

Explanatory Paper

Local Government (Boundary Adjustment) Amendment Act 2017

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INTRODUCTION

The *Local Government (Boundary Adjustment) Amendment Act 2017* (the Amendment Act) reforms the legislative provisions that govern how council boundaries can be changed under the *Local Government Act 1999* (the Act).

Legislative framework

The legislative framework that underpinned the Amendment Act was based on review work undertaken by the Office of Local Government (OLG) and the Local Government Association (LGA), as overseen by the Premier’s State/Local Government Forum. The Act therefore reflects the principles and processes for local government boundary adjustments and reform that were endorsed by the LGA Board and the Premier’s State/Local Government Forum.

To give effect to the framework, the Amendment Act amends Chapter Three, Part Two of the Act to allow for a more efficient process to progress minor boundary changes, and to enable freer debate and discussion on more significant boundary change proposals. The legislation will commence on 1 January 2019.

Key elements of the Amendment Act

The Amendment Act removes the limitations and inefficiencies in the current boundary change processes contained within the Act. Some of these include current restrictions on who can initiate reform proposals, burdensome procedural requirements and the necessity for two or more councils to agree with reform proposals from members of the public.

The key elements of the Amendment Act are—

- a simpler and broader initiation process, allowing proposals to be initiated by a single council or the Minister for Local Government;
- the introduction of a simplified pathway for administrative (minor) proposals;
- establishing the Local Government Grants Commission (the Commission) as an independent Commission to undertake the initial assessment of proposals, oversee investigations, and make recommendations to the Minister; and
- independent analysis of general proposals—significant boundary changes, amalgamations or significant structural reform—by one or more investigators with the relevant expertise for each proposal.
- an independent analysis of significant boundary change or amalgamation proposals, by investigators with expertise relevant to each proposal.

A simplified flowchart outlining the Amendment Act’s procedures for boundary change proposals is included in Attachment 1.

THE PROVISIONS OF THE AMENDMENT ACT

Part 1 – Preliminary

Part 1 of the Amendment Act contains preliminary information about the short title of the Amendment Act, commencement (the Act will come into operation on a day to be fixed by proclamation – 1 January 2019) and amendment provisions.

Part 2 – Amendment of *Local Government Act 1999*

Part 2 of the Amendment Act contains provisions to amend the *Local Government Act 1999* (the Act).

4—Amendment of section 4—Interpretation

The Amendment Act provides for the establishment of the Local Government Grants Commission as the independent Commission (the Commission) to oversee the investigation of proposed boundary changes.

The Commission’s chief role will be to—

- assess proposals to determine their validity and significance;
- oversee a simple, essentially administrative process for the assessment of minor administrative proposals;
- appoint one or more investigators to undertake detailed work on major proposals; and
- provide recommendations to the Minister for Local Government at the completion of these processes.

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

The LGA requested additional amendments to the Act to support the development of effective regional governance models in local government. The Amendment Act therefore includes an additional principle to be observed by councils relating to regional collaboration.

6—Amendment of section 26—Principles

Section 26 of the Act contains principles that must be considered when decisions about boundary changes are made. This section emphasises the importance of ensuring that boundary changes enhance the capacity of local government to deliver results to local communities in a more strategic and effective way.

The Amendment Act removes the provision that it is advantageous (but not essential) to amalgamate whole areas of councils (with associated boundary changes, if necessary), and to avoid significant dislocations within the community. The Amendment Act also includes a new principle for boundary change, where consideration will be given to regional activities that may offer a viable and appropriate alternative to boundary change.

Division 4—Procedures for proposals

27—Preliminary

This section includes definitions under this Division, including new definitions for administrative proposals, general proposals, proposals and proposal guidelines. The definition of eligible electors is also included, however, this is the same definition as the current Act.

An elector is a person, body corporate or group of persons enrolled on the voters roll for a council. In the case of a proposal to alter the boundaries of two or more councils, eligible electors are those whose place of residence or rateable property is either within the area of the receiving council or the affected area.

