

House of Assembly—No 14A

As reported with amendments, report agreed to and passed remaining stages,
6 July 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.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Interpretation
- 4 Interaction with other Acts

Part 2—Cross Border Commissioner

- 6 Appointment of Commissioner
- 7 Terms and conditions of appointment
- 8 Functions of Commissioner
- 11 Ministerial direction
- 12 Appointment of acting Commissioner
- 13 Honesty and accountability
- 14 Staff
- 15 Delegation

Part 3—Miscellaneous

- 16 Confidentiality
 - 17 Annual report
 - 18 Review of Act
 - 19 Regulations
-

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*.

5 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.

4—Interaction with other Acts

15 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.

Part 2—Cross Border Commissioner

6—Appointment of Commissioner

- (1) There will be a Cross Border Commissioner.
- 5 (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
 - 10 (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.
- 15 (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
 - 20 (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
 - 25 (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
 - 30 (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:

- 35 (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 consultation with the Minister;
- (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.

11—Ministerial direction

- (1) Subject to this section, the Minister may give directions to the Commissioner.
- 20 (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

- 25 (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.
- 30

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

- 5 (1) Subject to this section, 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
 - 10 (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

15 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—
 - 20 (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
 - 25 (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.
- 30 (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.35 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.
- 5 (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—
- 10 (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

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