

Review into the Local Government Boundaries Commission

Discussion Paper

November 2022





Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Review into the Local Government Boundaries Commission

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About the review

The Minister for Local Government has commissioned an independent review into the NSW Local Government Boundaries Commission (the review).

The review will examine the composition, function and processes of the NSW Local Government Boundaries Commission (Boundaries Commission) established under the *Local Government Act 1993* (Act) and the *Local Government (General) Regulation 2021* (Regulation), with the aim of identifying areas for improvement. The review will also include an examination of similar frameworks used in other jurisdictions for any lessons they may offer for improving the New South Wales framework.

This discussion paper has been prepared to outline the current framework and to invite submissions identifying areas for improvement, together with suggestions for the practical application of those improvements.

All stakeholders are invited to respond to this discussion paper, including community members, councils and joint organisations, individual councillors and council staff, professional and employee representative organisations, local government industry stakeholder groups and key NSW Government agencies and other related stakeholders.

The review will be undertaken by an independent consultant, Dr Juliet Lucy, whose legal experience has a strong focus on administrative and public law. Dr Lucy will author the final report canvassing options for improvement and making recommendations accordingly. Administrative support for the reviewer will be provided through the Office of Local Government (OLG) for coordination purposes.

The independent reviewer's findings and recommendations will be provided to the Minister.

The objectives of the review are to:



A copy of the terms of reference is included as Attachment 1 to this discussion paper. Further information about the review and the Boundaries Commission is available on the OLG [website](#).

Who may make submissions?

We want meaningful feedback and anyone is welcome to offer comment about how the Boundaries Commission can best carry out its role, how we can ensure good decision making when a proposal is put forward and how we can identify any potential improvements.

To assist formulate submissions that will be informative to the review and that can be compiled in a way that facilitates analysis, targeted questions have been asked at key points in this discussion paper.

While this discussion paper has been developed to encourage feedback in response to the targeted questions, we welcome any further, general feedback in connection with the terms of reference at Attachment 1.

The views of all stakeholders will be considered in identifying options for improvement.

Submissions are due by 5PM 16 December 2022

Submissions can be made using the online feedback form or in a separate written submission. Further information about how to make a submission is provided in Attachment 2 to this discussion paper.

Terminology

References in the Act and in this discussion paper to both the 'Department' and the 'Office of Local Government' include the 'Department of Planning and Environment'. The Office of Local Government forms part of that Department.

The Act refers to the 'Departmental Chief Executive.' The Departmental Chief Executive's functions include to nominate one of the commissioners on the Boundaries Commission and, if requested to do so, to report to the Minister on proposals to amalgamate councils or alter the boundaries of councils. The 'Deputy Secretary, Crown Lands and Local Government' performs the role of 'Departmental Chief Executive'.

The case for review and recent demerger determinations

In July 2021, the (then) Minister announced the review into the Boundaries Commission. The announcement coincided with the release of the Boundaries Commission reports into the two elector proposals, Snowy Valleys Council and the initial proposal for Cootamundra-Gundagai Regional Council.

When the Minister released the two elector proposals in 2021, the Minister confirmed that the current boundaries of these councils would remain in place, meaning that the councils would not demerge. At the time, the Boundaries Commission's examinations of the Cootamundra-Gundagai Regional Council and Snowy Valleys Council demerger elector proposals resulted in conflicting outcomes and recommendations.

It should be noted that recently, on 24 August 2022, based on a new proposal by Cootamundra-Gundagai Regional Council as a business case to demerge the 'new' Council formed in 2016, the Minister made the decision to support the de-amalgamation, based on consideration of the reports published by the Boundaries Commission in July 2022. As was the case in 2021, the Boundaries Commission put forward to the Minister a majority report and a dissenting report; however, on this occasion, the majority report recommended the de-amalgamation.

The diverse findings of the Boundaries Commission and the Minister's subsequent determinations in 2021 and 2022 indicate that the Boundaries Commission has an ability to provide robust and thorough

advice to the Minister. Nevertheless, this discussion paper and the review will explore opportunities to improve this process.

This Review does not seek to review or appeal the previous recommendations of the Boundaries Commission or examine past decisions of the Minister.

The role of the Local Government Boundaries Commission

The Boundaries Commission is an independent statutory authority constituted under section 260 of the Act. While the Boundaries Commission reports to the Minister, it is not subject to the direction of either the Minister or OLG. The funding for the work of the Boundaries Commission and its secretariat however is derived from OLG's recurrent funding.

The Boundaries Commission's role is to examine and report on any matter referred to it by the Minister in relation to the boundaries of local government areas in NSW. These matters include proposals for the constitution, amalgamation, or alteration of boundaries of local government areas. Amendments made to the Act in 2021 expanded the role of the Boundaries Commission to examine and report to the Minister in relation to proposals for de-amalgamation of 'new' councils formed in 2016 and 2017. These 'new' councils were formed as a result of decisions in 2016 and 2017 to amalgamate some former council areas.

