

South Australia



**LOCAL GOVERNMENT (BOUNDARY REFORM) AMENDMENT ACT
1995**

No. 108 of 1995

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ELIZABETHAE II REGINAE

A.D. 1995

No. 108 of 1995

An Act to amend the Local Government Act 1934.

[Assented to 21 December 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Local Government (Boundary Reform) Amendment Act 1995*.

(2) The *Local Government Act 1934* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 5—Interpretation

3. Section 5 of the principal Act is amended by inserting after the definition of "authorized person" in subsection (1) the following definition:

"Board" means the Local Government Boundary Reform Board established under Part II;

Insertion of s. 5A

4. The following section is inserted immediately after section 5 of the principal Act (in Part I):

Objects

5A. The objects of local government include—

- (a) to provide a representative, informed and responsible decision-maker in the interests of developing the community and its resources in a socially just and environmentally sustainable manner; and
- (b) to ensure a responsive and effective provider and co-ordinator of public services and facilities at the local level; and
- (c) to provide an initiator and promoter of effort within a local community; and

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- (d) to represent the interests of a local community to the wider community.

Amendment of s. 6—Constitution of councils

5. Section 6 of the principal Act is amended by inserting after subsection (4) the following subsection:

- (5) A proclamation under this section may—
- (a) determine the method or methods of assessing rateable property within the area of the council; and
 - (b) if some or all of the area of the council has previously been within the area of a council—provide for differential rates within the area on a specified basis for a specified period in order to allow rating relativities within the area of the council to be gradually realigned; and
 - (c) make provision in relation to the by-laws that are to apply in the area of the council.

Amendment of s. 7—Amalgamation of councils

6. Section 7 of the principal Act is amended—

- (a) by striking out subsection (6) and substituting the following subsection:

- (6) A proclamation under this section may—
- (a) provide for differential rates on a specified basis for a specified period in order to allow rating relativities within the area of the council or councils to be gradually realigned on account of the amalgamation; and
 - (b) make provision in relation to the by-laws that are to apply in the area of the council or councils to be formed by the amalgamation; and
 - (c) make, subject to the provisions of a relevant Act, award or industrial or enterprise agreement, provision to protect the various rights and interests of the officers and employees of the councils to be amalgamated under this section.;

- (b) by striking out from subsection (7) "the rights" and substituting "the assets, rights";

- (c) by striking out from subsection (8) "the rights" and substituting "the assets, rights".

Amendment of s. 8—Alteration of the boundaries of council areas

7. Section 8 of the principal Act is amended by inserting after paragraph (a) of subsection (2) the following paragraph:

- (ab) provide for differential rates within the area of a council affected by the alteration of boundaries on a specified basis in order to allow rating relativities to be gradually realigned on account of the alteration of boundaries.;

Amendment of s. 9—Abolition of councils

8. Section 9 of the principal Act is amended by striking out subsection (2) and substituting the following subsections:

- (2) A proclamation under this section may—

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- (a) declare that assets, rights and liabilities of the council, as at the date of abolition, vest in, or attach to, another council or councils named in the proclamation; and
- (b) make, subject to the provisions of a relevant Act, award or industrial or enterprise agreement, provision to protect the various rights and interests of the officers and employees of the council being abolished.

(3) If the Governor does not make a declaration under subsection (2)(a) on or before the day on which the council is abolished, the assets, rights and liabilities of the council vest in, or attach to, the Crown on the abolition of the council.

Amendment of s. 11—Formation, alteration or abolition of wards

9. Section 11 of the principal Act is amended by inserting after subsection (3) the following subsections:

(4) In addition to the other requirements of this Part, the following matters must be taken into account, as far as practicable, in the formulation of a proposal under this Part that relates to the boundaries of a ward:

- (a) the desirability of reflecting communities of interest of an economic, social, regional or other kind;
- (b) the population of the area, and of each ward affected or envisaged by the proposal;
- (c) the topography of the area, and of each ward affected or envisaged by the proposal;
- (d) the feasibility of communication between electors affected by the proposal and their elected representatives;
- (e) the nature of substantial demographic changes that may occur in the foreseeable future;
- (f) the total size and composition of the council and the need to ensure adequate and fair representation.

(5) A proposal that relates to the formation or alteration of wards of a council must also observe the principle that the number of electors represented by a councillor must not, as at the relevant date (assuming that the proposal were in operation), vary from the ward quota by more than 10 per cent and, for the purposes of this subsection—

- (a) if it is proposed that two or more councillors represent a particular ward, the number of electors represented by each councillor will be taken to be the number of electors for the ward (as at the relevant date) divided by the number of proposed councillors for the ward (ignoring any fractions that result from the division); and
- (b) the ward quota will be taken to be the number of electors for the area (as at the relevant date) divided by the number of councillors for the area (assuming that the proposal were in operation and ignoring any fractions that result from the division); and
- (c) the relevant date, in relation to a proposal that relates to the formation or alteration of wards of the council, will be taken to be the date on which the proposal is finalised for the purposes of this Part.

