

House of Assembly—No 5A

As reported with amendments, report agreed to and passed remaining stages,
18 September 2014

South Australia

Commissioner for Kangaroo Island Bill 2014

A BILL FOR

An Act to establish a Commissioner for Kangaroo Island and to provide for the development of management plans in relation to the co-ordination and delivery of infrastructure and services on Kangaroo Island and other matters relating to Kangaroo Island; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Commissioner for Kangaroo Island Act 2014*.

2—Commencement

- 5 This Act will come into operation on a day to be fixed by proclamation.

3—Interpretation

In this Act, unless the contrary intention appears—

Commissioner means the person for the time being holding or acting in the office of Commissioner for Kangaroo Island under Part 2;

5 **council** means a council established under the *Local Government Act 1999*;

government agency means—

- (a) a State authority; or
- (b) an agency or instrumentality of the Crown in right of the Commonwealth;

management plan means a management plan in force under Part 4;

10 **responsible Minister** in relation to a State authority means—

- (a) if the authority is a person who holds an office established by an Act or a body established by or under an Act—the Minister responsible for the administration of that Act; or
- (b) if the authority is an administrative unit—the Minister responsible for that administrative unit; or
- (c) if the authority is a regional development assessment panel or a council development assessment panel—the Minister responsible for the administration of the *Development Act 1993*; or
- (d) in any other case—the Minister declared by the regulations to be the responsible Minister for the authority or, in the absence of such a declaration, the Minister responsible for the administration of this Act;

State authority means—

- (a) a person who holds an office established by an Act; or
- (b) an administrative unit; or
- (c) a council; or
- (d) a regional development assessment panel or a council development assessment panel constituted under section 34 or 56A of the *Development Act 1993*; or
- (e) any incorporated or unincorporated body—
 - (i) established for a public purpose by an Act; or
 - (ii) established for a public purpose under an Act (other than an Act providing for the incorporation of companies or associations, co-operatives, societies or other voluntary organisations); or
 - (iii) established or subject to control or direction by the Governor, a Minister of the Crown or any instrumentality or agency of the Crown or a council (whether or not established by or under an Act or an enactment); or
- (f) a person or body declared by the regulations to be an authority to which this Act applies,

but does not include a body or entity excluded from the ambit of this definition by the regulations.

4—Interaction with other Acts

5 Except where the contrary intention is expressed in this or any other Act, this Act is in addition to and does not limit or derogate from the provisions of any other Act.

5—Act binds Crown

This Act binds the Crown in right of this State and also, so far as the legislative power of the State extends, the Crown in all its other capacities, but not so as to impose any criminal liability on the Crown.

Part 2—Commissioner for Kangaroo Island

6—Appointment of Commissioner

- (1) There will be a Commissioner for Kangaroo Island.
- (2) The Commissioner will be appointed by the Governor and is an agency of the Crown.
- (3) The Minister must undertake consultation (in such manner as the Minister thinks fit) with the Kangaroo Island Council and the people of Kangaroo Island in relation to any proposed appointment under this section.
- (4) The person appointed as Commissioner—
 - (a) should have experience in the commercial sector and a detailed understanding of the system of government in the State (including the respective roles of State and local government) and any strategies, plans or objectives for Kangaroo Island adopted by the State Government or the Kangaroo Island Council; and
 - (b) may be a Public Service employee.

7—Terms and conditions of appointment

- (1) The Commissioner will be appointed for a term not exceeding 5 years and on conditions determined by the Governor and, at the end of a term of appointment, will be eligible for reappointment.
- (2) The appointment of the Commissioner may be terminated by the Governor on the ground that the Commissioner—
 - (a) has been guilty of misconduct; or
 - (b) has been convicted of an offence punishable by imprisonment; or
 - (c) has become bankrupt or has applied to take the benefit of a law for the relief of insolvent debtors; or
 - (d) has been disqualified from managing corporations under Chapter 2D Part 2D.6 of the *Corporations Act 2001* of the Commonwealth; or
 - (e) has, because of mental or physical incapacity, failed to carry out duties of the position satisfactorily; or
 - (f) is incompetent or has neglected the duties of the position.

- (3) The appointment of the Commissioner is terminated if the Commissioner—
- (a) becomes a member, or a candidate for election as a member, of the Parliament of a State or the Commonwealth or a Legislative Assembly of a Territory of the Commonwealth; or
 - (b) is sentenced to imprisonment for an offence.
- (4) The Commissioner may resign by notice in writing to the Minister of not less than 3 months (or such shorter period as is accepted by the Minister).

