

Schedule 2.1 — Provisions about creating, changing the boundaries of, and abolishing districts

[Section 2.1(2)]

1. Terms used

In this Schedule, unless the contrary intention appears —

affected electors, in relation to a proposal, means —

- (a) electors whose eligibility as electors comes from residence, or ownership or occupation of property, in the area directly affected by the proposal; or
- (b) where an area of the State is not within or is not declared to be a district, people who could be electors if it were because of residence, or ownership or occupation of property, in the area directly affected by the proposal;

affected local government means a local government directly affected by a proposal;

notice means notice given or published in such manner as the Advisory Board considers appropriate in the circumstances;

proposal means a proposal made under clause 2 that an order be made as to any or all of the matters referred to in section 2.1.

2. Making a proposal

(1) A proposal may be made to the Advisory Board by —

- (a) the Minister; or
- (b) an affected local government; or
- (c) 2 or more affected local governments, jointly; or
- (d) affected electors who —
 - (i) are at least 250 in number; or
 - (ii) are at least 10% of the total number of affected electors.

(2) A proposal is to —

- (a) set out clearly the nature of the proposal, the reasons for making the proposal and the effects of the proposal on local governments; and

- (b) be accompanied by a plan illustrating any proposed changes to the boundaries of a district; and
- (c) comply with any regulations about proposals.

[Clause 2 amended by No. 49 of 2004 s. 67(2).]

3. Dealing with proposals

- (1) The Advisory Board is to consider any proposal.
- (2) The Advisory Board may, in a written report to the Minister, recommend* that the Minister reject a proposal if, in the Board's opinion —
 - (a) the proposal is substantially similar in effect to a proposal on which the Board has made a recommendation to the Minister within the period of 2 years immediately before the proposal is made; or
 - (aa) where the proposal was made by affected electors under clause 2(1)(d), that the majority of those electors no longer support the proposal; or
 - (b) the proposal is frivolous or otherwise not in the interests of good government.

** Absolute majority required.*

- (3) If, in the Advisory Board's opinion, the proposal is —
 - (a) one of a minor nature; and
 - (b) not one about which public submissions need be invited,the Board may, in a written report to the Minister, recommend* that the Minister reject the proposal or that an order be made in accordance with the proposal.

** Absolute majority required.*

- (4) Unless it makes a recommendation under subclause (2) or (3), the Advisory Board is to formally inquire into the proposal.

[Clause 3 amended by No. 64 of 1998 s. 52(2); No. 49 of 2004 s. 67(3).]

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4. Notice of inquiry

- (1) Where a formal inquiry is required the Advisory Board is to give —
 - (a) notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal; and
 - (b) a report to the Minister.
- (2) The notice and report under subclause (1) are to —
 - (a) advise that there will be a formal inquiry into the proposal; and
 - (b) set out details of the inquiry and its proposed scope; and
 - (c) advise that submissions may be made to the Board not later than 6 weeks after the date the notice is first given about —
 - (i) the proposal; or
 - (ii) the scope of the inquiry.
- (3) If, after considering submissions made under subclause (2)(c), the Advisory Board decides* that the scope of the formal inquiry is to be significantly different from that set out in the notice and report under subclause (1), it is to give —
 - (a) another notice to affected local governments, affected electors and the other electors of districts directly affected by the proposal; and
 - (b) another report to the Minister.
- (4) The notice and report under subclause (3) are to —
 - (a) set out the revised scope of the inquiry; and
 - (b) advise that further submissions about the proposal, or submissions about matters relevant to the revised scope of the inquiry, may be made to the Board within the time set out in the notice.

** Absolute majority required.*

5. Conduct of inquiry

- (1) A formal inquiry is to be carried out, and any hearing for the purposes of the inquiry is to be conducted, in a way that makes it as easy as possible for interested parties to participate fully.
- (2) In carrying out a formal inquiry the Advisory Board is to consider submissions made to it under clause 4(2)(c) and (4)(b) and have regard, where applicable, to —
 - (a) community of interests; and
 - (b) physical and topographic features; and
 - (c) demographic trends; and
 - (d) economic factors; and
 - (e) the history of the area; and
 - (f) transport and communication; and
 - (g) matters affecting the viability of local governments; and
 - (h) the effective delivery of local government services,

but this does not limit the matters that it may take into consideration.