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(6) The 10 per cent tolerance referred to in subsection (5) may be exceeded if, on the basis of demographic changes predicted by a Commonwealth or State government agency, it appears that the ward quota will not, as at the next periodical elections, be exceeded by more than 10 per cent (the relevant date in this case being the date of the next periodical elections).

Substitution of ss. 14 to 22

10. Sections 14 to 22 of the principal Act (and any headings appearing immediately before any of those sections) are repealed and the following headings and sections are substituted:

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OF PROCLAMATIONS**

Proclamations

14. (1) The Governor cannot make a proclamation under a preceding Division of this Part except—

- (a) in pursuance of an address from both Houses of Parliament; or
- (b) in pursuance of a proposal recommended by the Board under Division X; or
- (c) in pursuance of a proposal recommended by the Minister under Division X.

(2) If the Governor by proclamation under Division I or II makes provision for the appointment or election of the members of a council, the Governor may also, by proclamation, cancel (for a particular year) the holding of periodical elections for the council.

(3) Subsection (1) extends to a proclamation under subsection (2).

(4) Matters for which provision may be made by proclamations under separate provisions of this Part may, if the Governor thinks fit, be provided for by the same proclamation.

(5) The Governor may also, by proclamation under this Part—

- (a) make provision for related or ancillary matters necessary, desirable or expedient in view of the circumstances of the particular case;
- (b) provide that during a transitional period specified in the proclamation (being a period not exceeding five years from the date of operation of the proclamation), a provision of this Act applies as varied or modified in a manner set out in the proclamation to or in respect of—
 - (i) a council affected (or to be affected) by a proclamation under this Part; or
 - (ii) a council constituted or formed by a proclamation under this Part;
- (c) include other provisions of a transitional nature consequent on changes being made by proclamation under this Part (including for the construction of references in instruments or documents).

(6) The provisions of a proclamation under this Part have effect according to their terms as from the day or days fixed in the proclamation or, if no day or days are so fixed, as from the day of the publication of the proclamation.

(7) No proclamation purporting to be made under this Part, and within the powers conferred on the Governor under this Act, is invalid on account of any non-compliance with a matter specified by this Act as preliminary to the proclamation.

DIVISION X—THE LOCAL GOVERNMENT BOUNDARY REFORM BOARD AND REFORM PROPOSALS

Subdivision 1—Interpretation

Interpretation

15. (1) In this Division—

"structural reform proposal" means a proposal to—

- (a) constitute a council; or
- (b) amalgamate two or more councils; or
- (c) abolish a council and incorporate its area into the areas of two or more councils; or
- (d) alter the boundaries of a council area; or
- (e) establish a co-operative scheme for the integration or sharing of staff and resources within a federation of councils.

(2) If a proclamation under this Part providing for the constitution, amalgamation or abolition of a council or councils, or providing for the alteration of the boundaries of a council area or areas, has been made, a proposal that relates to any related matter that may be the subject of a separate proclamation under this Part will not be taken to be (or to form part of) a structural reform proposal for the purposes of this Division.

Subdivision 2—Establishment of Board

Establishment of Board

16. (1) The *Local Government Boundary Reform Board* is established.

(2) The Board is a body corporate.

(3) If a document appears to bear the common seal of the Board, it will be presumed, in the absence of proof to the contrary, that the common seal of the Board was duly affixed to the document.

(4) The Board cannot be brought under the operation of the *Public Corporations Act 1993*.

Composition of Board

16A. (1) The Board consists of eight members, of whom—

- (a) seven are to be persons appointed by the Governor—
 - (i) four being persons nominated by the Minister; and
 - (ii) two being persons selected from a panel of six persons nominated by the Local Government Association of South Australia; and

(iii) one being a person selected from a panel of two persons nominated by the United Trades and Labor Council; and

(b) one is to be the Executive Director of the Board (*see* section 16G).

(2) A person nominated under subsection (1)(a) should have such managerial, financial, local government or other qualifications, or such experience, as are, in the opinion of the Minister, necessary to assist the Board to carry out its functions.

(3) At least two members of the Board appointed under subsection (1)(a) must reside in Metropolitan Adelaide and at least two of the members appointed under subsection (1)(a) must reside outside Metropolitan Adelaide.

(4) At least one member of the Board must be a woman and at least one member a man.

(5) A member of the Board appointed under subsection (1)(a) will be appointed by the Governor to chair the Board.

(6) A suitable person may be appointed by the Governor to be the deputy of a member of the Board and to act as a member of the Board during a period of absence of the member.

