

Our ref: R90/0025-03 – SUB-715

16 December 2022

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Independent Reviewer  
Review into the Local Government Boundaries Commission

Endorsed by LGNSW Board  
in February 2023.

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### **Local Government Boundaries Commission Review**

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective, community-based system of local government in the State.

LGNSW welcomes the opportunity to participate in the independent Review into the Local Government Boundaries Commission (the Review) and appreciates the independent reviewer, Dr Juliet Lucy, making the time to meet with the LGNSW Chief Executive and staff earlier this month.

This is a draft submission until reviewed and endorsed by the LGNSW Board. Any amendments will be forwarded in due course.

### **General comment**

LGNSW recognises the Local Government Boundaries Commission (the Boundaries Commission) as an independent statutory authority and appreciates that it is only an advisory body. Any decisions on boundary changes are ultimately made by the Minister.

While LGNSW and individual councils may from time to time disagree with certain reports or processes of the Commission, the Commission is widely respected in the local government sector. To maintain this respect, it is essential that the Commission's independence be protected.

The Discussion Paper indicates that the review was triggered by the diverse findings of the Boundaries Commission in 2021-2022 in regard to the Cootamundra-Gundagai Regional Council and Snowy Valleys Council de-amalgamation proposals.

It is reassuring to note that the Paper has interpreted the diverse findings of the Boundaries Commission and the Minister's subsequent determinations in 2021 and 2022 as indications that the Boundaries Commission has an ability to provide robust and thorough advice to the Minister.

Indeed, it should not be surprising that the Boundaries Commission's findings will differ between proposals. It is entirely appropriate that different conclusions are reached depending on the circumstances of each case.

## Established LGNSW positions

The LGNSW Policy Platform sets out the policy positions of LGNSW, as established through motions voted on by councils at LGNSW Annual Conferences.

Relevant to this review, the Policy Platform calls on the NSW Government to:

- 16.1 – Legislate to prevent the forced amalgamation of councils or significant boundary alteration without the support of a plebiscite.
- 16.2 – Legislate to limit the power of the Minister for Local Government to suspend or dismiss democratically elected councils in all but the most extraordinary circumstances.
- 16.3 – Permit newly amalgamated councils that have been divided into wards as part of a larger council area to revert to their status as undivided electorates.

Councils also resolved at the LGNSW 2018 Annual Conference (resolution 97) to seek a change to the Local Government Act to prevent the forced amalgamation of councils or significant boundary alteration without the support of a plebiscite.

## Review Paper Questions

***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?***

The discussion paper notes that the criteria for selection, recommendation and approval of candidates for the Boundaries Commission are currently based on the following criteria.

Role	Eligibility criteria
Chairperson (Ministerial nomination)	<ul style="list-style-type: none"><li>• The ability to respond to significant, complex and novel challenges with a high level of resilience and persistence,</li><li>• Expertise in public administration,</li><li>• The ability to rapidly understand and solve complex issues,</li><li>• A high standard of professional accountability and integrity, and</li><li>• Experience in identifying contentious issues, directing discussions and debates, and steering parties towards effective resolution.</li></ul>
Deputy Secretary's nomination	<ul style="list-style-type: none"><li>• The ability to respond to significant, complex and novel challenges with a high level of resilience and persistence,</li><li>• Expertise in public administration,</li><li>• The ability to rapidly understand and solve complex issues,</li><li>• A high standard of professional accountability and integrity, and</li><li>• Status as an employee of OLG.</li></ul>
2x Councillor representatives	<ul style="list-style-type: none"><li>• Hold nomination on a panel of 8 councillors by the executive of Local Government NSW,</li><li>• Provide certain information to enable the completion of the required documentation.</li></ul>

LGNSW believes the current criteria are generally sufficient for supporting a strong and effective Commission, but with a minor amendment to require the Chairperson of the Boundaries Commission to have high level experience in the local government sector.

LGNSW also recognises that expert specific skills are required by the Commission from time to time but notes that the Commission has the ability to engage external resources as required.

**Recommendation 1** – That the Chairperson of the Boundaries Commission should also be required to have high level experience in the local government sector. The position benefits from local government experience and expertise.

***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?***

LGNSW is concerned that the Discussion Paper may misrepresent the qualifications of councillor members compared to the Chairperson.

As noted above, the Chairperson of the Boundaries Commission is subject to the following eligibility criteria:

- 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
- Experience in identifying contentious issues, directing discussions and debates, and steering parties towards effective resolution.

The eligibility criteria for the Deputy Secretary's nomination are similar but add a requirement that the nominee is an employee of the Office of Local Government (OLG).

Whereas the councillor representatives are represented as satisfying only the following eligibility criteria:

- 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.