The Boundaries Commission is also responsible, where a matter has been referred to the Deputy Secretary of OLG for examination and report, to review that report and provide comments to the Minister.

The Boundaries Commission's report assists the Minister in considering whether or not to make a recommendation to the Governor regarding the proposal. The Minister may recommend that a proposal be implemented, with or without modifications, or may decline to recommend that the proposal be implemented. In respect of constitutional matters, such as amalgamations, de-amalgamations and boundary alterations, the Governor acts of the advice of his or her Ministers.

Composition of the Boundaries Commission

Under section 261 of the Act, four commissioners are appointed to the Boundaries Commission by the Governor of NSW for a five-year term.

The Boundaries Commission is balanced with equal representation from within the local government sector and outside the sector.

Of the four commissioners:

- one member, the Chairperson, is nominated by the Minister for Local Government,
- a second member is an OLG officer nominated by the OLG Deputy Secretary, and
- the third and fourth members are councillors appointed from a panel comprising members nominated by Local Government NSW.

The Local Government NSW nominated panel, which selects two of the four commissioners, consists of 8 councillors. The Act provides the Minister with the ability to determine the process for nomination of panel members. Currently, however, the Minister does not specify a process for Local Government NSW to follow. In practice, Local Government NSW forms the panel of 8 councillors (usually 4 metro and 4 regional councillors) after seeking nominations from councillors through an Expression of Interest process.

In the event that an insufficient number of nominations (less than 8) have been made to the Local Government NSW-formed panel, the Governor may appoint a commissioner on the recommendation of the Minister.

Commissioners are eligible for reappointment however the [NSW Boards and Committees Guidelines](#) provides that, as good practice, members should not serve more than two consecutive terms on a board. The reappointment for Boundaries Commissioners must also be consistent with the [Public Service Commission’s Appointment Standards – Boards and Committees in the NSW Public Sector](#).

Selection credentials and eligibility criteria

There are no selection credentials or eligibility criteria for the appointment of commissioners in the Act, other than those listed above. This means that the commissioners are not required to hold any particular technical skills or experience.

The Boundaries Commission, however, has the ability to engage external resources to assist it with its workload and to provide needed skills and experience.

In practice, the selection, recommendation and approval of candidates for the positions of commissioner of the Boundaries Commission have been based on the following criteria.

Role	Eligibility Criteria
The Chairperson (Ministerial nomination)	<ul style="list-style-type: none"> • The ability to respond to significant, complex and novel challenges with a high level of resilience and persistence, • Expertise in public administration, • The ability to rapidly understand and solve complex issues, • A high standard of professional accountability and integrity, and • Experience in identifying contentious issues, directing discussions and debates, and steering parties towards effective resolution.
The Deputy Secretary’s nomination	<ul style="list-style-type: none"> • The ability to respond to significant, complex and novel challenges with a high level of resilience and persistence, • Expertise in public administration, • The ability to rapidly understand and solve complex issues,

- A high standard of professional accountability and integrity, and
- Status as an employee of OLG.

The two Councillor representatives

- Hold nomination on a panel of 8 councillors by the executive of Local Government NSW,
- Provide certain information to enable the completion of the required documentation.

The review is considering if commissioners should hold certain technical skills or experience and if additionally, each member should be required to hold different skill sets to complement each other. These might include functional knowledge or skills in areas such as public administration, asset management, risk management, internal and external auditing, financial or economic analysis, management control frameworks, internal financial controls, legal or governance (including planning, reporting and oversight).

There is no legislative requirement that regional and metropolitan areas are represented on the Boundaries Commission and the commonly-applied eligibility criteria do not make reference to this factor.

Remuneration

Commissioners, with the exception of the Departmental representative, are remunerated for their role on the Boundaries Commission. The remuneration is in accordance with the [NSW Government Boards and Committees remuneration framework](#). Commissioners are also entitled to reimbursement of associated expenses, such as travel expenses and a subsistence allowance. At present, the remuneration of Boundaries Commission members is as follows:

- Chair - \$50,000 pa
- Sitting members \$25,000 pa
- Department member - unpaid

The remuneration is paid on an annual basis and paid regardless of the number of reviews, if any, conducted in a year.

The Act enables commissioners to hold employment outside of the Boundaries Commission.

Meeting procedures

The Boundaries Commission determines the procedure for the calling of meetings. This means that the Boundaries Commission meets on a needs basis and is not required to meet a specified number of times per year.

The Chairperson is required to preside over the meetings and provide the necessary executive functions.

A quorum of a minimum of two commissioners (including the chairperson) is required for a Boundaries Commission meeting. Any decisions made need to be supported by a majority of votes cast at a meeting. In the event of an equality of votes, the Chairperson has a casting vote.