(7) The deputies to the persons appointed under subsection (1)(a)(ii) must be persons selected from the panel of six nominated by the Local Government Association of South Australia under that subsection.

(8) The deputy to the person appointed under subsection (1)(a)(iii) must be a person selected from the panel of two nominated by the United Trades and Labor Council under that subsection.

Conditions of membership

16B. (1) A member of the Board (other than the Executive Director) is appointed on conditions determined by the Governor and for a term specified in the instrument of appointment (and, at the expiration of a term of office, is eligible for reappointment).

(2) The Governor may remove a member of the Board from office—

(a) for breach of, or non-compliance with, a condition of appointment; or

(b) for misconduct; or

(c) for failure or incapacity to carry out duties satisfactorily; or

(d) if the Board has in the opinion of the Governor failed to carry out its functions effectively and the Board's membership should therefore (in the Governor's opinion) be reconstituted for that reason.

(3) The office of a member of the Board becomes vacant if the member—

(a) dies; or

(b) completes a term of office and is not reappointed; or

(c) resigns by written notice to the Minister; or

(d) is convicted of an indictable offence; or

(e) is removed from office under subsection (2).

(4) A member of the Board is disqualified from acting as such, or continuing to act as such, in a matter before the Board if—

- (a) the member is, or becomes, a member, officer or employee of a council involved in the matter; or
- (b) the member holds, or accepts, other remunerated office with such a council; or
- (c) the member is, or becomes, interested (directly or indirectly) in a contract with such a council.

(5) A member will not be regarded as having an interest in a contract with a council if the interest exists only by reason of the fact that the member is a shareholder in a company with 20 or more shareholders that is a party to, or otherwise interested in, the contract.

(6) If a casual vacancy occurs in the office of a member of the Board (or a deputy), the Governor may appoint a suitable person to fill the vacancy (subject to the qualification that a person appointed under this subsection to fill the vacancy of a person nominated by the Local Government Association of South Australia or the United Trades and Labor Council will be selected from a panel of two persons nominated by the relevant body).

Remuneration

16C. A member of the Board (other than the Executive Director) is entitled to remuneration, allowances and expenses determined by the Governor.

Protection of information, etc.

16D. (1) A member or former member of the Board must not make use of information acquired because of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the Board.

Penalty: \$10 000 or imprisonment for one year.

(2) A member of the Board must not make use of his or her official position to gain, directly or indirectly, a personal advantage for himself, herself or another, or to cause detriment to the Board.

Penalty: \$10 000 or imprisonment for one year.

(3) A member of the Board must not, without the approval of the Board, divulge information that—

- (a) the member knows to be commercially sensitive; or
- (b) the Board classifies as confidential information.

Penalty: \$10 000 or imprisonment for one year.

Validity of acts and immunity of members

16E. (1) An act or proceeding of the Board is not invalid by reason only of a vacancy in its membership or a defect in the appointment of a member.

(2) A member of the Board incurs no civil liability for an honest act or omission in the performance or exercise, or purported performance or exercise, of the member's or the Board's functions, duties or powers under this Act.

(3) A civil liability that would, but for this section, attach to a member attaches instead to the Crown.

Proceedings

16F. (1) The member appointed to chair meetings of the Board will preside at meetings of the Board or, in the absence of that member, a member chosen by those present will preside.

(2) A quorum of the Board consists of five members (and no business may be transacted at a meeting of the Board unless a quorum is present).

(3) A decision carried by a majority of votes of the members present at a meeting of the Board is a decision of the Board.

(4) Each member present at a meeting of the Board is entitled to one vote on a matter arising for decision by the Board, and the person presiding at the meeting has, in the event of an equality of votes, a second or casting vote.

(5) A meeting of the Board should be open to the public unless the Board is considering a matter that, in the opinion of the Board, should be dealt with on a confidential basis.

(6) The Board must have accurate minutes kept of its proceedings.

(7) A person is entitled, on request, to receive a copy of any Board minutes that have been adopted by the Board.

(8) However, the Board may, before it releases a copy of any minutes under subsection (7), exclude from the minutes information about any matter considered on a confidential basis by the Board.

(9) Subject to this Act, the Board may determine its own procedures.

Executive Director

16G. (1) There will be an Executive Director of the Board.

(2) The Executive Director will be appointed by the Minister on terms and conditions determined by the Minister.

(3) The Executive Director—

(a) will be the principal executive officer of the Board; and

(b) will be responsible for managing the staff and resources of the Board, and for performing other functions determined by the Board.

Other staff of the Board

16H. (1) The Minister will, after consultation with the Board, determine the staffing arrangements for the Board.

(2) The Board may engage agents and consultants, and enter into other contracts for the provision of services.

(3) The Board may—

- (a) by arrangement with the appropriate authority, make use of the services, facilities or staff of a government department, agency or instrumentality; or
- (b) by arrangement with the council, make use of the services, facilities or staff of a council.