The Amendment Act provides for the Commission to prepare and publish on a website guidelines that will set out procedures for inquiries. Guidelines will also be prepared that will specify consultation requirements and detail the process by which the Commission will determine the cost of an investigation that is undertaken as required by section 32B. Section 32B requires councils to resource the investigation of proposals that they initiate.

The guidelines may provide for any other matter the Commission thinks appropriate.

28—Commission to receive proposals

This section relates to the referral of proposals to the Commission.

The initiation of council boundary change proposals is currently restricted to two or more councils in agreement with each other, both Houses of Parliament, or members of the public. South Australia is the only State which does not allow the Minister to initiate proposals. It is also the only jurisdiction where council-led proposals must be agreed to by all councils involved before there can be any wider debate or discussion on these proposals.

The Amendment Act therefore provides for a broader range of initiation powers by allowing proposals to be submitted to the Commission by—

Resolution of either House of Parliament

The Amendment Act provides for one or both Houses of Parliament to submit a proposal to the Commission (as is currently the case).

The Minister for Local Government

Allowing the Minister to make an application for boundary change aligns the initiation process in South Australia with other jurisdictions. It also has the potential to allow consideration of a wider range of potential options and ideas.

Council(s) or members of the public may also ask the Minister to initiate a proposal on their behalf.

Councils (including single councils)

The Act allows a boundary change proposal to be made by a single council. This may also increase the accessibility of boundary reform processes to members of the public as each affected council would not be required to agree to a public initiated proposal for it to be submitted to the Commission.

Members of the Public

The provisions relating to the types of proposals referred by eligible electors are consistent with the current Act. Members of the public can submit a proposal to the Commission to consider boundary alterations, changes in the composition of a council or its representative structure, or the inclusion of unincorporated land into a council, however they cannot initiate a council amalgamation or the creation of a new council.

The Amendment Act provides that a public initiated proposal may be referred to the Commission by a prescribed percentage or number of eligible electors. It is expected that the prescribed percentage would be 10 percent. This figure was supported during consultation on the draft Bill. The inclusion of a prescribed percentage ensures that a representative sample can initiate a proposal.

The Amendment Act also replaces the currently separated public and council initiated processes with a single application process, irrespective of the initiator of the proposal.

Proposals must set out in general terms the nature of the proposal and comply with any requirements published by the Commission.

29—Commission to deal with proposals

These provisions set the framework by which the Commission receives and assesses a proposal, in order to determine whether to proceed or not. They also provide the direction for the Commission to undertake an investigation as the legislation requires.

The Amendment Act enables the Commission to refuse to inquire into a proposal if it is considered to be vexatious, frivolous or trivial; or if it is not considered to be in the public interest; or if it is the same or substantially similar to a proposal already inquired into; or if there is some other good reason to refuse to inquire into the proposal. For example, a proposal should not be used to express dissatisfaction with the services a council provides.

The Amendment Act also gives the Commission flexibility to deal with proposals. For example, the Commission may deal with similar or competing proposals that are referred to it.

30—Inquiries—administrative proposals

The Amendment Act introduces a simplified pathway for minor administrative proposals, including—

- to facilitate a development that has been granted an authorisation under the *Planning, Development and Infrastructure Act 2016*¹;
- to correct an anomaly that is, in the opinion of the Commission, generally recognised e.g. where the boundary intercepts one or more privately owned properties;
- where the common boundary of two or more councils requires adjustment following the physical realignment of a common road;
- a proposal to incorporate vacant unincorporated land into a council area;
- any other matter prescribed in regulation.

For proposals of this nature, the Commission would conduct an inquiry, provided that a reasonable amount of consultation is conducted in accordance with any guidelines published by the Commission. As the process for administrative proposals is more streamlined, the Amendment Act recognises that there will be communication between the Commission and the Minister on these proposals.

The Commission would then prepare and publish a report on the inquiry that includes the Commission’s recommendations and provide a report to the Minister. The Minister may then determine whether the proposal should proceed or not.

