

South Australia

Local Government (Boundary Adjustment) Amendment Act 2017

An Act to amend the *Local Government Act 1999*; and to make related amendments to the *South Australian Local Government Grants Commission Act 1992*.

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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 (Boundary Adjustment) Amendment Act 2017*.

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.

Part 2—Amendment of *Local Government Act 1999*

4—Amendment of section 4—Interpretation

Section 4(1)—after the definition of *commercial project* insert:

Commission means the South Australian Local Government Grants Commission established under the *South Australian Local Government Grants Commission Act 1992*;

5—Amendment of section 8—Principles to be observed by a council

Section 8—after paragraph (e) insert:

- (ea) seek to collaborate and form partnerships with other councils and regional bodies for the purposes of delivering cost-effective services (while avoiding cost-shifting among councils), integrated planning, maintaining local representation of communities and facilitating community benefit;

6—Amendment of section 26—Principles

- (1) Section 26(1) and (2)—delete "Minister" wherever occurring and substitute in each case:

Commission

- (2) Section 26(1)(c)(x)—delete subparagraph (x)

- (3) Section 26(1)(c)(xii) and (xiii)—delete subparagraphs (xii) and (xiii) and substitute:
- (xii) a scheme that provides for the performance of functions and delivery of services in relation to 2 or more councils (for example, a scheme for regional governance) may improve councils' capacity to deliver services on a regional basis and therefore offer a viable and appropriate alternative to structural change; and

7—Substitution of Chapter 3 Part 2 Divisions 4 to 7

Chapter 3 Part 2 Divisions 4 to 7—delete Divisions 4 to 7 (inclusive) and substitute:

Division 4—Procedures for proposals

27—Preliminary

- (1) In this Division—

administrative proposal—see section 30(7);

eligible elector, in relation to a proposal, is—

- (a) in the case of a proposal to alter the boundaries of 2 or more councils to incorporate land within the area of a council into the area of another council (a *receiving council*)—an elector in respect of a place of residence or rateable property within the area of a receiving council, or within the area that would be so incorporated; or
- (b) in the case of a proposal that relates to the composition of a council or the issue of wards within the area of a council—an elector in respect of a place of residence or rateable property within the area of the council; or
- (c) in the case of a proposal to incorporate within the area of a council a part of the State that is not within the area of a council (the *outside area*)—a person, body corporate or group within the outside area who or which would, if the proposal were to proceed, be an elector in respect of a place of residence or rateable property within the area that would be so incorporated;

general proposal means a proposal for the making of a proclamation under this Chapter, other than an administrative proposal;

proposal includes an administrative proposal or a general proposal;

proposal guidelines—see subsection (2).

- (2) The Commission must prepare and publish on a website determined by the Commission guidelines (*proposal guidelines*) for the purposes of this Division.
- (3) Without limiting subsection (2), the proposal guidelines—
- (a) must set out procedures for inquiries under this Division; and

- (b) must specify requirements relating to consultation that must be undertaken for the purposes of inquiries under this Division, including consultation with the community, councils affected by proposals and entities that represent the interests of council employees affected by proposals; and
 - (c) must set out procedures relating to the determination by the Commission of the reasonable costs of an inquiry for the purposes of section 32B; and
 - (d) may provide for any other matter the Commission thinks appropriate.
- (4) A provision of the proposal guidelines may be of general, limited or varied application according to—
- (a) the kind of proposal or inquiry; or
 - (b) any other specified factor,
- to which the provision is expressed to apply.

28—Commission to receive proposals

- (1) Subject to this section, a proposal for the making of a proclamation under this Chapter may be referred to the Commission—
- (a) by resolution of either House of Parliament; or
 - (b) by the Minister; or
 - (c) by a council or councils; or
 - (d) by the prescribed percentage or number of eligible electors.
- (2) A proposal referred under subsection (1)(d) by the prescribed percentage or number of eligible electors may only relate to—
- (a) the alteration of council boundaries to incorporate land within the area of a council into the area of another council; or
 - (b) the composition of a council or its representative structure; or
 - (c) the incorporation within the area of a council a part of the State that is not within the area of a council.
- (3) A proposal under this section must—
- (a) set out in general terms the nature of the proposal; and
 - (b) comply with any requirements of the proposal guidelines.

29—Commission to deal with proposals

- (1) The Commission must, in accordance with the proposal guidelines, assess a proposal and determine whether—
- (a) to inquire into the proposal in accordance with subsection (2); or

- (b) to refuse to inquire into the proposal in accordance with subsection (3).
- (2) If the Commission determines to inquire into a proposal, the following provisions apply:
 - (a) if the proposal is an administrative proposal, the Commission must inquire into the administrative proposal in accordance with section 30;
 - (b) if the proposal is a general proposal, the Commission must inquire into the general proposal in accordance with section 31.
- (3) The Commission may refuse to inquire into a proposal if the Commission considers that—
 - (a) the proposal is vexatious, frivolous or trivial; or
 - (b) it is not in the public interest to inquire into the proposal; or
 - (c) the proposal is the same as or substantially similar to a proposal that has already been inquired into; or
 - (d) there is some other good reason to refuse to inquire into the proposal.
- (4) For the purposes of this Division—
 - (a) an inquiry may relate to 1 or more proposals before the Commission; and
 - (b) a proposal received by the Commission after the commencement of an inquiry may be dealt with at the inquiry, if the Commission determines it appropriate to do so.

