

Explanatory Paper

*Local Government (Boundary Adjustment) Amendment
Bill 2016*

August 2016



Government of South Australia

Department of Planning,
Transport and Infrastructure

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INTRODUCTION

The Government is seeking comment on the draft Local Government (Boundary Adjustment) Amendment Bill 2016 (the Bill). The Bill will reform the legislative provisions that govern how council boundaries can be changed under the [Local Government Act 1999](#) (the Act).

Boundary Adjustment Facilitation Panel

The legislative provisions governing council boundary changes have not changed since the Act came into force in 1999. At the commencement of the Act, the Boundary Adjustment Facilitation Panel (BAFP) was established as an interim body to refine council boundaries following the council amalgamations and boundary alterations that had occurred in South Australia in the late 1990s. Since that time, there have been almost no significant boundary changes.

The BAFP was abolished in 2015—following the State Government’s reform of Boards and Committees—and the Panel’s functions were transferred to the Minister for Local Government. At this time, the Minister directed the Office of Local Government (OLG) to work with the Local Government Association (LGA) on a full review of the Act’s boundary reform process.

Legislative framework

The legislative framework underpinning this Bill is based on the review work undertaken by OLG and LGA, as overseen by the Premier’s State/Local Government Forum. The framework sets out principles for local government boundary reform and a process for boundary adjustments that have been endorsed by the LGA Board and the Premier’s State/Local Government Forum.

To give effect to the framework, this Bill proposes to amend 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 structural reform proposals.

Key elements of the Bill

The Bill provides an opportunity to remove 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 Bill 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;

- an independent Commission to undertake the initial assessment of proposals, and to 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.

A simplified flowchart outlining the Bill's procedures for boundary adjustment proposals is included in Attachment 1.

BACKGROUND MATERIAL

The Bill, this explanatory paper and other background material can be found on the OLG website at—

www.dpti.sa.gov.au/local_govt

SEEKING COMMENTS

The Bill proposes to establish the legislative provisions that will independently investigate structural reform proposals.

The OLG is therefore seeking comments on the provisions of the draft Bill rather than comments or proposals for specific council boundary changes.

HOW TO MAKE A COMMENT

Comments on the draft Bill can be sent to the Office of Local Government—

Email: DPTI.PDLocalGovernment@sa.gov.au

Postal address: GPO Box 1815, Adelaide SA 5001

The consultation will remain open until **5 pm on Friday 30 September 2016.**

THE PROVISIONS OF THE AMENDMENT BILL

Part 1 – Preliminary

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

Part 2 – Amendment of Local Government Act 1999

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

Establishment of an independent Commission

The Bill provides for the establishment of an independent Commission to oversee the investigation of proposed boundary changes. The Commission's chief role would be to—

- assess proposals to determine their validity and significance;
- oversee a simple, essentially administrative process for the assessment of minor administrative matters;
- 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.

Given that the role of the Commission is one of oversight, it is proposed that an existing body undertake the Bill's boundary reform work. A range of bodies such as the Electoral Commission of South Australia, the South Australian Civil and Administrative Tribunal and the Surveyor-General have been considered. However, as these bodies already have very specific roles in relation to local government, another body may be more appropriate to oversee boundary reforms.

Given their broad involvement with the local government sector, consideration has been given to utilising a body such as the—

- State Planning Commission, which will be established under the *Planning, Development and Infrastructure Act 2016*, as its membership is expected to include both local government expertise, and expertise in areas that could be intrinsic to structural reform proposals, such as economics, planning and development, infrastructure management and public administration; or
- Local Government Grants Commission due to its knowledge, experience and role across all local government finances and services.

While clause 4 of the Bill provides for the Commission to be prescribed in regulation, it is anticipated that, following consideration of consultation comments, the specific Commission body will be included in an amended Bill.

A key question for consultation is therefore which existing statutory authority is best placed to oversee boundary change processes, and feedback is welcome on this matter.

Structural reform proposals—principles

Section 26 of the Act contains principles that must be considered when decisions about structural reform are made. Clause 6(2) of the draft Bill 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.

Clause 6(3) includes a new principle for boundary change, where consideration will be given to regional activities that may offer a viable and appropriate alternative to structural change. As Clause 7(31)(3)(b) of the Bill requires inquiries into proposals to consider the principles contained in section 26, this will enable the Commission to make specific comment in its recommendations and final report to the Minister on potential regional service delivery models that could support, or possibly substitute for, structural reform.

Division 4—Procedures for proposals

Initiation of proposals

The initiation of council boundary change proposals is currently restricted to two or more councils in agreement with each other 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 debate or discussion on these proposals.

Clause 7(28)(1) of the Bill 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 Bill 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 would align 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)

If a single council can make a strong case for structural reform there should be a process by which this proposal is examined. Enabling single council initiated proposals could 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 submission for it to be submitted to the Commission.