6. Recommendation by Advisory Board

- (1) After formally inquiring into a proposal, the Advisory Board, in a written report to the Minister, is to recommend* —
 - (a) that the Minister reject the proposal; or
 - (b) that an order be made in accordance with the proposal; or
 - (c) if it thinks fit after complying with subclause (2), the making of some other order that may be made under section 2.1.

** Absolute majority required.*

- (2) The Advisory Board is not to recommend to the Minister the making of an order that is significantly different from the proposal into which it formally inquired unless the Board has —
 - (a) given* notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation of its intention to do so; and
 - (b) afforded adequate opportunity for submissions to be made about the intended order; and

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(c) considered any submissions made.

** Absolute majority required.*

7. Minister may require poll of electors

In order to assist in deciding whether or not to accept a recommendation of the Advisory Board made under clause 6, the Minister may require that the Board's recommendation be put to a poll of the electors of districts directly affected by the recommendation.

8. Electors may demand poll on recommended amalgamation

- (1) Where the Advisory Board recommends to the Minister the making of an order to abolish 2 or more districts (the *districts*) and amalgamate them into one or more districts, the Board is to give notice to affected local governments, affected electors and the other electors of districts directly affected by the recommendation about the recommendation.
- (2) The notice to affected electors has to notify them of their right to request a poll about the recommendation under subclause (3).
- (3) If, within one month after the notice is given, the Minister receives a request made in accordance with regulations and signed by at least 250, or at least 10%, of the electors of one of the districts asking for the recommendation to be put to a poll of electors of that district, the Minister is to require that the Board's recommendation be put to a poll accordingly.
- (4) This clause does not limit the Minister's power under clause 7 to require a recommendation to be put to a poll in any case.

[Clause 8 amended by No. 64 of 1998 s. 52(3).]

9. Procedure for holding poll

- (1) Where, under clause 7 or 8, the Minister requires that a recommendation be put to a poll —
 - (a) the Advisory Board is to —
 - (i) determine the question or questions to be answered by electors; and
 - (ii) prepare a summary of the case for each way of answering the question or questions;

and

- (b) any local government directed by the Minister to do so is to —
 - (i) in accordance with directions by the Minister, make the summary available to the electors before the poll is conducted; and
 - (ii) subject to subclause (2), declare* the Electoral Commissioner, or a person approved by the Electoral Commissioner, to be responsible for the conduct of the poll under Part 4, and return the results to the Minister.

** Absolute majority required.*

- (2) Before making a declaration under subclause (1)(b)(ii), the local government is to obtain the written agreement of the Electoral Commissioner.

[Clause 9 amended by No. 49 of 2004 s. 67(4) and (5).]

10. Minister may accept or reject recommendation

- (1) Subject to subclause (2), the Minister may accept or reject a recommendation of the Advisory Board made under clause 3 or 6.
- (2) If at a poll held as required by clause 8 —
 - (a) at least 50% of the electors of one of the districts vote; and
 - (b) of those electors of that district who vote, a majority vote against the recommendation,

the Minister is to reject the recommendation.

- (3) If the recommendation is that an order be made and it is accepted, the Minister can make an appropriate recommendation to the Governor under section 2.1.

10A. Recommendations regarding names, wards and representation

- (1) The Advisory Board may —
 - (a) when it makes its recommendations under clause 3 or 6; or

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(b) after the Minister has accepted its recommendations under clause 10,

in a written report to the Minister, recommend the making of an order to do any of the things referred to in section 2.2(1), 2.3(1) or (2) or 2.18(1) or (3) that the Board considers appropriate.

(2) In making its recommendations under subclause (1) the Advisory Board —

- (a) may consult with the public and interested parties to such extent as it considers appropriate; and
- (b) is to take into account the matters referred to in clause 8(c) to (g) of Schedule 2.2 so far as they are applicable.

[Clause 10A inserted by No. 64 of 1998 s. 52(4).]