8—Functions of Commissioner

The functions of the Commissioner are—

- (a) to improve the management, co-ordination and delivery of infrastructure and services provided by government agencies on Kangaroo Island;
- (b) to provide appropriate assistance to residents and businesses on Kangaroo Island in dealing with government agencies (with a view to ensuring co-ordinated delivery of infrastructure and services to such residents and businesses);
- (c) to assist with improving the local economy on Kangaroo Island;

Note—

This may include, for example, assisting with the marketing of the Island or products from the Island and helping to create employment and other opportunities from tourism or other industry development programs on the Island

- (d) to prepare, and keep under review, management plans in accordance with the provisions of Part 4 (and consistently with the functions of the Commissioner referred to in paragraphs (a) and (c));
- (e) any other functions conferred on the Commissioner by or under this or any other Act or by the Minister.

9—Provision of information

- (1) The Commissioner may, by written notice served personally or by post, require a State authority to give the Commissioner, within a reasonable time specified in the notice, information in its possession that the Commissioner requires for the performance of the Commissioner's functions under this Act.
- (2) A State authority must not enter into a contract of a prescribed kind unless the State authority has provided a copy of the contract to the Commissioner and allowed the Commissioner not less than 5 business days to comment on the proposed contract.
- (3) If a State authority (other than a council) refuses or fails to comply with a notice under subsection (1) or with the requirements of subsection (2), the Commissioner may, after consultation with the State authority—
 - (a) report the refusal or failure to the responsible Minister and to the Premier; and
 - (b) include details of the refusal or failure in the annual report of the Commissioner under section 19.

- (4) If a council refuses or fails to comply with a notice under subsection (1) or with the requirements of subsection (2)—
- (a) the Commissioner may, after consultation with the council, report the refusal or failure to the Minister responsible for the administration of the *Local Government Act 1999*; and
- (b) that Minister may, on the basis of the refusal or failure, take action under section 272 of that Act.
- (5) Information obtained by the Commissioner in the exercise of powers or functions under this section must not be disclosed except—
- (a) for the purpose of a report under this Act or as is otherwise reasonably required for the proper exercise of the Commissioner's functions under this Act; or
- (b) as may be authorised by the State authority; or
- (c) as required under any other Act or law.
- (6) The Commissioner, and all other persons appointed or engaged (or formerly appointed or engaged) to exercise powers and functions under this Act, must not disclose any information referred to in subsection (5) contrary to the provisions of that subsection.
- Maximum penalty: \$10 000.

10—Ministerial direction

- (1) Subject to this section, the Minister may give directions to the Commissioner.
- (2) The Minister must consult with the Commissioner before giving a direction.
- (3) A Ministerial direction to the Commissioner—
- (a) must be communicated to the Commissioner in writing; and
- (b) must be included in the annual report of the Commissioner under section 19.

11—Appointment of acting Commissioner

- (1) The Minister may appoint a person (who may be a Public Service employee) to act as the Commissioner during any period for which—
- (a) no person is for the time being appointed as the Commissioner; or
- (b) the Commissioner is absent from, or unable to discharge, official duties.
- (2) The terms and conditions of appointment of the person appointed to act as the Commissioner will be determined by the Minister.

12—Honesty and accountability

The Commissioner and any other person appointed to act as the Commissioner are senior officials for the purposes of the *Public Sector (Honesty and Accountability) Act 1995*.

13—Staff

The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

14—Delegation

- (1) Subject to this section, the Commissioner may delegate functions or powers to any person or body of persons that is, in the Commissioner's opinion, competent to perform or exercise the relevant functions or powers.
- 5 (2) A delegation under this section—
 - (a) must be in writing; and
 - (b) may be conditional or unconditional; and
 - (c) is revocable at will; and
 - (d) does not prevent the delegator from acting in any matter.
- 10 (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 3—Local advisory boards

15—Establishment of local advisory boards

- (1) The Commissioner—
 - 15 (a) may establish such local advisory boards as the Commissioner thinks fit; and
 - (b) must consult with a local advisory board in relation to each management plan or proposed management plan.
- (2) The Commissioner may appoint such members of a local advisory board as the Commissioner thinks fit.
- 20 (3) The Commissioner must undertake consultation (in such manner as the Commissioner thinks fit) with the Kangaroo Island Council in relation to any proposed appointment under this section.
- (4) The Commissioner must not appoint a person as a member of a local advisory board unless the Commissioner is of the opinion that the person has qualifications,
25 knowledge or experience relevant to the functions of the board.
- (5) The Commissioner will determine who will be the presiding member of a local advisory board.
- (6) The procedures to be observed in relation to the conduct of the business of a local advisory board will be—
 - 30 (a) as determined by the board; and
 - (b) insofar as a procedure is not determined under paragraph (a)—as determined by the Commissioner.
- (7) If the *Public Sector (Honesty and Accountability) Act 1995* would not, apart from this section, apply to a member of a local advisory board, that Act applies to the member
35 in the same way as to an advisory body member within the meaning of that Act.