Importantly, commissioners are not entitled to vote on any question relating to the boundaries of the council area for which the commissioner is a councillor. In this situation, the commissioner is treated as being absent with the leave of the Minister for the period of examination or inquiry. While not explicitly stated in the Act, it is expected that the commissioner would be removed from reviewing the proposal in which the commissioner has a perceived or actual conflict of interest.

Have your say - Questions 1 to 3



1. Do you think the criteria currently being applied ensure that the commissioners have the skills and experience needed to appropriately undertake their role? If not, what skills or experience do you suggest should form part of the eligibility criteria?
2. Should the criteria for individual commissioner appointments be varied to ensure a complementary and wider range of skills and experience on the Boundaries Commission? If so, what balance of skills and experience need to be represented?
3. Do you think there should be a requirement that both metropolitan and regional or rural councillors should be represented? If so, should there be a minimum number of regional or rural councillors?

How does the Boundaries Commission provide advice?

The Boundaries Commission's role is to examine and report on any proposal referred to it, in relation to the boundaries of local government areas in NSW. This includes proposals for the amalgamation, de-amalgamation or alteration of boundaries of local government areas.

Types of proposals

Boundary alteration – changing the geographic boundary of two or more councils. For example; adjusting council boundaries to enable an entire parcel of privately owned land to sit within one LGA and pay one set of rates.

Amalgamation – merging two or more councils into one 'new' council.

De-amalgamation – the division of a council into two or more 'new' councils (often similar to councils which previously existed before they were amalgamated).

A boundary alteration does not result in the creation of 'new' or merging of 'existing' councils. In practice, minor boundary change proposals where all affected councils consent to the proposal are often referred to the Deputy Secretary but they could also be referred to the Boundaries Commission.

Where one of the affected councils to a boundary alteration proposal does not agree with it then it must be referred to the Boundaries Commission.

An amalgamation proposal can be referred to either the Deputy Secretary or the Boundaries Commission. All de-amalgamation proposals are referred to the Boundaries Commission.



The Boundaries Commission does not have a decision-making role. Its role is to examine the proposal and to report to the Minister.

The primary function of the reports produced by the Boundaries Commission is to assist the Minister in considering whether or not to make a recommendation to the Governor that a proposal be implemented.

Who can make a proposal?

Amalgamation and boundary alteration proposals

A proposal to amalgamate existing councils or to alter the boundaries of a council can be made by the Minister, by a council or by electors. Where a proposal is being made by electors, the Act requires that the proposal be supported by an appropriate minimum number of electors, either 250 of the enrolled electors or 10% of the electors in the area affected, whichever is the greater.

If an amalgamation or boundary alteration proposal applies to only part of an area, the appropriate minimum number of electors is either 250 of the enrolled electors for that part or 10% of the electors for that part, whichever is the lessor.

De-amalgamation

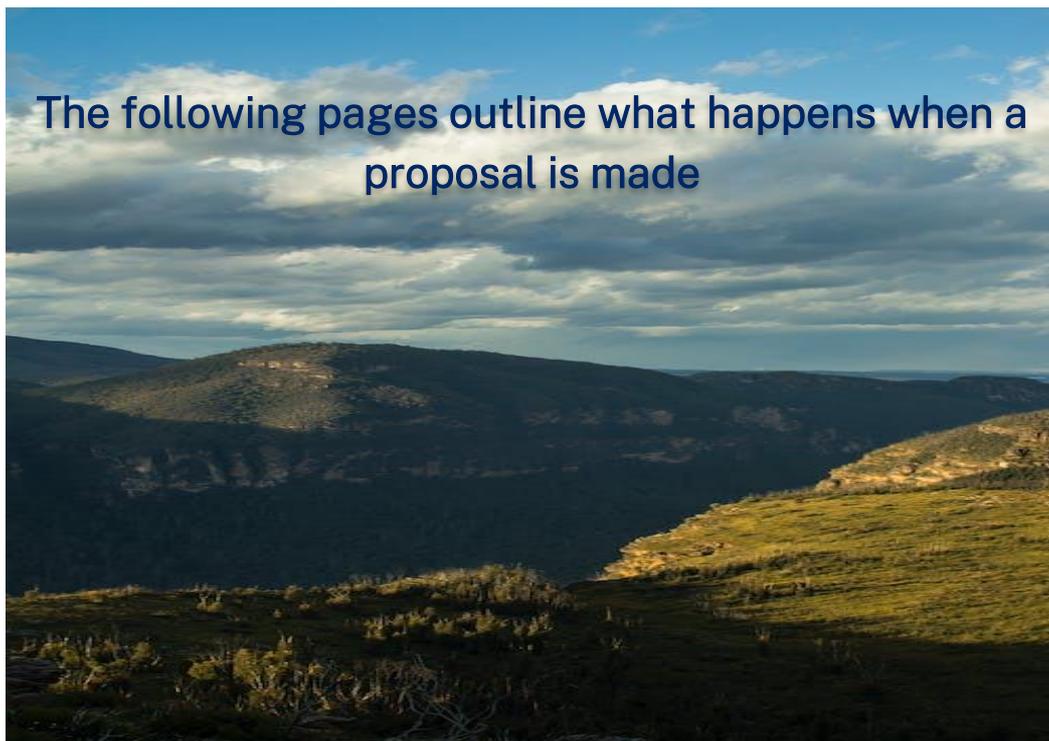
A proposal for de-amalgamation of a new area (where two or more councils have been amalgamated) may be made by the new council within 10 years of the constitution of the new area. The Act requires the proposal to be in the form of a business case setting out the proposal and the reasons in support of the proposal.