11. Transitional arrangements for orders about districts

(1) Regulations may provide for matters to give effect to orders made under section 2.1 including —

- (a) the vesting, transfer, assumption or adjustment of property, rights and liabilities of a local government;
- (b) the extinguishment of rights of a local government;
- (c) the winding up of the affairs of a local government;
- (d) the continuation of actions and other proceedings brought by or against a local government before the taking effect of an order under section 2.1;
- (e) the bringing of actions and other proceedings that could have been brought by or against a local government before the taking effect of an order under section 2.1;
- (f) if the effect of an order under section 2.1 is to unite 2 or more districts, the determination of the persons who are to be the first mayor or president, and deputy mayor or deputy president, of the new local government;
- (g) the continuation of any act, matter or thing being done under another written law by, or involving, a local government.

(2) Subject to regulations referred to in subclause (1), where an order is made under section 2.1 any local governments affected by the order (including any new local government created as a result of the order)

are to negotiate as to any adjustment or transfer between them of property, rights and liabilities.

- (3) Where an order is made under section 2.1 the Governor may, by order under section 9.62(1), give directions as to any of the matters set out in subclause (1) if, and to the extent that, those matters are not resolved by regulations referred to in that subclause or by negotiation under subclause (2).
- (4) A contract of employment that a person has with a local government is not to be terminated or varied as a result (wholly or partly) of an order under section 2.1 so as to make it less favourable to that person unless —
 - (a) compensation acceptable to the person is made; or
 - (b) a period of at least 2 years has elapsed since the order had effect.
- (5A) The value of compensation required to be made under subclause (4)(a) to a person whose contract of employment with a local government is terminated or varied is not to exceed in total —
 - (a) in the case of a person whose contract of employment is terminated —
 - (i) if the person's employment is governed by a written contract in accordance with section 5.39, the maximum amount of money to which the person is entitled, under that contract, if the contract is terminated before the expiry date; or
 - (ii) in any other case, the value of the person's final annual remuneration, as calculated in accordance with regulations made for the purposes of section 5.50(3);
 - or
 - (b) in the case of a person whose contract of employment is varied, the lesser of —
 - (i) the amount that the person would have been entitled to if the person's contract of employment had been terminated before the expiry date; or
 - (ii) the value of the person's annual remuneration for the year ending on the date of the variation, calculated in accordance with regulations made for the purposes of

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section 5.50(3) as if the person's contract of employment had terminated on that date.

- (5B) For the purposes of subclause (5A), the total value of the compensation required to be made to a person includes all amounts to which the person is entitled under a contract of employment or award relating to the person as an employee of the local government.
- (5) The rights and entitlements of a person whose contract of employment is transferred from one local government to another, whether arising under the contract or by reason of it, are to be no less favourable to that person after the transfer than they would have been had the person's employment been continuous with the first local government.
- (6) If land ceases to be in a particular district as a result of an order under section 2.1, any written law that would have applied in respect of it if the order had not been made continues to apply in respect of the land to the extent that its continued application would be consistent with —
 - (a) any written law made after the order was made; and
 - (b) any order made by the Governor under subclause (8).
- (7) Regulations may make provision as to whether or not, or the modifications subject to which, a written law continues to apply in respect of land under subclause (6).
- (8) The Governor may, in a particular case, by order, vary the effect of subclause (6) and regulations made in accordance with subclause (7).

[Clause 11 amended by No. 64 of 1998 s. 52(5); No. 26 of 2016 s. 23.]

12. Registration of documents

- (1) In this clause —
relevant official means —
 - (a) the Registrar of Titles under the *Transfer of Land Act 1893*; or
 - (b) the Registrar of Deeds and Transfers under the *Registration of Deeds Act 1856*; or
 - (c) the Minister administering the *Land Administration Act 1997*; or

- (d) any other person authorised by a written law to record and give effect to the registration of documents relating to transactions affecting any estate or interest in land or any other property.

(2) The relevant officials are —

- (a) to take notice of an order of the kind referred to in clause 11(3) relating to property, rights and liabilities; and
- (b) to record and register in the appropriate manner the documents necessary to show the effect of the order as it relates to those matters.

[Clause 12 inserted by No. 26 of 2016 s. 24.]