30—Inquiries—administrative proposals

- (1) An inquiry under this section into an administrative proposal will be conducted by the Commission according to such procedures as the Commission thinks fit, provided that a reasonable amount of community consultation is conducted in accordance with the proposal guidelines.
- (2) Despite subsection (1), the Commission may determine not to conduct community consultation in relation to a particular administrative proposal if the Commission considers it unnecessary to do so.
- (3) After conducting an inquiry into an administrative proposal, the Commission must consult with the Minister on the matter (including on any recommendations that the Commission proposes to make in relation to the administrative proposal).

- (4) After consulting with the Minister under subsection (3), the Commission must—
 - (a) prepare and publish on a website determined by the Commission a report on the administrative proposal that includes the Commission's recommendations as to the administrative proposal (subject to any redactions or limitations that the Commission considers necessary to prevent the disclosure of confidential or commercially sensitive information); and
 - (b) provide a copy of the report to the Minister.
- (5) To avoid doubt, if the Commission determines to recommend an administrative proposal in a report under subsection (4), the administrative proposal recommended may involve such variations as the Commission thinks fit to the administrative proposal referred to the Commission under this Division.
- (6) The Minister may, in relation to an administrative proposal set out in a report under subsection (4), determine that—
 - (a) the administrative proposal proceed and forward it to the Governor with a recommendation that a proclamation be made under this Chapter in relation to the administrative proposal; or
 - (b) the administrative proposal not proceed.
- (7) In this section—

administrative proposal means a proposal—

 - (a) relating to the alteration of a boundary that is shared by 2 or more councils—
 - (i) to facilitate a development that has been granted a development authorisation (within the meaning of the *Planning, Development and Infrastructure Act 2016*); or
 - (ii) to correct an anomaly that is, in the opinion of the Commission, generally recognised; or
 - (b) in the case of a boundary shared by 2 or more councils that falls along a road—relating to the alteration of the boundary following the realignment of the road; or
 - (c) relating to the alteration of a boundary to incorporate within the area of a council vacant land in a part of the State that is not within the area of a council; or
 - (d) of a kind prescribed by the regulations.

31—Inquiries—general proposals

- (1) The Commission—
 - (a) in the case of an inquiry under this section into a general proposal—
 - (i) referred by resolution of either House of Parliament or by the Minister; or
 - (ii) of a prescribed kind,must appoint 1 or more investigators to conduct the inquiry; or
 - (b) in any other case—may appoint 1 or more investigators to conduct the inquiry.
- (2) In appointing investigators to conduct inquiries under this section, the Commission must seek to ensure, as far as is reasonably practicable, that—
 - (a) the qualifications, knowledge, expertise and experience of a particular investigator are relevant to the inquiry for which the investigator is being appointed; and
 - (b) councils affected by a proposal the subject of an inquiry are consulted on proposed appointments.
- (3) An inquiry into a general proposal under this section—
 - (a) must be conducted in accordance with the proposal guidelines; and
 - (b) must consider (in addition to the principles set out in section 26)—
 - (i) the financial implications and impact on resources that the general proposal is likely to have on any council affected by the general proposal; and
 - (ii) the extent of support for the general proposal (in particular) and boundary reform in the area (in a general sense) within the community affected by the general proposal; and
 - (iii) the extent of support for the general proposal of any council affected by the general proposal; and
 - (iv) the impact on the various rights and interests of any council employees affected by the general proposal; and
 - (v) any other principles prescribed by the regulations.
- (4) An investigator appointed to conduct an inquiry under this section must—
 - (a) comply with any directions or requirements of the Commission relating to the inquiry; and

- (b) at the conclusion of the inquiry, provide a report on the inquiry to the Commission.
- (5) The Commission must—
 - (a) after conducting an inquiry to which this section applies; or
 - (b) receiving a report under subsection (4),
prepare and publish on a website determined by the Commission a report on the matter that includes the Commission's recommendations as to the general proposal (subject to any redactions or limitations that the Commission considers necessary to prevent the disclosure of confidential or commercially sensitive information) and provide a copy of the report to the Minister.
- (6) To avoid doubt, if the Commission determines to recommend a general proposal in a report under this section, the general proposal recommended may involve such variations as the Commission thinks fit to the general proposal referred to the Commission under this Division.
- (7) The Commission may include in a report published under this section recommendations relating to the delivery of services on a regional basis by councils as an alternative to structural change, or any other recommendation the Commission considers appropriate.
- (8) The Minister may, on receipt of a report, request that the Commission make specified amendments to the report (including to recommendations in the report).
- (9) On receipt of a request under subsection (8)—
 - (a) the Commission may make such amendments (if any) as the Commission considers appropriate; and
 - (b) if the Commission makes amendments, the Commission must—
 - (i) publish an amended report on a website determined by the Commission; and
 - (ii) provide a copy of the amended report to the Minister.
- (10) The Minister may, in relation to a general proposal set out in a report of the Commission under subsection (5) or subsection (9)—
 - (a) determine that the general proposal proceed and forward it to the Governor with a recommendation that a proclamation be made under this Chapter in relation to the general proposal; or
 - (b) determine that the general proposal not proceed; or
 - (c) in the case of a general proposal referred to the Commission by a council that the Commission has recommended in the report not proceed—at the request of 1 or more councils, consult with the relevant councils about the matter.