Subdivision 3—Functions, Objectives and Principles Associated with the Board

Functions

17. (1) The functions of the Board include—

- (a) to assist councils that are working towards an amalgamation or rationalisation of areas, or towards the rationalisation, integration or sharing of works and services; and
- (b) to facilitate the provision of financial incentives to councils that are participating in significant reform proposals in order to assist in the finalisation and implementation of those proposals; and
- (c) to recommend criteria, to be prescribed by regulation, against which the performance of councils as local government authorities under this Act can be assessed, and then to assess the performance of councils in the State against those prescribed criteria; and
- (d) to consider proposals for the making of proclamations under this Part submitted by councils by agreement, and to make recommendations to the Minister on the basis of those proposals; and
- (e) to conduct inquiries into the efficiencies and operations of councils which, on the basis of the Board's assessments against the prescribed performance criteria, warrant further investigation, and which have not participated in the formulation and submission of structural reform proposals; and
- (f) to make recommendations to the Minister about proposals for the making of proclamations under this Part in respect of matters that have not otherwise been dealt with by proclamations based on proposals submitted by councils; and
- (g) to assess or develop, in consultation with the proponents, three-year financial and management plans for the 1997/1998, 1998/1999 and 1999/2000 financial years for councils that are to be constituted or formed under structural reform proposals under this Part; and
- (h) to provide advice to the Minister on matters referred to the Board by the Minister; and
- (i) to conduct other inquiries and to consider various proposals relevant to the operation of this Part, and to the performance of other functions contemplated by this Part.

(2) The Board's functions do not extend to any matter under Divisions XIII or XIV.

(3) The Governor may, by regulation, prescribe criteria for the purposes of subsection (1)(c).

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Objectives

17A. The Board should seek to achieve the following objectives through the adoption of appropriate practices and procedures under this Part in order to enhance the ability of local government to provide services in an efficient, effective, fair and responsive manner:

- (a) a significant reduction in the number of councils in the State; and
- (b) a significant reduction in the total costs of providing the services of local government authorities under this Act; and
- (c) significant benefits for ratepayers under this Act.

Principles

17B. The Board should, in arriving at the recommendations for the purposes of this Part (but taking into account the nature of the proposal under consideration), have regard to the objects of local government under this Act and to the following principles:

- (a) the desirability of achieving significant economies in the use of resources within local government, while avoiding significant divisions within the community;
- (b) that ratepayers should be able to receive a reduction in their council rates through the implementation of structural reform proposals under this Part;
- (c) a council should have a sufficient resource base to fulfil its functions fairly, effectively and efficiently;
- (d) a council should offer its community a reasonable range of services delivered on an efficient, flexible, equitable and responsive basis;
- (e) 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;
- (f) a council should be in a position to facilitate the management of environmental issues and the integration of land use schemes;
- (g) 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;
- (h) a council area should incorporate or promote an accessible centre (or centres) for local administration and services;
- (i) in considering boundary reform, 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;
- (j) if the area of a council that is not divided into wards is to be amalgamated with the area of a council that is divided into wards, the new area should be divided into wards;
- (k) in certain circumstances a scheme that provides for the integration or sharing of staff and resources by two or more councils may offer a community or communities a viable and appropriate alternative to boundary reform options.

Subdivision 4—Procedures and Powers

Procedures and powers

18. (1) The Board may, in the performance of its functions under this Part—

- (a) hold hearings and inquiries;
- (b) receive and consider written submissions;
- (c) hear and consider other evidence and representations;
- (d) conduct (or engage a person to conduct) opinion surveys and polls;
- (e) otherwise inform itself as it thinks fit.

(2) A hearing or inquiry should be open to the public unless the Board is hearing, considering or determining a representation or matter that, in the opinion of the Board, should be dealt with on a confidential basis.

(3) The Board is not bound by the rules of evidence.

(4) The Board may, for the purposes of its functions under this Part—

- (a) by summons issued by the Board, require a person's attendance;
- (b) require a person to answer, orally or in writing, questions to the best of his or her knowledge, information and belief;
- (c) require a person to verify an answer under paragraph (b) by declaration;
- (d) require a council or person to produce for examination by the Board books, papers or other records;
- (e) retain books papers or other records produced under paragraph (d) for reasonable periods determined by the Board and make copies of them or their contents.

(5) Subject to subsection (6), a person or council must not refuse or fail to comply with a requirement under subsection (4).

Penalty: \$10 000.

(6) A person is not obliged to comply with a requirement under subsection (4) 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 (4) that is privileged on the ground of legal professional privilege.

(7) A person may appear before the Board personally or by representative.

(8) The Board should seek to deal with a matter as expeditiously as possible.

