

**House of Assembly—No 150**

As laid on the table and read a first time, 10 November 2011

South Australia

**Local Government (Road Closures—1934 Act)  
Amendment Bill 2011**

A BILL FOR

An Act to amend the *Local Government Act 1934*.

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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 *Local Government (Road Closures—1934 Act) Amendment Act 2011*.

5        **2—Commencement**

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

#### **3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10      **Part 2—Amendment of *Local Government Act 1934***

#### **4—Repeal of section 359**

Section 359—delete the section

## Schedule 1—Transitional provisions

### 1—Transitional provisions

- (1) Subject to this clause, the following provisions apply with respect to the repeal of section 359 of the principal Act:
- (a) in relation to a prescribed road that is the subject of a resolution under section 359 of the principal Act—any exclusion of vehicles from the prescribed road in force under that section immediately before the commencement of this clause, or due to take effect after that commencement, may continue or take effect (as the case may be) after that commencement, but in any event will no longer have effect (unless already brought to an end by resolution of the relevant council (a "pre-emptive resolution")) after the expiration of the period of 6 months after the commencement of this clause (the "prescribed period") unless—
- (i) the continuation of the exclusion is, before the expiration of the prescribed period, agreed to by resolution passed by the affected council under this clause; or
- (ii) the exclusion has been the subject of a decision under section 721 of the principal Act (as in existence before its repeal by the *Local Government (Implementation) Act 1999*); or
- (iii) before 10 November 2011, exclusive occupation of the prescribed road had been granted to a person for a period that is due to expire after the expiration of the prescribed period; or
- (iv) except in relation to a prescribed road excluded from the operation of this subparagraph by proclamation—the prescribed road runs into or intersects with a highway and the Commissioner of Highways approved, or concurred with, the exclusion under the *Highways Act 1926* or the *Road Traffic Act 1961*; or
- (v) the prescribed road is, or is within a class of prescribed roads, declared by proclamation made within the prescribed period to be outside the ambit of this paragraph;
- (b) in relation to any road that is the subject of a resolution under section 359 of the principal Act and that is not a prescribed road—any exclusion of vehicles from the road in force under that section immediately before the commencement of this clause, or due to take effect after that commencement, will be taken to be a road closure effected (or to be effected) by resolution under section 32 of the *Road Traffic Act 1961*;
- (c) in relation to a public place that is not a prescribed road or any other kind of road and that is the subject of a resolution under section 359 of the principal Act—the resolution will continue to have effect (or to take effect) and may be—
- (i) enforced by the council;
- (ii) revoked or varied by the council,
- as if this Act had not been enacted.

- (2) An exclusion continued under subclause (1)(a)(i) or (ii) will cease to have effect if both the council for the area in which the prescribed road is situated, and the affected council, determine, by resolution, to revoke the exclusion.
- (3) An exclusion continued undersubclause (1)(a)(iii) will cease to have effect at the end of the period of exclusive occupation of the prescribed road (unless continued under another Act).
- (4) An exclusion continued under subclause (1)(a)(iv) will cease to have effect if the Commissioner for Highways, by notice in the Gazette, revokes the exclusion.
- (5) The Commissioner for Highways must, before acting under subclause (4), give at least 28 days written notice of his or her proposed course of action to any council to be directly affected by the revocation of the exclusion.
- (6) An exclusion continued under subclause (1)(a)(v) will—
- (a) subject to paragraph (b)—continue to have effect and may be enforced by the council as if this Act had not been enacted;
  - (b) cease to have effect if or when revoked by further proclamation.
- (7) If an exclusion ceases to have effect under this clause (other than an exclusion within the ambit of subclause (1)(b)), the council for the relevant area must immediately remove any barricades or other traffic control devices installed by the council to give effect to the exclusion.
- (8) If a council brings an exclusion to an end by a pre-emptive resolution within the meaning of subclause (1), a prescribed road to which the exclusion related (being a prescribed road within the meaning of this clause) will be taken to be a prescribed road under section 32 of the *Road Traffic Act 1961* (and so any subsequent proposal of the council relating to the closure of the road under that section that would be operative for a period referred to in subsection (5)(a) or (b) of that section will be taken to be subject to the operation of subsection (5)(d) of that section).
- (9) In this clause—

***affected council***, in relation to a prescribed road, means—

- (a) in the case of a road that runs into the area of another council—the council into whose area the road runs;
- (b) in the case of a road, or former road, or part of a road or former road, that is subject to a proclamation under paragraph (b) of the definition of ***prescribed road***—a council declared by proclamation to be within the ambit of this definition in relation to that road, former road or part;

***council*** has the same meaning as in the principal Act;

***highway*** has the same meaning as in section 32 of the *Road Traffic Act 1961* and includes any other road that is under the care, control and management of the Commissioner of Highways;

***prescribed road*** means—

- (a) a road that runs into the area of another council; or
- (b) a road, or a former road, or part of a road or former road, declared by proclamation to be within the ambit of this definition;

***principal Act*** means the *Local Government Act 1934*;

***road*** includes a street or other thoroughfare.

- 5 (10) For the purposes of this clause, a road that runs from the area of a council into an intersection and then changes to a different road in the area of another council on the other side of the intersection will be taken to run into the area of another council.
- 10 (11) For the purposes of this clause, a road that was, on the making of a resolution under section 359 of the principal Act with respect to the road, a road that ran into the area of another council within the meaning of this clause will continue to be taken to be a road that runs into the area of another council (and therefore to be a prescribed road) despite the fact that a council, either before or after the commencement of this clause—
- 15 (a) alters the road, or any part of the road; or
- (b) changes the name of the road, or of any part of the road; or
- (c) takes any other action to alter the circumstances that applied to the road or to any part of the road at the time of its closure.
- 20 (12) The Governor should not make a proclamation for the purposes of the definition of ***affected council*** or ***prescribed road*** unless satisfied that the Minister to whom the administration of the principal Act is committed has, before the commencement of this clause, taken reasonable steps to consult with any council to be directly affected by the making of the proclamation.
- 25 (13) For the purposes of subclause (12), if—
- (a) at least 2 months before the commencement of this Act the Minister to whom the administration of the principal Act is committed provided to a council a copy of a draft proclamation in the same terms, or substantially the same terms, as a proclamation that is presented to the Governor for promulgation under this clause; and
- (b) the Minister allowed the council at least 6 weeks in which to respond, then the Minister will be taken to have taken reasonable steps to consult with that council in relation to the relevant proclamation.