- (11) After consultation in accordance with subsection (10)(c), the Minister may—
- (a) if the Minister determines that it is appropriate to make a recommendation to the Governor in the circumstances of the particular case, forward the general proposal to the Governor with a recommendation that a proclamation be made under this Chapter in relation to the general proposal; or
 - (b) in any other case—determine that the general proposal not proceed.

32—Notification of outcome of inquiries

- (1) After completion of all relevant procedures in relation to an inquiry under section 30 or 31, the Commission must give public notice of, and notify the following persons or bodies of, the Minister's determination in relation to the proposal:
- (a) the person or body who referred the proposal to the Commission;
 - (b) any council affected by the proposal;
 - (c) any registered industrial association (within the meaning of section 108) that represents the interests of employees of councils.
- (2) In addition, if a general proposal recommended by the Commission under section 31 does not proceed to a proclamation after completion of all relevant procedures under that section, the Minister must prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

32A—Powers relating to inquiries

- (1) The Commission or an investigator conducting an inquiry under this Division may, in connection with the inquiry—
- (a) by summons signed by the Commission or investigator (as the case requires), require a person's attendance; and
 - (b) require a person to answer, orally or in writing, questions to the best of his or her knowledge, information and belief; and
 - (c) require a person to verify an answer under paragraph (b) by declaration; and
 - (d) require a council or person to produce any relevant documents or other records; and
 - (e) retain documents or other records produced under paragraph (d) for reasonable periods and make copies of them or their contents; and
 - (f) call for or receive submissions or representations.

- (2) Subject to subsection (3), a person or council must not refuse or fail to comply with a requirement under subsection (1).

Maximum penalty: \$10 000.

- (3) A person is not obliged to comply with a requirement under subsection (1) if to do so might incriminate the person of an offence, and a person or a council is not required to provide information under subsection (1) that is privileged on the ground of legal professional privilege.

32B—Costs

The Commission may recover reasonable costs incurred in respect of an inquiry in relation to a general proposal referred to the Commission by a council or councils under this Division as a debt due from the council or councils.

32C—Inquiries—independence of Commission etc

- (1) Except as provided by this Division, the Commission or an investigator appointed by the Commission is not subject to Ministerial direction in relation to an inquiry or a recommendation or report under this Division.
- (2) Sections 16 to 18 of the *South Australian Local Government Grants Commission Act 1992* do not apply to or in relation to an inquiry conducted or recommendation made under this Division.

8—Amendment of section 34—Error or deficiency in address, recommendation, notice or proclamation

Section 34(1)—delete "or in a recommendation or report of the Minister" and substitute:

, in a recommendation of the Minister, or in a report of the Commission

9—Amendment of section 110—Code of conduct for employees

Section 110(2)—after "registered" insert:

industrial

10—Amendment of section 122—Strategic management plans

Section 122(1)(a)(iii)—after "governments" insert:

and councils or other regional bodies

11—Amendment of Schedule 5—Documents to be made available by councils

Schedule 5, item commencing **Reviews of council constitution, wards and boundaries**, second and third dot points—delete the second and third dot points

Schedule 1—Related amendments and transitional provision

Part 1—Related amendments to *South Australian Local Government Grants Commission Act 1992*

1—Amendment of section 5—The Account

- (1) Section 5(2)—after paragraph (d) insert:
 - (e) amounts paid into the Account for the purposes of the Commission's functions under any other Act.
- (2) Section 5(3)(b)—after "this Act" insert:

or the performance of the Commission's functions under any other Act

2—Amendment of section 14—Staff

Section 14(1)—delete "this Act" and substitute:
the performance of the Commission's functions under this and any other Act

3—Amendment of section 15—Functions of Commission

Section 15(1)(b)—after "this" insert:
or any other

Part 2—Transitional provision

4—Transitional provision

Any process or proceeding commenced before the commencement of this clause under Chapter 3 Part 2 of the *Local Government Act 1999* (as in existence before the amendment of that Part by this Act) may be continued and completed in accordance with the process set out in Chapter 3 Part 2 of the *Local Government Act 1999* (and be the subject of any appropriate proclamation) as if that Part had not been amended by this Act.