What happens when a proposal is made?

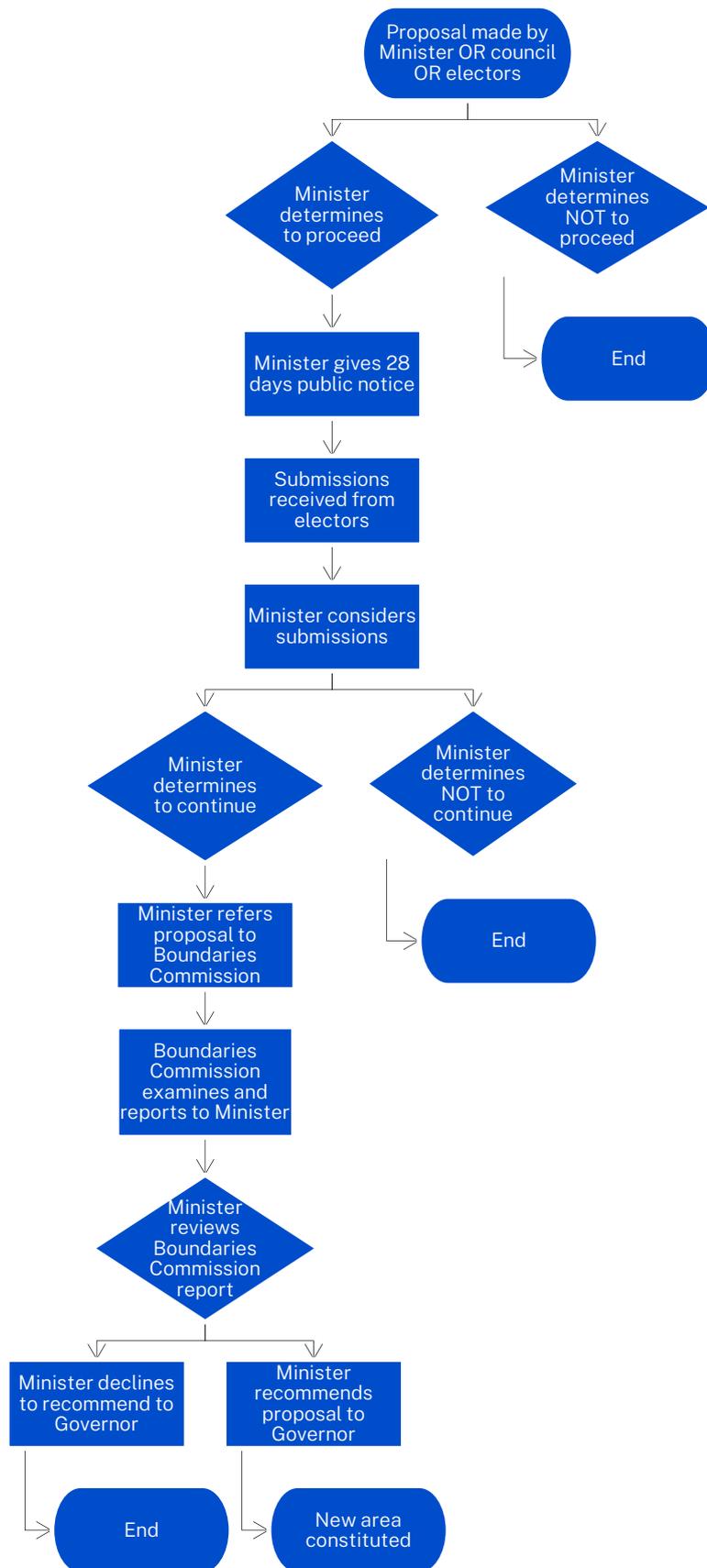
In practice, minor boundary change proposals where all affected councils consent to the proposal are referred to the Deputy Secretary without the need for reference to the Boundaries Commission.

Contested proposals, such as minor boundary alterations where one of the affected councils does not agree, and all amalgamation and de-amalgamation proposals, are referred to the Boundaries Commission.