Members of the Public

Public initiated submissions currently require a minimum of 20 eligible electors. 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. Under the Act's current provisions, a public initiated submission must also nominate five people who are willing to represent the interests of those who would be directly affected by any proposal contained in the submission.

The Bill proposes that a public initiated submission may be referred to the Commission by a prescribed percentage or number of eligible electors. While not stated in the Bill, it is expected that this prescribed percentage could be 10 percent. This will ensure that proposals affecting fewer than 20 people can be considered, while also ensuring that proposals that could affect significantly more people are put forward by an appropriately larger group of electors.

The Bill also proposes the definition of 'eligible electors' to only include people within the area that would be incorporated into another council area (in light of the fact that past proposals have only been made by people in these areas).

The Bill also replaces the currently separated public and council initiated processes with a single application process, irrespective of the initiator of the proposal. Currently, public initiated proposals are complex and time consuming as they must first be lodged with the relevant councils, which may choose to take it up themselves and submit a council initiated proposal. If the councils do not support the proposal, the group of electors may lodge the submission with the Minister. A single application process will streamline this process.

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

Dealing with proposals

Clause 7(29) of the Bill enables the Commission to assess and investigate proposals. The Commission will have the power to refuse to investigate a proposal if it is considered to be trivial, frivolous or vexatious; 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.

The ability to refuse a proposal that is substantially similar to a previous proposal clause 7(29)(3)(c)– combined with the Commission's ability to combine proposals into one inquiry (clause 7(29)(4)(a)), and to vary proposals under clause 7(30)(5) and clause 7(31)(6) is intended to allow the Commission sufficient flexibility to avoid undertaking separate investigations on separate proposals that are substantially the same.

Inquiries—administrative proposals

Whereas the Act currently makes no differentiation between the assessment of minor and major boundary reform proposals, clause 7(30) of the Bill introduces a simplified assessment pathway for minor administrative matters, including—

- to facilitate a development that has been granted an authorisation under the *Planning, Development and Infrastructure Act 2016*;

- 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 declared 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. 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.

Inquiries—general proposals

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

It is essential that the process for examining significant proposals and making recommendations is as open and transparent as possible. Clause 7(31) of the Bill provides for the Commission to appoint one or more investigators to inquire into a proposal which is not an administrative matter.

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).

The intent of the requirement to appoint investigators is to ensure that the close analysis of significant proposals for boundary change is undertaken by people with expertise and knowledge that is specific to each proposal. The Bill also provides appropriate flexibility in appointing investigator(s)—more significant proposals will require a number of investigators, whereas relatively straightforward proposals may only require a single investigator.

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 to which the proposal relates;
- appropriate community engagement;
- the level of community support for boundary reform in the area;
- the nature and extent of any plans for implementing the proposal;
- any guidelines published by the Commission; and
- any other matters prescribed by regulations.

As further detailed in clause 7(31)(4)(a), the ability of the Commission to publish guidelines will enable it to provide more detail on the matters that should inform investigations, such as the division of council assets, management of council staff, potential impact on local government elections, impact on subsidiary bodies and so on.

It is also expected that the Commission would release guidelines on community engagement to ensure that consultation and engagement is properly undertaken while a proposal is being investigated. This is specifically recognised in clause 7(31)(4)(b).

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

The Bill provides for the Minister to send the report back to the Commission for reconsideration in accordance with any directions 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.

Powers Relating to Inquiries

Clause 7(32A) 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.

Costs

Clause 7(32B) provides for the Commission to recover reasonable costs incurred in respect of an inquiry.

It is intended that the Commission would recover costs incurred in the investigation of a proposal from the person or body that initiated it. For council initiated submissions, the Commission would therefore recover costs from a responsible person nominated by the council, or the council. In the case of a public initiated submission, the Commission may recover costs from the responsible person nominated by the group of eligible electors.

This ensures that councils or electors initiating proposals can be assured that the investigations of these proposals are not delayed through limited resource allocations. If a council (or councils) or the public wishes to initiate a proposal without incurring these costs, they may approach the Minister who has the discretion to initiate a proposal on their behalf.

Independence of Inquiries

Clause 7(32C) provides that the Commission or an investigator conducted to appoint an inquiry by the Commission is not subject to Ministerial direction in relation to the inquiry or a recommendation or report (except as provided by Division 4 of the Bill).

Support for regional governance models

The LGA has requested additional amendments to the Act to support the development of effective regional governance models in local government. The Bill therefore amends section 8 of the Act to outline the objects and principles of regional collaboration and partnerships. Further, as part of the council boundary reform framework, the principles for boundary change will also include consideration of regional activities.

Further, as requested by the LGA, the Bill also amends 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.

SIMPLIFIED FLOWCHART—BOUNDARY REFORM PROPOSALS

