.
 - 6.4.3 If both the Board Member and the Deputy Board Member of a Constituent Council are unable to attend a Board meeting, the Constituent Council affected may appoint a representative with voting powers to attend that Board meeting in accordance with Clause 6.5.
 - 6.4.4 The Board may appoint observers to the Board. Such appointees will not be entitled to vote at meetings.
 - 6.4.5 Board members shall not be entitled to receive a sitting fee except with the prior approval of the Board.
 - 6.4.6 The EPLGA may pay a Board Member's travelling and other expenses that he or she properly incurs in connection with the EPLGA's affairs, provided that the Board Member has received prior written approval from the Board.
- 6.5 A certificate signed by the Chief Executive Officer of the appointing Constituent Council will be sufficient evidence of appointment to the Board.
- 6.6 The President shall preside over all meetings of the Board.
- 6.7 In the absence of the President, the Deputy President will preside over meetings of the Board.
- 6.8 In the absence of the President and Deputy President, the members present at a meeting shall appoint a member from those present for the purposes of that meeting, and that person shall preside for that meeting or until the President or Deputy President is present.

7 TERM OF OFFICE - THE BOARD

- 7.1 Subject only to the following sub-clauses, the term of office of each Board Member will be as determined by the Constituent Council responsible for the appointment of the member.
- 7.2 The Board may by a two-thirds majority vote of the members present (excluding the member subject to this clause):
- 7.2.1 make a recommendation to the Constituent Council responsible for the appointment of the relevant member seeking the appointing body's approval to terminate the appointment of that member.
- 7.3 The Constituent Council which appointed the member whose term of office has become vacant will be responsible to appoint a replacement member if it decides to accept the recommendation of the Board.
- 7.4 If the Constituent Council affected does not accept the recommendation of the Board in relation to the termination of the appointment of the member concerned then the matter is able to be dealt with in accordance with Clause 19.

8 PROCEEDINGS OF THE BOARD

- 8.1 Subject only to the extent that they are modified by this Clause, the proceedings of the Board will be the same as those for committees of Council as defined in Part 2 of Chapter 6 of the Act and in accordance with the Regulations for "Other Committees" comprised in Parts 1, 3 and 4 of the Local Government (Proceedings at Meetings) Regulations 2013.

References in Part 2 of Chapter 6 of the Act to "the Chief Executive Officer" shall be read as if they were references to the Executive Officer of the EPLGA and references to "the Council" or "the Committee" shall be read as if they were references to the EPLGA.

To the extent that this Charter and the Act and its associated Regulations are silent, the Board may determine its own meeting procedures.

- 8.2 Subject only to the special provisions of this Clause, no meeting of the Board will commence until a quorum of members is present and no meeting may continue unless there is a quorum of members present. A quorum of members will comprise half the members plus one. A time limit of 30 minutes shall apply from the advertised time of the meeting in which to reach a quorum. Failure to reach a quorum within this time limit shall result in a failed meeting. If at any time during a meeting of the Board there is no quorum then no formal business may be transacted. The members may decide to continue informal discussions and any outstanding business shall be deferred to a future meeting. The meeting will be adjourned to a place and time to be determined by the person chairing the meeting.