Subdivision 5—Committees and Delegations

Committees

19. (1) The Board may establish a committee or committees to assist it in the performance of its functions under this Part, or to assist in the resolution or management of issues associated with the implementation of a proposal or proposals under this Part.

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(2) The Board must establish—

- (a) a *Metropolitan Councils Reform Committee* to provide advice and assistance to the Board on matters relevant to councils within Metropolitan Adelaide; and
- (b) a *Country Councils Reform Committee* to provide advice and assistance to the Board on matters relevant to councils outside Metropolitan Adelaide.

(3) At least one member of each committee established under subsection (2) must be a person nominated by the Local Government Association of South Australia.

(4) At least one member of each committee established under subsection (2) must be a woman, and at least one member must be a man.

(5) A committee may, but need not, consist of a member or members of the Board.

(6) The Board must consult with the Local Government Association of South Australia—

- (a) before it establishes a committee under this section (other than under subsection (2)); and
- (b) before it appoints a person who is not a member, or a deputy member, of the Board to a committee established under this section.

(7) Subject to direction by the Board, a committee may determine its own procedures.

(8) However, a meeting of a committee should be open to the public unless the committee is considering a matter that, in the opinion of the committee, should be dealt with on a confidential basis.

(9) The appointment of a committee does not limit the powers of the Board in a matter.

Delegation

19A. (1) The Board may delegate a function or power—

- (a) to a specified person, committee or other body; or
- (b) to a person occupying a specified office or position.

(2) A delegation—

- (a) may be made subject to conditions and limitations specified in the instrument of delegation; and
- (b) if the instrument of delegation so provides, may be further delegated by the delegate; and
- (c) is revocable at will and does not prevent the Board from acting in a matter.

Subdivision 6—Submission of Proposals by Councils

Submission of proposals by councils

20. (1) Councils may submit to the Board proposals for the making of proclamations under this Part.

(2) A proposal submitted to the Board under subsection (1) must—

- (a) set out in general terms the nature of the proposal; and
- (b) examine the effect of the proposal to the extent required by the Board for the purposes of this section; and
- (c) in the case of a proposal that relates to more than one council—be submitted by all councils affected by the proposal; and
- (d) otherwise comply with requirements established and published by the Board.

(3) The Board may decline to accept a proposal unless or until it is satisfied that a council or councils submitting the proposal have carried out a reasonable amount of community consultation on the proposal.

(4) On the submission of a proposal to the Board, the Board must cause public notice to be given setting out the substance of the proposal.

(5) The Board may inquire into the proposal as it thinks fit.

(6) The Board may consult with one or more councils (including councils not included within the terms of the proposal) about the proposal and, at its discretion, about any amendment, or alternative proposal or proposals, that it thinks should be considered.

(7) The Board may, at the request of or with the consent of the council or councils that submitted the proposal, and any other council that may be affected—

- (a) amend the proposal;
- (b) substitute an alternative proposal.

(8) The Board must then prepare a report to the Minister on the proposal.¹

¹ Subdivision 8 sets out what happens after this report is prepared.

Subdivision 7—Formulation of Proposals by the Board

Formulation of proposals by the Board

21. (1) The Board may itself formulate proposals for the making of proclamations under this Part.

(2) However—

- (a) the Board may not exercise its power to formulate a structural reform proposal under this section until after 31 March 1996; and
- (b) the Board may only include a council in a structural reform proposal formulated by the Board under this section if—
 - (i) the council consents to its inclusion; or

- (ii) the Board has, after assessing the council's performance and taking into account such matters as the Board thinks fit, determined that it is appropriate to include the council in a structural reform proposal under this section.

(3) Subsection (2)(b)(ii) is subject to the qualification that the Board must consult with the relevant council—

- (a) before it makes a determination under that subsection; and
- (b) on the terms of any proposal.

(4) The Board must, in formulating or considering a proposal under this section, take into account any relevant proposal submitted to the Board under Subdivision 6.

(5) If the Board formulates a structural reform proposal under this section, the Board must cause public notice to be given—

- (a) setting out the substance of the proposal; and
- (b) inviting interested persons to make submissions in writing on the proposal within six weeks after the date of the notice or within a longer period specified in the notice.

(6) If public notice has been given under subsection (5), the Board must then, after the expiration of the time allowed for submissions, hold a hearing in relation to the proposal.

(7) At a hearing held pursuant to subsection (6)—

- (a) a person who made written submissions is entitled to appear and to be heard on those submissions; and
- (b) the Board may hear and consider other evidence and submissions as it thinks fit.

(8) The Board may also, in respect of a structural reform proposal, conduct other inquiries and public consultation as it thinks fit.

(9) The Board must, in respect of a proposal other than a structural reform proposal, conduct inquiries and public consultation, but only to the extent that it thinks fit (and this requirement does not apply at all if the Board considers that the proposal relates to a matter or matters that are of a minor nature only).