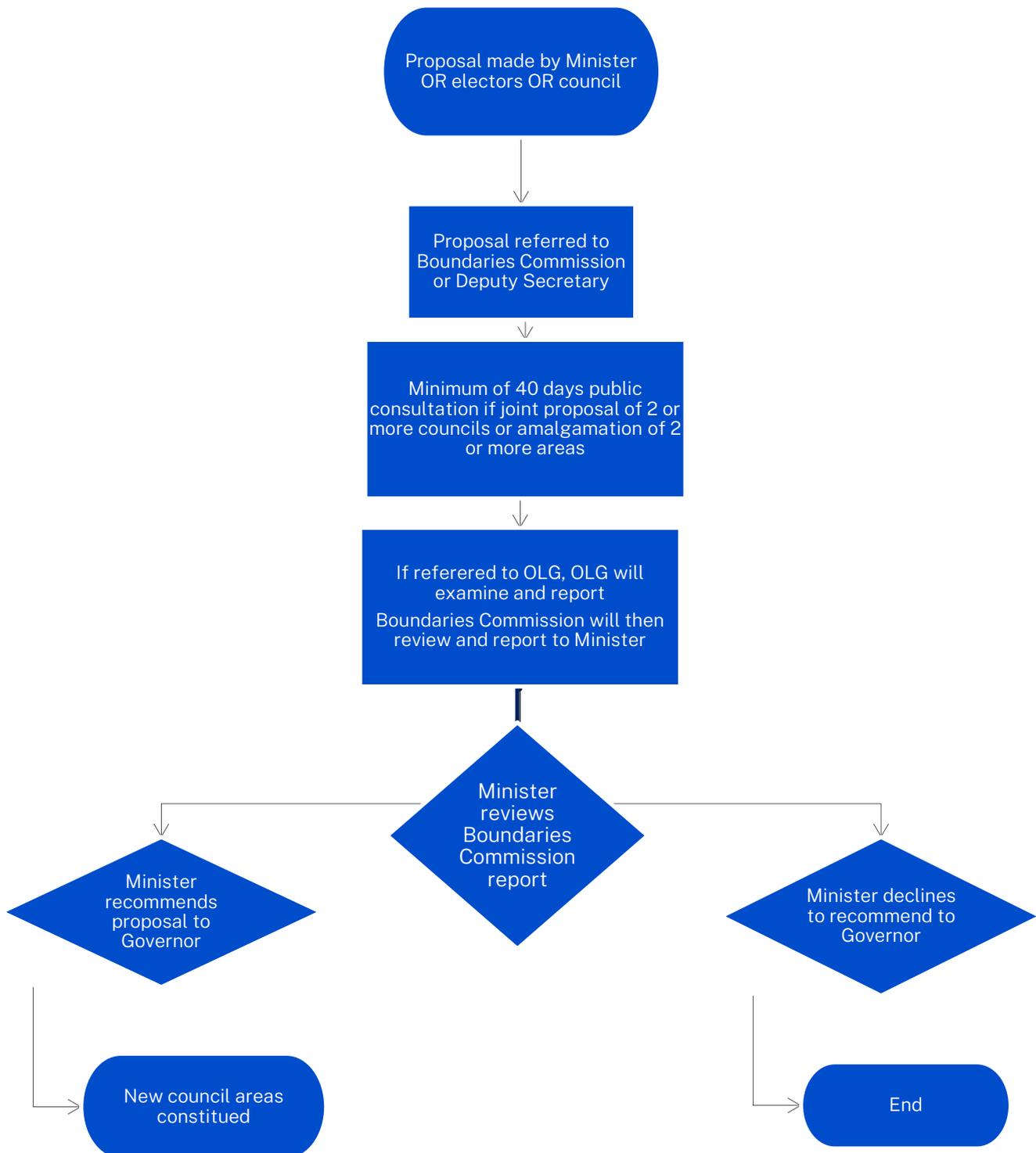
If the Minister determines to NOT proceed with a proposal, it is open to the council or electors to re-submit the proposal for subsequent examination and determination.