- 8.3 For the purpose of this Clause 8 the contemporary linking together by telephone, audio-visual or other instantaneous means (“telecommunications meeting”) of a number of the Board Members is deemed to constitute a meeting of the Board, provided that there is collectively a quorum.
- 8.4 Each of the Board Members taking part in the telecommunications meeting must at all times during the meeting be able to hear and be heard by each of the Board Members present.
- 8.5 At the commencement of a telecommunications meeting, each Board Member must announce his/her presence to all of the Board Members taking part in the meeting.
- 8.6 A Board Member must not leave a telecommunications meeting by disconnecting his/her audio-visual or other communication equipment, unless that Board Member has previously notified the chairperson of the meeting.
- 8.7 Subject only to any specific requirement of this Charter, all matters for decision at a meeting of the Board will be decided by a simple majority of the Members present and entitled to vote on the matter. All Members of the Board are entitled to a deliberative vote. Board Members may not vote by proxy.
- 8.8 In the event of equality of votes, the chairperson will not have a casting vote and the matter will be deemed to have lapsed and may at some later time be reconsidered.
- 8.9 Meetings of the Board will be held at such time and such place as the Board decides subject only to the requirement that there will be at least four meetings in a calendar year, with at least one meeting held in every three month period.
- 8.10 A special meeting of the Board may be held at any time and may be called at the request of the President, or in his absence the Deputy President, or at the written request of two members of the Board.
- 8.11 Notice of all meetings will be given in accordance with the provisions applicable to a committee meeting under Part 2 of Chapter 6 of the Act and the associated Regulations.
- 8.12 Meetings of the Board will be open to the public unless the Board so resolves to exclude the public pursuant to Section 90 of the Act.
- 8.13 All members must keep confidential all documents and any information provided to them in confidence for their consideration prior to a meeting of the Board.
- 8.14 The Board must ensure that accurate written minutes of its proceedings are kept and are produced for verification at the subsequent meeting of the Board.

9 OFFICERS OF THE BOARD

9.1 The Board shall elect, from the elected member Board Members of different Constituent Councils, at the February meeting following the Local Government periodical elections:

9.1.1 President, who shall be the chairperson of the Board;

9.1.2 Deputy President, who shall be the deputy chairperson of the Board.

9.2 In the event that:

9.2.1 the President ceases to be a Board Member for any reason whatsoever, the Deputy President will be appointed to the role of President and the Board Members may elect from their members a person to hold the office of Deputy President until the next election;

9.2.2 the Deputy President ceases to be a Board Member for any reason whatsoever, the Board Members may elect from their members a person to hold the office of Deputy President until the next election;

9.2.3 both the President and Deputy President cease to be a Board Member for any reason whatsoever, the Board Members may elect from their members persons to hold the offices of President and Deputy President until the next election.

10 PROPRIETARY OF MEMBERS OF THE BOARD

10.1 The principles regarding conflict of interest prescribed in the Act will apply to all Board Members as if they were elected members of a Council.

10.2 The Board Members will not be required to comply with Division 2, Chapter 5 (Register of Interests) of the Act.

10.3 The Board Members will at all times act in accordance with their duties of competence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the Board as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Part 2 of Schedule 2.

11 ADMINISTRATIVE MATTERS

11.1 There will be an Executive Officer of the EPLGA appointed by the Board on such terms and conditions as may be determined by the Board.

11.2 The Executive Officer will be responsible to the Board:

11.2.1 to ensure that the policies and lawful decisions of the EPLGA are implemented in a timely manner;

- 11.2.2 for the efficient and effective management of the operations and affairs of the EPLGA;
 - 11.2.3 to provide advice and reports to the Board on the exercise and performance of the EPLGA powers and functions; and
 - 11.2.4 to give effect to the principles of human resource management generally applicable within the local government industry.
- 11.3 The Executive Officer has such powers, functions and duties prescribed by this Clause and as determined necessary by the Board from time to time to ensure the efficient and effective management of the operations and affairs of the EPLGA.
- 11.4 The Board may employ other officers and it may authorise the Executive Officer to employ such other officers on its behalf as are required for the efficient and effective management of the operations and affairs of the EPLGA.
- 11.5 The Board may engage professional consultants and may authorise the Executive Officer to engage professional consultants to provide services to the EPLGA to ensure the proper execution of its decisions, the efficient and effective management of the operation and affairs of the EPLGA and for giving effect to the general management objectives and principles of human resource management prescribed by this Charter.

12 BUSINESS PLAN

- 12.1 The EPLGA shall have a rolling Business Plan in respect of the ensuing four years.
- 12.2 The Business Plan must:
- 12.2.1 state the services to be provided by the EPLGA;
 - 12.2.2 identify how the EPLGA intends to manage service delivery;
 - 12.2.3 identify the performance targets which the EPLGA is to pursue;
 - 12.2.4 provide a statement of financial and other resources and internal processes that will be required to achieve the performance targets and purposes of the EPLGA; and
 - 12.2.5 specify the performance measures that are to be used to monitor and assess performance against targets.
- 12.3 Prior to setting the draft budget each year, the EPLGA must review the Business Plan in conjunction with the Constituent Councils.