16—Functions of local advisory board

The function of a local advisory board is to provide advice to the Commissioner in relation to any matter referred to the board by the Commissioner (and in particular in relation to any management plan or proposed management plan referred to the board).

Part 4—Management plans

17—Preparation of management plans and amendments

(1) The Commissioner must prepare management plans setting out—

5 (a) the proposals of the Commissioner in relation to the provision of infrastructure, the effective delivery of services and other matters relating to Kangaroo Island; and

(b) the priorities that the Commissioner recommends be pursued in order to implement the proposals; and

10 (c) strategies for consulting and engaging with persons or bodies whose co-operation is required for the effective implementation of the proposals.

(2) The Commissioner must keep the management plans under review and may amend any management plan in accordance with this section at any time the Commissioner thinks fit.

15 (3) In relation to any proposal to create or amend a management plan, the Commissioner—

(a) must prepare a draft of the proposal; and

(b) if the draft is approved by the Governor—

(i) must seek the views of any relevant local advisory board; and

(ii) must seek the views of—

20 (A) the responsible Minister for each State authority (other than a council) that will be directly affected by the proposal; and

(B) prescribed bodies,

in relation to the proposal; and

25 (c) if a council is directly affected by the proposal—must seek the views of the council in relation to the proposal and, if the proposal has the potential to create additional costs for the council, must consult with the council in relation to options for funding such additional costs; and

(d) may seek the views of any Minister or other person or body the Commissioner thinks fit; and

30 (e) must, by public notice, give notice of the place or places at which copies of the draft are available for inspection (without charge) and purchase and invite interested persons to make written representations on the proposal within the period specified in the notice.

35 (4) The Commissioner must make copies of all representations made by members of the public in response to a notice under subsection (3)(e) available for public inspection (except in the case of a representation that was made in confidence) and for that purpose the Commissioner must, by public notice, give notice of the place or places at which the copies are available.

(5) Before adopting a management plan, or an amendment to a management plan, the Commissioner must—

(a) have regard to any views expressed by relevant local advisory boards, responsible Ministers, prescribed bodies and councils in relation to the proposal; and

(b) consider all representations made by members of the public in response to a notice under subsection (3)(e),

and the Commissioner may make such alterations to the draft as the Commissioner thinks necessary or desirable.

(6) The Commissioner must—

(a) make reasonable provision for the publication of management plans; and

(b) ensure that copies of management plans are reasonably available for inspection (without charge) by the public at a place or places determined by the Commissioner and on a website determined by the Commissioner; and

(c) ensure that public notice is given of any amendment to a management plan within a reasonable time after the amendment is made.

(7) A failure of the Commissioner to comply with a requirement of this section cannot be taken to affect the validity of a management plan.

(8) In this section—

relevant local advisory board, in relation to a management plan or an amendment to a management plan, means the local advisory board consulted by the Commissioner in relation to the management plan and any other local advisory board that, in the opinion of the Commissioner, has responsibilities relevant to the matters being addressed in the plan or amendment (as the case requires).

18—Effect of management plans

(1) A management plan, and any amendment to a management plan, has no force or effect until approved by the Governor.

(2) A management plan is an expression of policy and does not in itself affect rights or liabilities (whether of a substantive, procedural or other nature).

(3) A State authority must endeavour, as far as practicable, to act consistently with the management plans.

(4) If the Commissioner is reasonably satisfied that a government agency has failed to act consistently or to co-operate with a management plan or that the actions of any other person or body have frustrated proposals included in a management plan or are otherwise likely to affect the implementation of a management plan—

(a) the Commissioner may make a report on the matter to the Minister and to the Premier; and

(b) the Commissioner may forward copies of any such report to the Speaker of the House of Assembly and the President of the Legislative Council with a request that they be laid before their respective Houses.

(5) A power or function of the Commissioner under subsection (4) must not be delegated.

Part 5—Miscellaneous

19—Annual report

- (1) The Commissioner must, on or before 30 September in each year, prepare and deliver to the Minister a report on—
- 5 (a) the operations of the Commissioner and any local advisory boards; and
- (b) the implementation of the management plans,
- during the previous financial year.
- (2) The Minister must, within 12 sitting days after receiving a report under this section, cause a copy of the report to be laid before both Houses of Parliament.

10 20—Review by ERD Committee

The Environment, Resources and Development Committee of the Parliament must inquire into, consider and report to the Parliament on the operation of this Act—

- (a) after this Act has been in operation for a period of 2 years; and
- (b) at the end of each period of 4 years thereafter.

15 21—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) The Minister must undertake consultation (in such manner as the Minister thinks fit) with the Kangaroo Island Council and the Commissioner in relation to any proposed
- 20 regulation under this Act.