To constitute a new area - s215 of Act

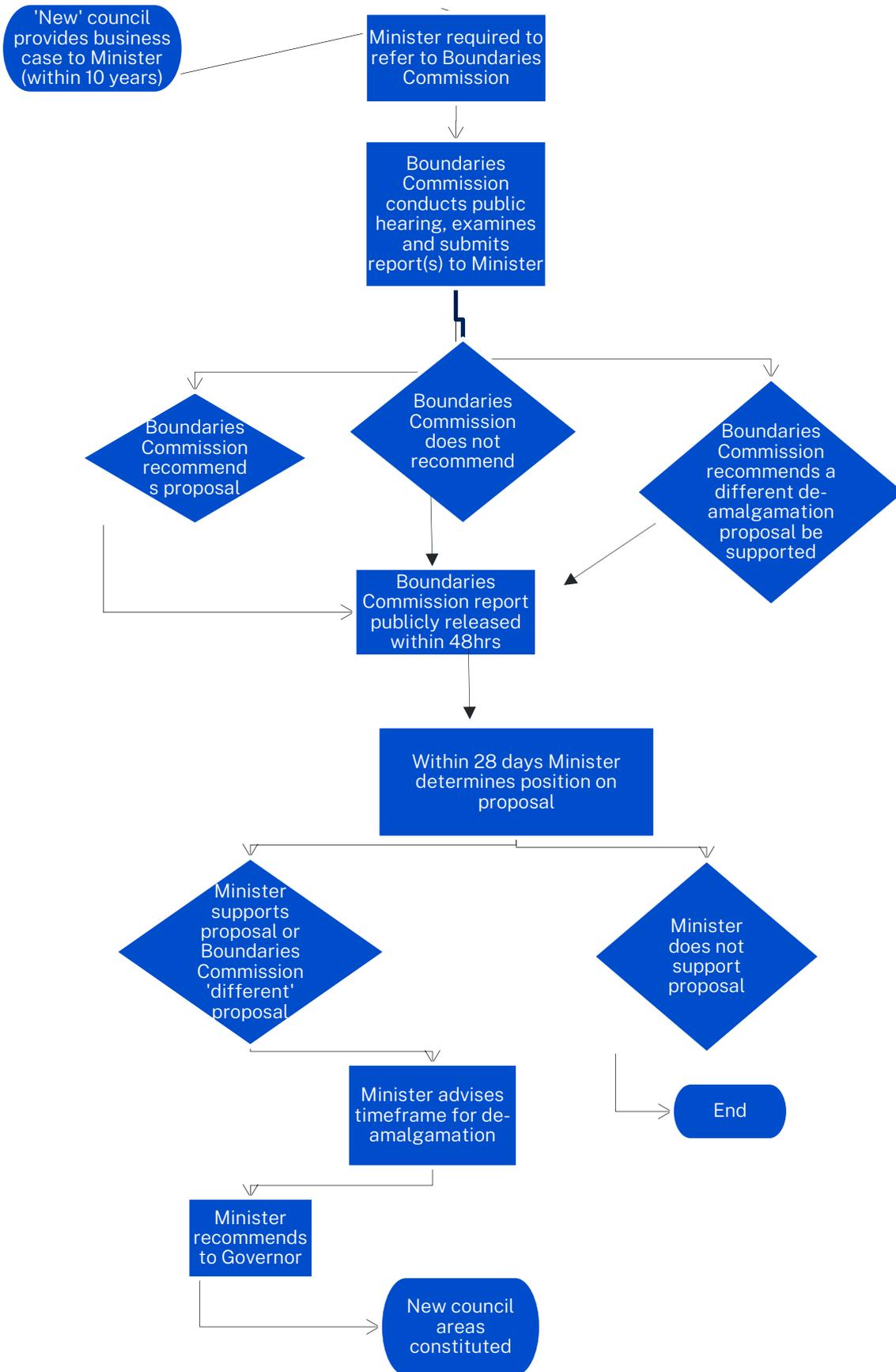


Amalgamation or boundary alteration – Division 2B of Act



#Note – As noted above, minor boundary change proposals where all affected councils consent to the proposal can be referred to the OLG Deputy Secretary without the need for reference to the Boundaries Commission. Contested proposals, such as minor boundary alterations where one of the affected councils does not agree, and all amalgamation and de-amalgamation proposals, are referred to the Boundaries Commission.

De-amalgamation of areas - 218CC of Act



What factors are considered by the Boundaries Commission when examining proposals?

The Boundaries Commission is required to consider 11 matters when examining proposals under section 263(3) of the Act relating to the boundaries of areas (including proposals for amalgamations and de-amalgamations). These are, in summary:

1. the financial advantages or disadvantages of any proposal to residents and ratepayers, including the economies or diseconomies of scale,
2. the community of interest and geographic cohesion in the existing areas and in any proposed new area,
3. existing historical and traditional values in the existing areas and the impact of change on them,
4. the attitude of residents and ratepayers,
5. the requirement for appropriate elected representation for ratepayers and residents at the local level,
6. the impact of the proposal on the ability of the councils to provide adequate, equitable and appropriate services and facilities,
7. the impact of the proposal on the employment of the staff by the councils,
8. the impact of the proposal on rural communities in the areas concerned,
9. in the case of a proposal for the amalgamation of two or more areas, the desirability (or otherwise) of dividing the resulting area/s into wards,
10. in the case of a proposal for the amalgamation of two or more areas, the need to ensure that the opinions of each of the diverse communities are effectively represented, and
11. any other factors the Boundaries Commission considers relevant to the provision of efficient and effective local government in the existing and proposed new areas.

While the Act requires the Boundaries Commission to consider these 11 matters, it does not prescribe what is required by the examination of the proposal or how the examination should be undertaken by the Commission. The Act does not provide for the weighting the Boundaries Commission is to give to each of these matters (for example, it does not require the Boundaries

Commission to give priority to any particular matter or matters). That is left to the judgment of the Boundaries Commission.