13 BUDGET

- 13.1 The EPLGA must prepare and adopt an annual Budget for the forthcoming financial year.
- 13.2 The Budget must:
 - 13.2.1 deal with each principal activity of the EPLGA on a separate basis;
 - 13.2.2 be consistent with its Business Plan;
 - 13.2.3 comply with standards and principles prescribed by the Local Government (Financial Management) Regulations 2011, as amended from time to time;
 - 13.2.4 identify the amount of surplus (deficit) brought forward from the previous year;
 - 13.2.5 identify the amount of subscriptions to be made by each Constituent Council;
 - 13.2.6 be submitted in draft form to each Constituent Council before 30 April for information of its proposed contribution for the ensuing year; and
 - 13.2.7 be adopted by the EPLGA after 31 May but before 30 June.
- 13.3 The adoption of the Budget at a meeting requires approval by a two-thirds majority of the Board Members present at that meeting.
- 13.4 The EPLGA must provide a copy of its Budget to each Constituent Council within five business days after adoption.
- 13.5 The EPLGA must reconsider its Budget in accordance with the Local Government (Financial Management) Regulations 2011, as amended from time to time.
- 13.6 The EPLGA must submit to each Constituent Council, for approval by that Constituent Council, any proposed amendment to the Budget that provides for an additional financial contribution by the Constituent Councils.
- 13.7 In the event that a Constituent Council does not approve a proposed amendment to the Budget, any such Constituent Council will be bound by the amended budget if the amendments are approved by a two thirds majority of the Constituent Councils.

14 ACCOUNTING

- 14.1 The EPLGA must ensure that its accounting records, accounts and financial statements are prepared and maintained in accordance with Section 124 of the Act, the Local Government (Financial Management) Regulations 2011 and all relevant Australian Accounting Standards.

- 14.2 Subject to Clause 14.1, the EPLGA will not have any special accounting, internal auditing or financial systems or practices.

15 FINANCIAL MANAGEMENT

- 15.1 The Executive Officer shall cause adequate and proper books of account to be kept in relation to all affairs of the EPLGA.
- 15.2 The EPLGA's books of account must be available for inspection by any Board Member or authorised representative of a Constituent Council at any reasonable time on request.
- 15.3 The EPLGA must establish and maintain a bank account with such banking facilities at a bank to be determined by the Board.
- 15.4 The EPLGA may distribute to the Constituent Councils any surplus revenue as determined by the Board, having regard to estimated future expenditure that the Business Plan or Budget envisages in any financial year.
- 15.5 The EPLGA shall give due regard to Chapter 9, Part 4 of the Act when investing funds.
- 15.6 The financial year for the EPLGA is from 1st July to 30th June.

16 AUDIT

- 16.1 The EPLGA must appoint an auditor.
- 16.2 The EPLGA must provide its audited financial statements to the Chief Executive Officer of each Constituent Council by 30th September in accordance with the Local Government (Financial Management) Regulations 2011, as amended from time to time.
- 16.3 Subject to the approval of the relevant Minister, the EPLGA will not have an Audit Committee.

17 REPORTS AND INFORMATION

- 17.1 The EPLGA must submit its annual report on its work and operations, including its audited financial statements, to each Constituent Council before 30th September.
- 17.2 The Board must, at the written request of a Constituent Council, furnish to the Council as soon as practicable, but not later than 4 weeks after the request was made, any information or records in the possession or control of the EPLGA as the Council may require, in such manner and form as the Council may require.

