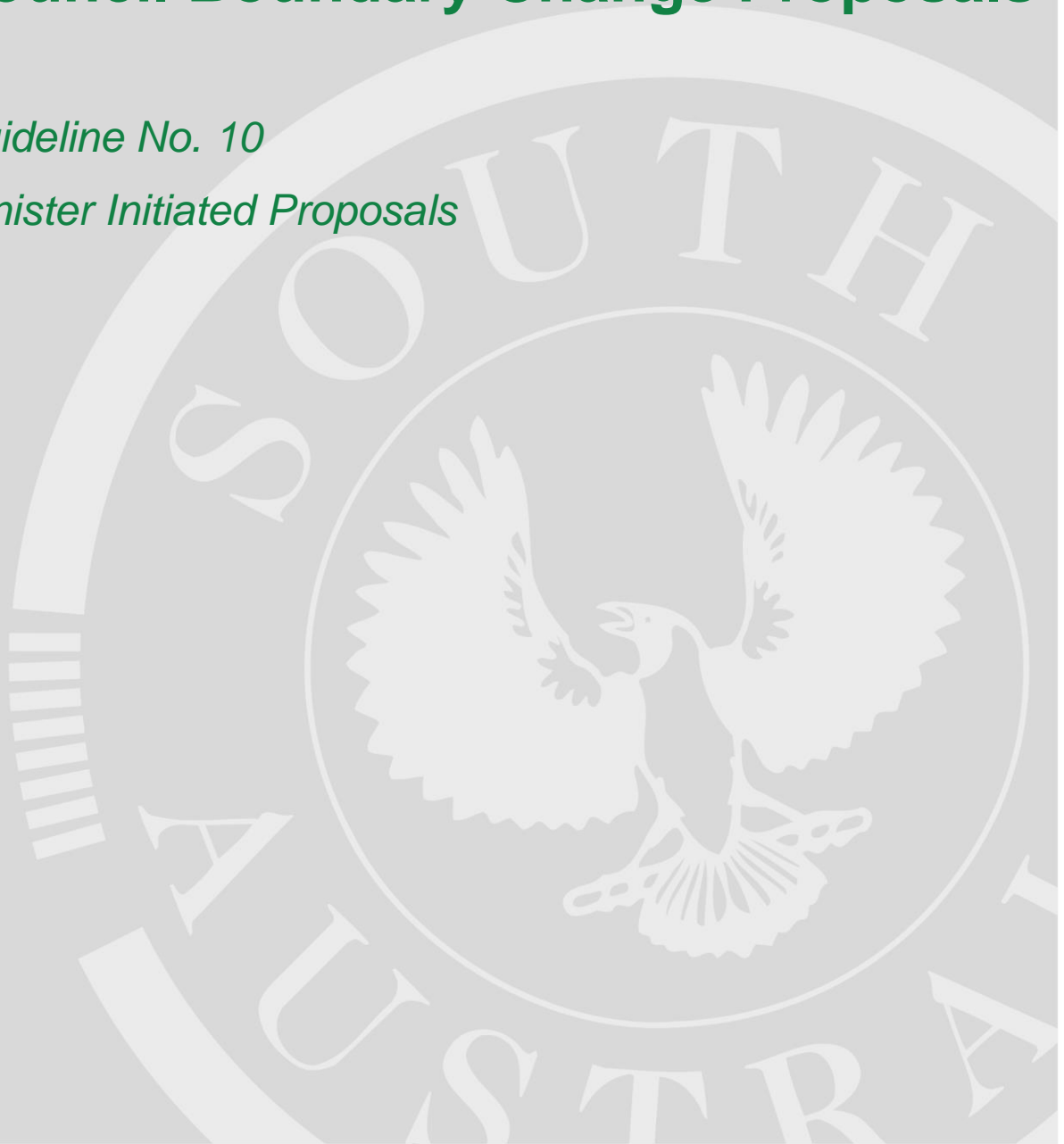


Council Boundary Change Proposals

Guideline No. 10

Minister Initiated Proposals



This Guideline should be read in conjunction with the procedures for boundary change proposals which are set out in Chapter 3, Part 2 of the *Local Government Act 1999* (the Act). The Act is accessible via the [South Australian Legislation website](#).

The Boundaries Commission (the Commission) is the body established to undertake the initial assessment of proposals, oversee investigations, and make recommendations to the Minister responsible for the Act (the Minister). This role is undertaken by the Local Government Grants Commission.

This Guideline has been issued by the Commission to provide information on general proposals initiated by the Minister, including the steps that need to be taken to prepare a submission. Guideline 2 details the process for proposals that are considered administrative under Section 30 of the Act, including Minister initiated.