How does the Boundaries Commission report?

After having considered the 11 matters stipulated in the Act, the Boundaries Commission compiles a report to the Minister. Schedule 2 of the Act provides that in the event a commissioner has a dissenting view, the commissioner may provide the Minister with a dissenting report.

As referred to in the 'case for review and recent demerger determinations' section of this discussion paper, dissenting reports have been provided with majority reports put to the Minister in 2021 and 2022.

The Act provides that the Supreme Court has limited jurisdiction to interfere with the conduct of the Boundaries Commission.

Timeframe for Boundaries Commission reviews

The Act does not provide a timeframe for the examination and report process to be undertaken and completed by the Boundaries Commission.

Review timeframes are dependent on the complexity of the proposal and the quantity of information the Boundaries Commission needs to review, and therefore timeframes change on a case-by-case basis. The Boundaries Commission, however, is acutely aware of the need for its examinations to be completed within reasonable timeframes to provide certainty to the affected council/s and their communities.

Completion of the examination, during 2021 and 2022, of proposals affecting Snowy Valleys Council and the two proposals affecting Cootamundra-Gundagai Regional Council were impacted by the COVID-19 pandemic. The Boundaries Commission was required to defer public inquiry hearings until such a time the hearings could be held in accordance with the Public Health Orders in place at the time.

Have your say - Questions 4 to 8



4. Do you have any suggested changes or improvements to who can make a boundary alteration, amalgamation or de-amalgamation proposal? If so, please explain your suggestion.

5. Do you have any views on the minimum number of electors which should be required to make a proposal? If so, please explain the reasons for your views.
6. Do you suggest any changes to the 11 matters the Boundaries Commission is required to consider? If so, what changes would you recommend and why?
7. In your view, should the Boundaries Commission be required to give any of the 11 matters (or any other matters you think it should be required to consider) any particular weighting or preference? If so, what matters should be given more weight or preference and why?
8. Do you think timeframes should be set for the Boundaries Commission examination and reporting process? If so, what timeframe do you suggest for boundary alteration proposals, for amalgamation proposals and for de-amalgamation proposals? Why do you suggest these timeframes?

How are community and stakeholder views represented?

It is important that communities and stakeholders have an opportunity to articulate their views about a proposal. It is equally important that the feedback received is listened to and that it forms an integral part of the review and decision-making process.

The Act provides for a number of important public feedback and public reporting avenues. These are explained below.

The process maps provided earlier in this discussion paper outline that if the Minister determines to proceed with a proposal to constitute a new area, the Minister must give 28 days' public notice of the intention to proceed, receive submissions from electors and consider the submissions received prior to making any determination to continue or not with a proposal.

When a proposal is made to amalgamate or alter council boundaries, a minimum of 40 days' public consultation is required if the proposal has been jointly submitted by 2 or more councils or the proposal seeks to amalgamate 2 or more council areas. During this 40-day period, the Act stipulates that elector views must be sought through a range of mechanisms including advertised public meetings, issuing invitations to make public submissions, holding postal surveys or opinion polls and by means of formal polls.

When seeking public feedback through postal surveys and opinion polls, the Regulation requires the Boundaries Commission (or the Deputy Secretary as the case requires) to prepare a list and seek the views of:

- electors based on the Electoral Roll for the area/s concerned by the proposal,
- non-resident owners of land for the area/s concerned by the proposal, held by the relevant council/s, and
- occupiers and ratepaying lessees, held by the relevant council/s.

Another form of engagement is through an inquiry. The Minister can direct the Boundaries Commission to hold an inquiry, and if it has not received a Ministerial direction, the Boundaries Commission can seek the Minister's approval to hold an inquiry.

If a 'new' council, which has resulted from the amalgamation of previous councils within the past 10 years, provides a business case to the Minister seeking to de-amalgamate, the Boundaries Commission is required to hold an inquiry. The Minister is also required to ensure that the report of the Boundaries Commission is publicly released within 48 hours of receipt.

Reasonable public notice of the holding of an inquiry must be given and members of the public must be allowed to attend any inquiry. The legislation does not define 'reasonable public notice', set out the process for seeking public submissions or contain any details about how public inquiries should be held.

The Boundaries Commission held public hearings in the pandemic period. To facilitate public access, the hearings were live streamed. The recordings of the hearings remained available for a period of time to allow the public to make further submissions, which many people did.

When appearing before a public inquiry held by the Boundaries Commission, a person is not entitled to be represented by an Australian lawyer or by any person acting for fee or reward. An Australian lawyer may, however, prepare documents, submissions or legal advice to be tendered to the Boundaries Commission, on behalf of member/s of the public.

Have your say – Questions 9 to 11



9. Do you have any views on who should be approached to complete postal surveys and opinion polls when public feedback is sought about a proposal? Please explain the basis for your views.