In reality, the councillors ultimately selected by the Minister to be members of the Boundaries Commission are likely to satisfy many if not all of the same eligibility criteria as the Chairperson and the OLG representative. More importantly, the councillor representatives also bring:

- knowledge and experience of local government
- experience in direct electoral/community accountability
- direct experience of boundary changes and amalgamations (in some cases)
- experience in community engagement.

Clearly, the councillor representatives are well qualified for the role on the Commission.

It is also important to clarify the councillor selection process. LGNSW submits a panel of eight councillors from which the Minister selects the two councillor representatives.

Selection for the panel of nominees involves an open and competitive process. LGNSW calls for nominations from all elected councillors in NSW, seeking an application stating why the candidate should be selected and a detailed resume. The nominations are rigorously assessed on merit by LGNSW with a heavy emphasis on knowledge, experience and performance. This process helps ensure that the Minister has a strong field to select from.

LGNSW represents all 128 councils across NSW, and the Board and President of LGNSW are elected through fair and transparent elections administered by the Australian Electoral Commission. LGNSW is registered as an industrial organisation of employers under the Industrial Relations Act 1996 (NSW) and separately under the Fair Work (Registered Organisations) Act 2009 (Cth). The LGNSW Rules (registered with the Fair Work Commission) clearly set out the process for elections to the LGNSW Board and for voting on motions to establish policy positions on behalf of LGNSW.

This positions LGNSW as a credible body, genuinely representing the local government sector, to nominate councillor representatives to the Boundaries Commission.

Councillor representatives selected from the panel are not subject to guidance or direction from LGNSW nor do they report to LGNSW.

This process has proved to work successfully in past and LGNSW is firmly of the view that that the current process for determination of councillor representation is suitable. LGNSW would strongly oppose the Boundaries Commission review process replacing the role of councillor representatives with bureaucrats and technocrats.

**Recommendation 2:** That the current process for the appointment of councillor representatives to the Boundaries Commission be maintained.

***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?***

LGNSW has always sought to have balanced representation as the Commission may handle a range of regional and metropolitan issues during any one term. This balance was protected prior to the amalgamation of the Local Government Association of NSW and the Shires Association of NSW in 2013 to form LGNSW. Up until then 1 Commission member was drawn from the respective list submitted by each Association.

The balance is required to maintain confidence in the Commission through recognition of the differences between rural/regional and metropolitan councils.

LGNSW recommends that the Act be amended to stipulate equal rural/regional and metropolitan representation among councillor representatives on the Commission. The question of minimum representation does not appear to be relevant as there are only two local government representatives in total – this is the minimum required while maintaining rural/metropolitan balance.

**Recommendation 3:** That the Local Government Act be amended to stipulate equal rural/regional and metropolitan representation among councillor representatives on the Commission.

**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?**

Section 263(3) of the Local Government Act requires the Boundaries Commission to consider:

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.*

The 11 existing matters are appropriate and LGNSW does not recommend any deletions. However, the criteria can be strengthened. See response to Q.7.

**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?**

It is not possible to assign rigid weightings to each of the matters for consideration as the key considerations vary in each case and are further complicated by the differences between a boundary adjustment, amalgamation and a de-amalgamation. However, there are two matters which are key to any successful boundary change or amalgamation – public support and financial sustainability. LGNSW proposes two gateway tests.

It is LGNSW's strong position that amalgamations, de-amalgamations and substantial boundary changes should be subject to a plebiscite of residents and ratepayers and the proposal should only proceed if there is a clear majority in the subject council areas (i.e. in the case of amalgamation, a majority in each of the existing council areas). The proposal should lapse without majority support. This goes well beyond the somewhat vague

requirement for the Boundaries Commission to consider the attitude of residents and ratepayers. LGNSW's position on this matter is set out in the LGNSW Policy Platform, as informed by resolutions of LGNSW's Annual Conferences.

Financial sustainability is the major challenge for local government and there is no empirical evidence to support the notion that amalgamation in itself is the panacea. Any amalgamation or de-amalgamation proposal should be accompanied by a detailed independent assessment of the long-term financial sustainability of the existing councils and the proposed amalgamated council. Or in the case of a council that is to be de-amalgamated, the existing council and the new or reinstated councils that result from the de-amalgamation. This information should be freely available to ratepayers and residents to inform their consideration of any proposal prior to the plebiscite.

**Recommendation 4:** That the Act be amended to require amalgamations, de-amalgamations and substantial boundary changes be subject to a plebiscite of residents and ratepayers and the proposal should only proceed if there is a majority in the subject council areas. Any proposal should lapse without majority support.

**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?**

The current timeframes appear to be appropriate.

**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.**

As stated in response to Q.7. LGNSW strongly maintains that amalgamations, de-amalgamations and substantial boundary changes should be subject to a plebiscite of all residents and ratepayers eligible to vote.

Thank you for the opportunity to provide input to this submission. For further information, please contact me on 02 9242 4063 or at [damian.thomas@lgnsw.org.au](mailto:damian.thomas@lgnsw.org.au).

Yours sincerely



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