

Legislative Council—No 10A

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 14 June 2022

South Australia

Cross Border Commissioner Bill 2022

A BILL FOR

An Act to establish a Cross Border Commissioner charged with facilitating improved outcomes for people and businesses in cross border communities, 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 *Cross Border Commissioner Act 2022*.

2—Commencement

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

3—Interpretation

In this Act—

10 ***Commissioner*** means the person for the time being holding or acting in the office of Cross Border Commissioner under Part 2;

cross border communities means communities located on, or close to, the South Australian border;

government agency means—

- (a) a State authority; or

(b) an agency or instrumentality of the Crown in right of the Commonwealth;

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 an assessment panel appointed or constituted under Part 6 Division 2 of the *Planning, Development and Infrastructure Act 2016*—the Minister responsible for the administration of that Act; 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) an assessment panel appointed or constituted under Part 6 Division 2 of the *Planning, Development and Infrastructure Act 2016*; 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

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—Cross Border Commissioner

6—Appointment of Commissioner

- (1) There will be a Cross Border Commissioner.
- (2) The Commissioner will be appointed by the Governor, on the recommendation of the Minister, and is an agency of the Crown.
- (3) The person appointed as Commissioner—
 - (a) should reside in a cross border community; and
 - (b) should have a detailed understanding of the issues affecting cross border communities; and
 - (c) may be a Public Service employee.

7—Terms and conditions of appointment

- (1) The Commissioner will be appointed for a term not exceeding 3 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 as follows:

- (a) to facilitate collaboration between governments and service providers to address issues involving cross border communities;

- (b) to work and engage with all tiers of government, businesses and the community to ensure the needs of cross border communities are considered in the development and implementation of policy, procedures and legislation;
- (c) to identify key barriers for economic development in the cross border regions;
- 5 (d) to advocate for a simplified regulatory environment for business growth and labour mobility in the cross border regions;
- (e) to facilitate better access to services for cross border communities by working with other jurisdictions and service providers to improve planning for and access to a range of education, justice, health and community services for those communities;
- 10 (f) to update and inform cross border communities and businesses on issues and progress;
- (g) to prepare an annual plan in accordance with section 9;
- (h) to provide reports on any aspect of the Commissioner's functions at the request of the Minister or on the Commissioner's own initiative;
- 15 (i) any other functions conferred on the Commissioner by or under this or any other Act or by the Minister.

9—Annual plan

- (1) The annual plan prepared by the Commissioner must set out—
 - 20 (a) the proposals of the Commissioner in relation to the provision of infrastructure, the effective delivery of services and other matters relating to cross border communities; and
 - (b) the priorities that the Commissioner recommends be pursued in order to implement the proposals; and
 - 25 (c) strategies for consulting and engaging with persons or bodies whose cooperation is required for the effective implementation of the proposals,and may set out any other matters the Commissioner thinks fit.
- (2) After preparing a draft of the annual plan, the Commissioner—
 - 30 (a) must undertake consultation in relation to the draft annual plan with—
 - (i) any council that the Commissioner thinks will be directly affected by any proposal in the plan; and
 - (ii) any members of the House of Assembly whose electorates include areas affected by proposals in the plan; and
 - 35 (iii) any Minister or other person or body the Commissioner thinks fit; and
 - (b) must, publish a draft of the annual plan on a website determined by the Minister and invite interested persons to make written representations on the draft plan within a specified period (which must be not less than 3 weeks).
- 40 (3) The Commissioner must, when finalising the annual plan, have regard to any representations made by persons or bodies consulted under subsection (2)(a) or by members of the public in response to the invitation published under subsection (2)(b).

- (4) The Commissioner must publish—
- (a) the finalised annual plan; and
 - (b) subject to subsection (5)—a list of all persons and bodies that made representations in relation to the draft plan and a summary of those representations,
- 5 on a website determined by the Minister.
- (5) If a person or body making a representation indicated to the Commissioner that the representation was being made in confidence, the Commissioner must not publish any details under subsection (4)(b) in relation to that representation.
- 10 (6) The Governor may, by notice in the Gazette, adopt (wholly or partially) the annual plan published by the Commissioner under subsection (4).
- (7) If the Governor publishes a notice adopting the annual plan, or provisions of an annual plan—
- (a) a State authority must endeavour, as far as practicable, to act consistently with the plan or provisions so adopted; and
 - (b) if the Commissioner is reasonably satisfied that a government agency has failed to act consistently or to cooperate with the plan or provisions, or that the actions of any other person or body have frustrated proposals included in the plan or provisions or are otherwise likely to affect the implementation of the plan or provisions—
- (i) the Commissioner may make a report on the matter to the responsible Minister and to the Premier; and
 - (ii) 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.
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- (8) A function of the Commissioner under subsection (7)(b) must not be delegated.

10—Power to require information

30 The Commissioner may, by written notice given to a person who is an officer or employee of a State authority, require the person to give the Commissioner, within a reasonable time specified in the notice, information in the possession of the State authority that the Commissioner requires for the performance of the Commissioner's functions under this Act.

11—Ministerial direction

- 35 (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 Part 3.

12—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.

13—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*.

14—Staff

The Commissioner's staff consist of—

- (a) Public Service employees assigned to assist the Commissioner; and
- (b) persons employed by the Commissioner, with the consent of the Minister and on terms and conditions determined by the Minister, to assist the Commissioner.

15—Delegation

- (1) Subject to this Act, the Minister and the Commissioner may delegate any functions under this Act.
- (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.
- (3) A function delegated under this section may, if the instrument of delegation so provides, be further delegated.

Part 3—Miscellaneous

16—Confidentiality

- (1) A person must not divulge or communicate personal information, information relating to trade secrets or business processes or financial information acquired by reason of being, or having been, employed or engaged in, or in connection with, the administration of this Act, except—
- (a) with the consent of the person to whom the information relates; or
 - (b) as authorised by the Commissioner; or
 - (c) in connection with the administration of this Act; or

- (d) to a police officer or a member of the police force of another State, a Territory of the Commonwealth or the Commonwealth; or
- (e) to a person concerned in the administration of another law of the State, or a law of another State, a Territory of the Commonwealth or the Commonwealth; or
- (f) for the purposes of legal proceedings.

Maximum penalty: \$20 000.

- (2) Information that has been disclosed under this section for a particular purpose must not be used for any other purpose by—

- (a) the person to whom the information was disclosed; or
- (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$20 000.

17—Annual report

- (1) The Commissioner must, on or before 30 September in each year, prepare and deliver to the Minister a report on the operations of the Commissioner 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.

18—Review of Act

- (1) The Minister must cause an independent review of the operation of this Act to be conducted, and a report on the review to be prepared and submitted to the Minister—
 - (a) after this Act has been in operation for a period of 3 years; and
 - (b) at the end of each period of 5 years thereafter.
- (2) The Minister must cause a copy of a report submitted under subsection (1) to be laid before both Houses of Parliament within 12 sitting days after receiving the report.

19—Regulations

The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.