What is a general proposal?

A general proposal is a proposal that is not defined as an 'administrative proposal' within section 30(7) of the Act (for example, general proposals may include a significant boundary change or amalgamation). Further information on administrative proposals is contained within Guideline 2.

Who can submit a general proposal?

Proposals may be referred to the Commission—

- by resolution of either House of Parliament;
- by the Minister;
- by a council or councils; or
- by the prescribed percentage or number of eligible electors.

Referral of a Minister initiated general proposal

The Commission requires the matters listed below to be included in a Minister initiated proposal as far as the Minister can be reasonably aware of them.

Description of the proposal

- The reasons for the referral of the proposal.
- Provide a detailed description of the proposal.
- Clearly identify all councils involved.
- Maps that clearly depict in sufficient details the area subject to the proposal and the surrounding areas relevant to the proposal.

Section 26 principles

- Describe the proposal with reference to the principles set out in section 26 of the Act and contained and described in Attachment 1 and 2.

Community of interest

- Discuss various components (cultural, heritage, shopping, community services, road and other transport links, sporting, etc.) of the social fabric of the area which is the subject of the proposal. Identify common interests that would be likely to benefit from the proposal.
- Identify any individual large community or business assets, or significant geographical features in the area of the proposal that you consider affect the community of interest.

Consultation

- Provide a description of any consultation undertaken with the relevant councils and/or community.
- Summary of the views of the relevant councils and/or community that have been provided as part of any consultation

Advantages and Disadvantages

- Provide a balanced representation of the advantages and disadvantages of the proposal.

Any other relevant information

- Information the Minister considers relevant for matters the Commission must consider under section 31(3)(b) of the Act.

What happens following a submission to the Commission?

The Commission will assess the proposal in accordance with the Act and the Guidelines and determine whether to inquire into the proposal or refuse to inquire into the proposal.

The Commission may refuse to inquire into a proposal if the Commission considers that—

- The proposal is vexatious, frivolous or trivial; or
- If it is not in the public interest to inquire into the proposal; or
- The proposal is the same as or substantially similar to a proposal that has already been inquired into; or
- there is some other good reason to refuse to inquire into a proposal, for example, the issues raised in the inquiry were dealt with through a previous representation review in line with Section 12 of the Act.

The Commission may also decide to defer consideration of a proposal if it is of the view that the proposal cannot be finalised and gazetted by 31 December of the calendar year preceding a periodic council election.

The Commission may seek additional information from the Minister or affected councils to assist with its decision and will directly notify the Minister of its decision.

The Act gives the Commission flexibility to deal with proposals to ensure that the most effective inquiry into an identified issue is undertaken.

Inquiry into a Minister Initiated General Proposal

Section 31 of the Act sets out the process for inquiries into general proposals. The Act provides for an independent analysis of major proposals by one or more investigators consisting of expertise that is determined to be necessary for each proposal.

The Commission must appoint investigators when a general proposal is referred to it by either the Minister or by resolution of either House of Parliament. Further information on the appointment of investigators is contained within Guideline 5.

When considering any boundary change proposal, the Commission must refer to the objects of the Act as a whole, and in particular, the Principles contained within section 26 of the Act (Attachment 1). The Commission is obliged to take these principles into consideration when making recommendations on boundary changes.

In addition to these principles, an inquiry must consider the matters in section 31(3)(b) of the Act —

- The financial implications and impact on resources that the proposal is likely to have on any council affected by the general proposal; and
- The extent of support for the general proposal and boundary reform in the area within the community affected by the general proposal; and
- The extent of support for the general proposal of any council affected by the general proposal; and
- The impact of the various rights and interests of any council employees affected by the general proposal; and
- Any other principles prescribed by regulations.

Other matters an inquiry may consider include—

- Division of assets and liabilities – including land and buildings, plant and equipment, cash, investments, interests in and business activities, debtors, debt, overdraft, staff entitlements;
- Impact of any significant contracts;
- Ability of communities to access council services and relevant communication issues between councils and communities;
- Assessment of any significant differences in rating policies of the councils involved, the impacts on ratepayers and how these are to be addressed in both the short and longer term;
- Potential conflicts that may arise from existing patterns of land use if the proposal was implemented, for example, predominantly residential areas being aligned with intensive agricultural lands.
- Assessment of any significant differences in fees and charges of the councils involved;
- Material impact of legal orders and proceedings;

- Assessment of any significant differences in service levels provided by the councils involved; and
- Implications for council employees, including any proposed transfer of staff and conditions of employment.