(10) The Board may, at the conclusion of its inquiries and consultation on a proposal under this section, determine—

- (a) that the proposal should proceed; or
- (b) that the proposal should be amended, or that an alternative proposal should proceed; or
- (c) that the proposal should lapse.

(11) However, the Board must not make an amendment, or determine that an alternative proposal should proceed, unless—

- (a) the Board has conducted further consultation as it thinks fit; or
- (b) the Board determines—
 - (i) that there has already been adequate consultation in respect of the matter; or
 - (ii) that the amendment, or the alternative proposal, is of a minor nature only, or that the final proposal differs from the original proposal in minor respects only.

(12) The Board must ascertain whether a council affected by a proposal under subsection (10) accepts or rejects the terms of the proposal (and unless a council resolves to accept a proposal within one month after the Board presents it to the council for formal consideration under this subsection, or within a longer period requested by the council before the expiration of that month, it will be taken that the council rejects the terms of the proposal).

(13) If a council affected by a structural reform proposal recommended by the Board rejects the terms of the proposal under subsection (12), the proposal cannot proceed unless or until a poll has been conducted in relation to the matter.

(14) The following provisions apply to a poll:

- (a) Part VII will apply to the poll subject to modifications, exclusions or additions prescribed by regulation;
- (b) a person is entitled to vote at the poll if (and only if) the person is an elector under Part VII in respect of property (being either the person's place of residence or property for which the person is a ratepayer) located in an area that, according to the terms of the proposal, is to be constituted as part of a new council (including by amalgamation), or is to be incorporated into the area of another council (as the case may be);
- (c) the Board will, after consultation with the relevant councils, determine the day on which the poll will be conducted;
- (d) the poll will be conducted by postal voting (in a manner that allows the Board to ascertain both the overall result of the poll and voting according to individual council areas);
- (e) the councils for the relevant areas will conduct the poll (although a council may arrange for the Electoral Commissioner to conduct the poll on its behalf (and at its expense) within the council's area);
- (f) the Board must prepare a summary of the issues surrounding the proposal to assist persons who may vote at the poll, subject to complying with the following requirements:
 - (i) the Board must consult with the relevant councils about the summary; and
 - (ii) the Board must not release the summary until the Electoral Commissioner has certified that he or she is satisfied that the Board has taken reasonable steps to ensure that the summary presents the arguments for and against the implementation of the proposal in a fair and comprehensive manner;

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- (g) a council affected by a proposal must ensure that copies of the summary prepared by the Board under paragraph (f) are made available for public inspection at the principal office of the council, and distributed to electors in accordance with directions of the Board;
- (h) the Board may publish directions and guidelines relating to—
 - (i) the preparation, distribution and use of ballot papers; and
 - (ii) the procedure for voting at the poll; and
 - (iii) the counting of votes; and
 - (iv) the publication of results; and
 - (v) other issues relevant to the conduct of the poll;
- (i) if—
 - (i) 40 per cent or more of the persons entitled to vote cast a vote at the poll; and
 - (ii) a majority of the persons so voting vote against the proposal,the result is binding and the proposal cannot proceed;
- (j) if paragraph (i) does not apply, the Board must nevertheless reconsider the proposal in view of the outcome of the poll and may, if it thinks fit, amend the proposal, or substitute an alternative proposal, or resolve that the proposal should lapse.

(15) Subsection (14)(j) is subject to the qualification that if—

- (a) the Board—
 - (i) amends the proposal so that it directly affects electors who were not directly affected by the original proposal; or
 - (ii) substitutes an alternative proposal; and
- (b) the Board does not, at that time, resolve that the amendment, or the alternative proposal, is of a minor nature only, or that the final proposal differs from the original proposal in minor respects only,

then the proposal as amended, or the substituted proposal (as the case may be) will be taken to be a new proposal under this section.

(16) The Board must, after complying with the above requirements, prepare a report to the Minister on the matter.¹

¹ Subdivision 8 sets out what happens after this report is prepared.

*Subdivision 8—Reports to the Minister;
Submissions of Proposals to the Governor*

Reference of proposals to Minister and Governor

22. (1) On the receipt of a report of the Board under Subdivision 6 or 7, the Minister may—

- (a) accept the report; or
- (b) refer the report back to the Board with a request for the Board to consider various matters, and to take steps, specified by the Minister; or
- (c) if the report relates to a proposal under Subdivision 6 and the Board has not recommended that the proposal proceed—at the request of one or more councils—consult with the relevant councils about the matter.

(2) If a request is made under subsection (1)(b)—

- (a) the request must contain a statement of the reasons for the request; and
- (b) the Board may, after considering the request and taking such steps as may be requested or as it thinks fit, amend or confirm its report, including any proposal recommended in the report, subject to the qualification that it cannot amend or substitute a structural reform proposal without the consent of all councils affected by the proposal, and must then send the report back to the Minister.