18 COMMON SEAL

- 18.1 The EPLGA will have a common seal which may be affixed to documents requiring execution under the common seal and must be witnessed by the signatures of two Board Members.
- 18.2 The common seal must not be affixed to a document except to give effect to a resolution of the Board. The Executive Officer will 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 particulars of the persons who witnessed the fixing of the seal and the date.
- 18.3 Subject to Clause 18.2, the Board made by instrument under seal authorise a person to execute documents on behalf of the EPLGA. The Executive Officer will maintain a Register of such resolutions and details of any documents executed in this way, together with particulars of the person executing the document.

19 DISPUTES

- 19.1 In the event of any dispute or difference between one or more Constituent Councils and the EPLGA concerning the operations or affairs of the EPLGA, the dispute process shall be initiated by a Constituent Council serving a notice of dispute on the Executive Officer of the EPLGA, with a contemporaneous copy being served on all other Constituent Councils. The Constituent Councils:
 - 19.1.1 will attempt to settle the dispute or difference by negotiating in good faith;
 - 19.1.2 if good faith negotiations do not settle the dispute or difference within one month of the dispute arising, then the dispute shall be referred to an expert for determination. The expert shall be a person with the skills and expertise necessary to resolve the dispute and shall be nominated by the President of the Local Government Association of South Australia. The expert is an expert and not an arbitrator. The expert's determination shall be final and binding on the Constituent Councils. The costs of the expert will be apportioned and payable in accordance with the expert's determination;
 - 19.1.3 if the dispute is unable to be resolved by the expert within six months of the dispute arising, then any Constituent Council may request the Minister to dissolve the EPLGA; and
 - 19.1.4 notwithstanding the existence of a dispute or difference, the Constituent Councils will continue to meet any and all of its obligations to the EPLGA.

20 ALTERATION TO THE CHARTER

- 20.1 This Charter may be amended by two-thirds majority resolution of the Constituent Councils.
- 20.2 The Executive Officer of the EPLGA must ensure that the amended Charter is published in the Gazette.

- 20.3 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendation of the Board.

21 ADDITION OF NEW MEMBER COUNCIL

- 21.1 The Board may consider the addition of a new member Council to the EPLGA.
- 21.2 The Constituent Councils must resolve by a two-thirds majority to approve the addition of a new member Council to the EPLGA and must obtain Ministerial approval.
- 21.3 The Charter will be amended in accordance with the provisions of this Charter to address any new addition.

22 WITHDRAWAL OF A CONSTITUENT COUNCIL

- 22.1 Subject to the approval of the Minister, a Constituent Council may withdraw from the EPLGA by giving not less than six months' notice of its intention to do so to all other Constituent Councils and the Executive Officer.
- 22.2 In any event a withdrawal cannot become effective until 30 June following the expiry of the six months in the preceding sub-clause. Until withdrawal becomes effective, the Constituent Council proposing withdrawal from the EPLGA will remain liable for all financial contributions in the remaining period and through its Board Member, the responsibility of ensuring the continued proper conduct of the affairs of the EPLGA.
- 22.3 A withdrawing Constituent Council is not entitled to any refund of any financial contributions made to the EPLGA.

23 CIRCUMSTANCES NOT PROVIDED FOR

- 23.1 If any circumstances arise to which this Charter is silent, incapable of taking effect or being implemented according to its strict provisions, the EPLGA will have the power to determine what action may be taken to ensure the effective administration and purposes of the EPLGA provided that such action will be determined at a meeting of the Board.

24 WINDING UP

- 24.1 In addition to the provisions of Clause 33 of Schedule 2 of the Act, the EPLGA may be wound up by the Constituent Councils.

- 24.2 In the event of dissolution and after payment of all expenses, any surplus assets shall be returned to the Constituent Councils in proportion to the financial contributions paid in the financial year prior to the passing of the resolution to dissolve.
- 24.3 In the event of dissolution where there are insufficient funds to pay all expenses due by the EPLGA a levy shall be struck to cover the deficiency, such levy being in proportion to the financial contributions payable in the financial year prior to dissolution.

25 **INSOLVENCY**

- 25.1 In the event of the insolvency of the EPLGA each Constituent Council shall be responsible for the liabilities of the EPLGA in proportion to the financial contributions payable in the financial year prior to its insolvency.