Provision of Information

Section 32A of the Act provides powers for the Commission or an investigator to obtain information in connection with an inquiry. The Commission or its investigators may seek relevant information from a person or affected councils to inform consideration of the above matters.

Commission's Engagement and Consultation

As part of its assessment of a Minister initiated general proposal, the Commission is required to consult widely with the affected councils and the public. Guideline 9 details how the Commission and its investigators will undertake engagement and consultation on boundary change proposals. The Commission will design an engagement plan for each general proposal.

Finalisation of an Inquiry into a Minister Initiated proposal

At the conclusion of an inquiry, the Commission must prepare and publish on a website a report that includes the Commission's recommendations and provide a report to the Minister. If the Commission determines to recommend a general proposal, the proposal may involve such variations as the Commission thinks fit.

The Commission may include in a report recommendation relating to the delivery of services on a regional basis by councils as an alternative to boundary change, or any other recommendation the Commission considers appropriate.

The Commission may also include a recommendation that the Minister write to the Electoral Commission of South Australia (ECSA) if the acceptance of a recommendation would have an impact on representation in council ward areas.

The Minister may send the report back to the Commission for reconsideration in accordance with any suggestions by the Minister. However, if this does occur, the Commission must then publish an amended report and provide a copy of the amended report to the Minister. The Minister may then determine whether a proposal recommended by the Commission should proceed.

If the Minister determines that the proposal proceed, it will be forwarded to the Governor with a recommendation that a proclamation be made.

The Minister may, 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. After consultation, 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.

If the Minister determines that a proposal not proceed, the Minister must prepare a report for both Houses of Parliament.

Following completion of an inquiry, the Commission must give public notice of the Minister's determination. The Commission must also notify the person or body who referred the proposal to the Commission, any council affected by the proposal, and any registered industrial association that represents the interests of employees of councils.

In line with the Commissions 'Publication Policy' the Commission will, upon receipt of all proposals, make the proposal publicly available on its website.

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Guideline Versions – Guideline 10		
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1.0	Published	23/12/2022

ATTACHMENT 1**26—Principles**

(1) The Commission should have regard to—

- The objects of the Act
- The roles, functions and objectives of councils under this Act; and
- The following principles:
 - The resources available to local communities should be used as economically as possible while recognising the desirability of avoiding significant divisions within a community;
 - Proposed changes should, wherever practicable, benefit ratepayers;
 - A council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;
 - A council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;
 - A council should facilitate effective planning and development within an area, and be constituted with respect to an area that can be promoted on a coherent basis;
 - A council should be in a position to facilitate sustainable development, the protection of the environment and the integration of land use schemes
 - A council should reflect communities of interest of an economic, recreational, social, regional or other kind, and be consistent with community structures, values, expectations and aspirations
 - A council area should incorporate or promote an accessible centre (or centres) for local administration and services
 - The importance within the scheme of local government to ensure that local communities within large council areas can participate effectively in decisions about local matters
 - Residents should receive adequate and fair representation within the local government system, while over-representation in comparison with councils of a similar size and type should be avoided (at least in the longer term)
 - 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
- The extent and frequency of previous changes affecting the council or councils under this Chapter or the repealed Act.
- The Commission should, so far as is relevant, give preference to structural changes that enhance the capacity of local government to play a significant role in the future of an area or region from a strategic perspective.

ATTACHMENT 2

The principles guide the Commission in balancing various council and community interests. While general in nature, they address a range of considerations, including communities of interest, effective governance, operational capacity, delivery of services, effective planning and development, accessibility, and adequate and fair representation. Consideration will also be given to regional activities that may offer a viable and appropriate alternative to boundary change.

The principles emphasise the importance of ensuring that boundary changes enhance the capacity of local government within the area to continue to deliver results to local communities in a more strategic and effective way.

Below are some questions you may wish to consider when formulating a proposal—

- How will the proposal align resources to where they are most needed and provide value to ratepayers?
- How will the proposal increase the council's ability to improve operational capacity and financial sustainability?
- What impact will the proposal have on the resource base of affected councils?
- How will the proposal enhance the capacity of the council to deliver better services to the community?
- How does the proposal support communities of interest?
 - Similar interests are important for groups that have been represented together because of their close geography or social and economic interests. Factors contributing to a sense of community included shared interests and shared use of community facilities.
 - Is there a sense of belonging or stronger community connection with the area which can be clearly defined?
 - Identify common interests that would be likely to benefit from the proposal, such as economic, social, heritage, cultural and recreational.
 - Consider the functional relationships and whether the proposal meets the community's needs, for example, use of services, road and transport links, shopping etc.
- How will the proposal improve representation?
- Has consideration been given to delivering services on a regional basis as an alternative to boundary change?