31—Inquiries—general proposals

The Amendment Act provides for an independent analysis of major proposals (for example, significant boundary changes or amalgamations) by one or more investigators consisting of expertise that is determined to be necessary for each proposal.

For these general proposals, the Commission can appoint one or more investigators to undertake a detailed inquiry into the proposal. However, the Commission must appoint investigators when a general proposal is referred to them by either the Minister or by resolution of either House of Parliament.

The Amendment Act also provides appropriate flexibility in appointing investigators—more significant proposals will require a number of investigators, whereas relatively straightforward proposals may be completed ‘in house’ (for council initiated proposals), or may only require a single investigator.

¹ Note: The Commission will not be involved in legislative planning processes. Development applications and authorisations are separate matters under the relevant planning legislation. In order for a proposal to be treated as an administrative proposal, it would need to be referred to the Commission following the conclusion of the development approval process.

The Commission must seek to ensure, as far as is reasonably practicable that the qualifications, knowledge, expertise and experience of a particular investigator are relevant to each inquiry. The Commission must also consult with affected councils when appointing the investigator(s).

In addition to the principles set out in section 26 of the Act, an inquiry must consider—

- 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.

At the conclusion of an inquiry, the Commission must prepare and publish on a website a report that includes the Commission's recommendations. The requirement for the Commission to publish the report ensures that the Commission's advice to the Minister, and the decision making that then follows, is fully transparent.

The Amendment Act provides for the Minister to 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.

32—Notification of outcome of inquiries

Following the 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 interest of employees of councils.

If a general proposal recommended by the Commission does not proceed to a proclamation after completion of all relevant procedures, the Minister must to prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament. This is consistent with the current Act.

32A—Powers relating to inquiries

The Amendment Act sets out the powers of the Commission or an investigator when conducting an inquiry. These powers enable the Commission or an investigator to obtain information determined to be relevant to an inquiry.

As the content of proposals could be very serious, the powers available to the Commission parallel this seriousness. Without such powers, the information used to develop the Commission's recommendations and the Minister's consideration of those recommendations could be seriously impacted. These common powers are similar to other investigation panels.

32B—Costs

The Amendment Act provides for the Commission to recover reasonable costs of an inquiry in relation to a general proposal referred to the Commission by a council or councils as a debt due from the council or councils.

A council or councils will only incur costs for the general proposals that they refer themselves. If a council, or a number of councils feel that a proposal they are considering is of value to the State more widely, then they can request the Minister to progress it on their behalf.

If a proposal is referred to the Commission by the Minister, costs related to work needed on proposals initiated by the Minister will be the responsibility of the State Government.

All costs associated with the investigation of administrative proposals will be borne by the State Government.

The Amendment Act requires guidelines that will detail the process the Commission will use to determine the cost of an investigation that is undertaken. The Commission will advise of expected costs and any alterations to a proposal prior to commencing an investigation.

This provision facilitates the sending of an invoice and the usual enforcement mechanisms. It provides the Commission with a mechanism to ensure that a council will pay any invoice for costs. This is a common legislative provision that is already included within the *Local Government Act 1999*.

32C—Inquiries—*independence of Commission etc*

The Amendment Act ensures that 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.

The independence of the Commission is a key element of the Amendment Act and the Minister cannot direct the Commission to come to a conclusion on a proposal. The Amendment Act does allow the Minister to propose amendment to the Commission's final report, however, the Commission is not required to make these amendments. If the Commission does incorporate any amendments proposed by the Minister, the Commission must then publish the amended report.

Support for regional governance models

The Amendment Act supports the development of effective regional governance models in local government. It does this in three key ways:

1. By amending section 8 of the Act – Principles to be observed by a council – to include a specific principle based on collaboration and partnerships with other councils and regional bodies
2. By enabling the Commission to make a recommendation that a regional governance or service delivery mechanism be put in place as an alternative to boundary change

3. By amending section 122(1) of the Act to include a requirement for councils or other regional bodies to demonstrate that the potential benefits of regionalisation have been assessed as part of long-term planning.

FLOWCHART—BOUNDARY REFORM PROPOSALS