10. Do you think that guidelines should be developed to determine the mechanisms and processes for ensuring that community and stakeholder views are represented? If so, what mechanisms and processes would you suggest and why?

11. Do you have any views about restricting representation of persons by a lawyer or person acting for fee or reward at public inquiries? If so, please explain the basis for your views.

Next steps

This discussion paper has been released to facilitate community and stakeholder input into the review. It is one phase of a broader review into the effectiveness of the Boundaries Commission.

Targeted consultation with key stakeholders and an examination of Boundaries Commission frameworks used in other jurisdictions will also be undertaken as part of the review.

The independent reviewer will collate and analyse all submissions, information and data and develop a report to the Minister at the end of March 2023.



To keep up to date with the review and for further information about the Boundaries Commission visit the [OLG website](#).

Terms of Reference - Attachment 1

Terms of Reference

Review into the Local Government Boundaries Commission



Context

The Boundaries Commission (the **Commission**) has a role under Chapter 9 of the *Local Government Act 1993* to examine and report on proposals for the constitution, amalgamation, de-amalgamation or alteration of boundaries of local government areas. Any amalgamation and de-amalgamation proposal is required to be referred to the Commission. The Commission is required to examine and report to the Minister for Local Government on proposals referred to it, to assist the Minister in considering whether or not to make a recommendation to the Governor regarding the proposal.

The Commission's recent examinations of Cootamundra-Gundagai Regional Council and Snowy Valleys Council demerger elector proposals resulted in conflicting outcomes and recommendations.

Recent amendments to the *Local Government Act 1993* have created a new role for the Commission in relation to proposals for de-amalgamation.

Role

The Reviewer is to review, examine and report to the Minister for Local Government on the composition, functions and processes of the Commission established under the *Local Government Act 1993* in relation to current and future proposals referred to the Commission under sections 218, 218F or 218CC of the *Local Government Act 1993*, including to:

- Review the efficacy of Chapter 9 Part 3 and Schedule 2 of the *Local Government Act 1993* to provide robust and cohesive advice to the Minister, including the statutory composition of the Commission
- Consider and report on mechanisms by which information and community and stakeholder views can be best provided to the Minister to guide and enhance the decision-making process, including whether the different approaches might be suitable for proposals considered by the Commission, and
- Advise on any improved, effective mechanisms for providing advice on and recommendations relating to proposals to the Minister, to ensure best practice and optimum outcomes.

Process

- Liaise with community, stakeholder groups and local councils
- Consult with the Department of Planning, Industry and Environment, Treasury, NSW Electoral Commission and other relevant Government agencies as necessary
- Make public a mechanism for providing submissions, and receive and assess submissions
- Review mechanisms similar to the Boundaries Commission in other jurisdictions
- Seek expert advice as required, and
- Consider the information, submissions, and material and formulate recommendations to the Minister.

Outcome

The report of the Review is to be provided to the Minister for Local Government.

Administration

Secretariat to be provided by DPIE – Office of Local Government.

How to make a submission - Attachment 2

Submissions may be made using the online feedback form or in writing by **5.00PM 16 December 2022**

Online submissions

Go to www.olg.nsw.gov.au and follow the link to the Boundaries Commission Review. The online submission form may also be accessed from [here](#) or downloaded from [here](#).

Written submissions

Completed submission forms or written submissions should be labelled 'Local Government Boundaries Commission Review'.

Post: Locked Bag 3015 NOWRA NSW 2541

Email: olg@olg.nsw.gov.au

To ensure submissions offer maximum value in assisting this review to identify the issues it needs to consider and address and to identify possible opportunities for improvement, they should be made based on the following guidelines:

- Submissions should be framed to offer constructive responses to the considerations identified in the dialogue boxes at conclusion of each section of this discussion paper. These are designed to prompt consideration of the key issues that need to be examined and addressed by the review.
- Submissions should focus on making positive suggestions for improvement rather than seeking to remedy past errors or failures. However, examples that illustrate any deficiencies in the current framework may assist the review in identifying opportunities for improvement.
- The review is not a vehicle to re-prosecute individual cases or as an appeal mechanism for past decisions. To the extent that submissions seek to do this, they will not be considered.
- There is no word limit on submissions. However, the inclusion of copious attachments and appendices to illustrate the points made in a submission is discouraged and will only detract from the attention that can be given to the submission.

While every effort will be made to preserve any confidential information provided in submissions, submissions or extracts from submissions may be incorporated into the review report and may otherwise be made publicly available at the discretion of OLG in consultation with the independent reviewer. If submissions are made public, contact details will be redacted. The name of the person making a submission may be released unless that person has requested to remain anonymous.

Any submissions received are also subject to the *Government Information (Public Access) Act 2009*.

For more information or for assistance with making a submission, please contact OLG on (02) 4428 4100 or via email at olg@olg.nsw.gov.au.