(3) If the Minister consults with councils under subsection (1)(c), the Minister must also consult with the Board about the matter (and obtain any report from the Board that the Minister thinks fit).

(4) The Minister may then—

- (a) on the basis of the report of the Board (but subject to the result of a binding poll under Subdivision 7), forward to the Governor a proposal recommended by the Board for the making of a proclamation under this Part; or
- (b) if—
 - (i) the Minister has undertaken consultation with various councils under subsection (1)(c); and
 - (ii) on the basis of that consultation, and after taking into account a relevant three-year financial and management plan prepared under this Division, any report or comments prepared or provided by the Board in relation to the matter, and any other matter that the Minister thinks fit, the Minister decides that it is appropriate to make a recommendation to the Governor in the circumstances of the particular case; and
 - (iii) all councils affected by the proposal agree with the Minister's recommendation,

forward to the Governor a proposal recommended by the Minister for the making of a proclamation under this Part; or

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- (c) determine that a particular proposal should not further proceed under this Part.

(5) If a proclamation providing for the constitution, amalgamation or abolition of a council or councils, or providing for the alteration of the boundaries of a council area or areas, is made under subsection (4)(b), the Governor may, by subsequent proclamation made on the recommendation of the Minister, make provision for any related matter that may be the subject of a separate proclamation under this Part.

(6) A proclamation under subsection (4)(b) or (5) may be based on a proposal or recommendation that has not been submitted, formulated or considered under Subdivision 6 or 7.

Subdivision 9—Related Matters

Financial and management plans

22A. (1) A proposal under this Part—

- (a) to constitute a council; or
(b) to form a council by amalgamation,

must include a three-year financial and management plan for the 1997/1998, 1998/1999 and 1999/2000 financial years for the council that is to be constituted or formed.

(2) A plan under subsection (1)—

- (a) must state the savings that are expected to be obtained from the constitution of the new council, or the amalgamation of the relevant councils, and ways in which those savings are proposed to be used to benefit the community, including through rate reductions; and
(b) must state the impact that the implementation of the proposal is expected to have on the quality and extent of services delivered or provided within the relevant area.

(3) The Board must report to the Minister on the plans received or developed by the Board under this section.

Draft proposals

22B. (1) Councils may submit to the Board a draft or outline of a proposal for the making of a proclamation under this Part.

(2) If a proposal is submitted under subsection (1), the Board must undertake a preliminary assessment of the proposal and then provide advice to the relevant councils about the extent to which the proposal is consistent with the criteria and principles that apply under this Part, about action that could (in the opinion of the Board) be taken to improve the proposal (if appropriate), and about other matters determined by the Board to be relevant.

Report if council proposal rejected

22C. If a proposal submitted by councils under Subdivision 6 (or an alternative proposal agreed to by the relevant councils in consultation with the Minister) does not proceed to a proclamation under this Part after completion of all relevant procedures under this Part, the Minister must prepare a report on the matter and cause copies of that report to be laid before both Houses of Parliament.

Report if Board proposal submitted to poll

22D. If a proposal formulated by the Board under Subdivision 7 is submitted to a poll under that subdivision, the Minister must, after the completion of the poll and after receiving advice from the Board, prepare a report on—

- (a) the outcome of the poll; and
- (b) the action that the Board has taken, or proposes to take, on account of the outcome of the poll,

and cause copies of the report to be laid before both Houses of Parliament.

Protection from proceedings

22E. (1) No proceeding seeking the grant of relief or a remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction, or any other form of judicial review, may be brought against the Minister, the Board, a member of the Board or the staff of the Board, or any other person, in respect of—

- (a) an inquiry or report under this Part; or
- (b) proceedings relating to an inquiry or report under this Part; or
- (c) an act, matter or thing, or a failure to act, incidental or relating to an inquiry or report under this Part.

(2) However, subsection (1) does not prevent—

- (a) proceedings founded on an excess or want of jurisdiction; or
- (b) proceedings to challenge a requirement of the Board under section 18(3).

Provision of reports to councils

22F. (1) The Board must, at the time that it provides a report to the Minister under Subdivision 6 or 7, send a copy of the report to each council affected by a proposal to which the report relates.

(2) If the Board, at the request of the Minister, amends a report, the Board must immediately send a copy of the amended report to each council that received a copy of the original report under subsection (1).

Expiry of Division

22G. This Division expires on 30 September 1997.

Substitution of heading

11. The heading immediately preceding section 23 of the principal Act is repealed and the following headings are substituted:

DIVISION XI—CHANGES WITHIN COUNCILS

Subdivision 1—Composition and Wards of a Council.

Amendment of s. 23—Application of subdivision

12. Section 23 of the principal Act is amended by striking out from subsection (2) "subdivision 3" and substituting "Subdivision 2".

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Amendment of s. 24—Initiation of proposal—Council reviews

13. Section 24 of the principal Act is amended by striking out from subsection (6) "the objects and principles set out in Division IX" and substituting "the objects of local government under this Act and the matters referred to in section 11(4), (5) and (6)".

Substitution of heading

14. The heading immediately preceding section 25 of the principal Act is repealed and the following heading is substituted:

Subdivision 2—Status of a Council or Change of Various Names.

Repeal of ss. 27 and 28

15. Sections 27 and 28 of the principal Act, and the heading immediately preceding section 27, are repealed.

Amendment of s. 29—Error or deficiency in an address, recommendation, notice or proclamation

16. Section 29 of the principal Act is amended by striking out from subsection (1) "a panel constituted by the Local Government Association of South Australia" and substituting "the Board".

Amendment of s. 42a—Annual report

17. Section 42a of the principal Act is amended by inserting after subsection (1a) the following subsection:

(1b) A council constituted or formed between 25 October 1995 and 1 July 1997 (inclusive) must include in its reports for the 1997/1998, 1998/1999 and 1999/2000 financial years information relating to—

- (a) any savings that have been achieved during the relevant financial year on account of the constitution or formation of the council; and
- (b) any changes to the quality or extent of services delivered or provided within the relevant area on account of the constitution or formation of the council.

Insertion of s. 174A

18. The following section is inserted after section 174 of the principal Act.

Limitation on general rates—1997/1998 and 1998/1999 financial years

174A. (1) Subject to this section, a council must, in each of the 1997/1998 and 1998/1999 financial years, aim to recover from general rates charged on land within the area of the council (in total) an amount that does not exceed the total revenue raised from general rates charged on the same land under this Division for the 1995/1996 financial year, adjusted to reflect changes in the Consumer Price Index between the March quarter 1995 and the March quarter 1997.

(2) However—

- (a) a council is not required to comply with this section if—
 - (i) a poll of electors for the relevant area is conducted on the matter; and
 - (ii) the majority of persons voting at the poll vote in favour of the proposition that the council is not required to comply with this section;

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- (b) the Governor may, by proclamation, grant a council an exemption from the requirements of this section on the basis that the Governor is satisfied that extenuating circumstances exist that justify the exemption.

(3) Part VII will apply to a poll under subsection (2)(a) subject to modifications, exclusions or additions prescribed by regulation.

(4) A person cannot challenge a general rate (or a requirement to pay rates under this Act) on the ground that the declaration of the rate may result in the council raising more than an amount fixed under subsection (1), but a council may be subject to investigation and action under Division XIII of Part II if the Minister considers that the council has failed to comply with the requirements of this section.

(5) In this section—

"Consumer Price Index" means the Consumer Price Index (All groups index for Adelaide) published by the Australian Bureau of Statistics.

Amendment of s. 176—Basis of differential rates

19. Section 176 of the principal Act is amended by striking out subsection (2) and substituting the following subsection:

(2) A determination under subsection (1)(d)—

(a) may only be made if—

- (i) the council is a new council with an area that includes land previously within the area of a different council; or
- (ii) the council has been formed by the amalgamation of two or more councils; or
- (iii) the boundaries of the area of the council have been altered,

and the council has resolved that in the circumstances differential rating is appropriate in order to allow rating relativities within the area of the council to be gradually realigned; and

- (b) may not be inconsistent with a proclamation under Part II (insofar as a proclamation under that Part provides for the realignment of rating relativities during a specified period);
- (c) may not apply for more than five financial years or, if a proclamation under Part II so provides, a longer period specified by proclamation.

Amendment of s. 672—Expiry of by-laws

20. Section 672 of the principal Act is amended by striking out from subsection (1)(a) "1996" and substituting "1998".

Transitional provisions

21. (1) A proposal for—

- (a) the amalgamation of two or more councils; or

(b) the alteration of the boundaries of a council area,

initiated under Subdivision 1 of Division XI of Part II of the principal Act before the commencement of this Act and referred to the Local Government Association of South Australia for the constitution of a panel under that subdivision before 30 November 1995 may proceed under that Part (and be the subject of any appropriate proclamation) as if this Act had not been enacted.

(2) If—

(a) a council is participating in, or affected by—

(i) a proposal for the amalgamation of two or more councils that is proceeding under subsection (1); or

(ii) a proposal under consideration under Division X of Part II of the principal Act (as enacted by this Act); and

(b) the council would, apart from this subsection, be required to conduct a review under section 24 of the principal Act while the proposal is still under consideration,

the requirement to conduct the review is suspended until the consideration of the proposal is finalised.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor