

Representation Review 20/21

Q&A FACTS

1. What is a representation review?

A representation review is a mechanism for examining the existing composition and electoral structure, assessing the advantages and disadvantages of various options available for the composition and structure of the elected Council, and ensuring structures will be in place to ensure effective and efficient governance to meet future community requirements.

The *Local Government Act 1999* (referred to as “the Act”), sets out the requirements for a representation review. A representation review must comprehensively examine:

- all aspects of the composition of the Council, and
- the division or potential division of the Council area into wards.

The process of undertaking a Representation Review includes:

- preparation of a representation options paper and a report by Council, and
- the opportunity for Council to receive written submissions from the public on the review (see “7. How are Community Members involved?”).

2. What is the purpose of a representation review?

The purpose of a representation review is to determine whether a Council’s community would benefit from an alteration to its composition or ward structure.

The review must take into account principles set out in the *Local Government Act 1999*, in particular:

- the benefit to ratepayers,
- any change or arrangements should reflect communities of interest, values and aspirations of the community and avoid significant dis-location within the community
- community members being able to participate effectively in decisions about local matters
- the Council is able to cooperate with other Councils and provide effective local governance.

All aspects of the Council’s composition and electoral structures are to be considered, in particular,

- the number of Council Members,
- the division of the area into wards and/or whether the division of the area into wards

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- should be abolished; and
- ward quotas.

The ward quota is the number of electors for the Council area divided by the number of Council Members for the area who represent wards. A proposal relating to the formation or alteration of wards must observe the principle that the number of electors¹ in a ward divided by the number of Council Members for that ward does not vary from the ward quota by more than 10% at the date the proposal is finalised.

3. What are the steps in the representation review process?

The representation review process involves the following steps.

Step 1	Initiate representation review project	
Step 2	Council considers current arrangements and future options An assessment of ward quotas (if relevant) is also required to ensure quotas do not vary by more than 10% (see footnote 2).	S33(2)
Step 3	Prepare a Representation Options Paper The Representation Options Paper is to be prepared by a “qualified person” and must examine matters considered in Step 1 and Step 2.	S12(5)
Step 4	Public Notice #1 Give public notice of Representation Review, availability of Representation Options Paper and invite public submissions on the Representation Options Paper allowing a period of at least six weeks.	S12(7)
Step 5	Prepare a Representation Review Report Following careful consideration of all the options and issues, and any public submissions, Council is to prepare a report documenting its deliberations and endorsed proposal for future composition and structure. The report must contain an analysis of how the proposal relates to the principals under s.26(1)(c) and s.33 of the Act. It should also include the reasons why Council has decided not to adopt other alternatives for change as indicated in the	S12 (8a)

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Options Paper or suggested in the public submissions.

Step 6	Public Notice #2 Give public notice of the availability of the Representation Review Report and invite public submissions allowing a period of at least three weeks	S12(9)
Step 7	Hearing of submissions by Council or Council Committee	S12(10)
Step 8	Conduct a Poll if proposed to change the method of selection of the principal member (chairperson to mayor, or mayor to chairperson)	S12 (11a-d)
Step 9	Finalise Representation Review Report	
Step 10	Submit final Representation Review Report to the Electoral Commissioner for certification	S12 (12-21)
Step 11	Technical description of boundaries if amendments occur to internal ward boundaries	
Step 12	Gazettal of the Review outcome after certificate of compliance issued by Electoral Commissioner	S15
Step 13	Implement changes to representative structure	S18

4. When do representation review take place and who conducts them?

A Council is required to conduct a review of its representation:

- at least once in every eight years, or
- within a period specified by the Electoral Commissioner if the area of a Council is divided into wards and the Electoral Commissioner notifies a Council in writing that the number of electors represented by a Council Member for a ward varies from the ward quota by more than 20%.

The Council's final report on its representation review must be referred to the Electoral Commissioner, who has the role of determining whether Council has satisfied all of the requirements set out in s12 and, in the case of a proposal for wards, the criteria for wards set out in s33. Only after certification by the Electoral Commissioner can a Council, by notice in the SA *Government Gazette*:

- alter the composition of the Council, and/or
- divide or re-divide the area into wards or alter or abolish wards.

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5. What is a representation Options Paper and why is it required?

To commence a review, Council must initiate the preparation of a *Representation Options Paper*.

The Representation Options Paper explores options for changes to the Council's representative structure and the implications of these options for representation and governance. The Representation Options Paper is to be written by a person who, in the opinion of the Council, is qualified to:

- write a paper on the alternatives that could be considered for the Council composition and structure and
- address any representation and governance issues that may arise from the review.

(see “6. Who is considered a ‘qualified person’ to prepare the Representation Review Options paper?”)

The Representation Options Paper must examine the advantages and disadvantages of the options available to the Council (depending on the features of the composition and structure of the Council being reviewed) and, in particular, examine, if it is relevant –

- whether the number of members should be reduced, if the Council is comprised of more than 12 members,
- if the area of the Council should be divided into wards, or whether the division of the area into wards should be abolished;

and may examine other relevant issues as the Council or the person preparing the paper thinks fit.

The requirement to prepare a Representation Options Paper supports Council to more fully consider alternatives for representation structure and provides the basis for consultation with its community (see “7. How are community members involved?”). As the Options Paper will form the basis of consultation, it should be written in plain English, with appropriate explanation of obscure/technical terms.

6. Who is considered a ‘qualified person’ to prepare the Representation Review Options Paper?

As previously stated, the Act prescribes that the Representation Options Paper is to be written by a person who, in the opinion of the Council, is qualified to:

- write a paper on the alternatives that could be considered for the Council composition and structure and
- address any representation and governance issues that may arise from the review.

The following list suggests the knowledge and skills required to undertake the task:

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- knowledge of the *Local Government Act 1999*
- understanding and determining various options, and knowledge of advantages and disadvantages from **all** perspectives. For example: Council, key stakeholders, and the broader local and regional community
- knowledge of the role and functions of Local Government
- knowledge of the general implications for representation and governance and the various options for composition and structure, and the skills to relate these to the specific characteristics of the Council and its community
- knowledge of the Council area
- calculating elector distribution ratios
- compiling and assessing relevance of demographic profile and population projections, and
- report writing.

The City of Mitcham has engaged CL Rowe & Associates to undertake the Representation Review.

7. How are community members involved?

The Act prescribes opportunities for community members and the public (for example, community groups, agencies and organisations) to examine and make written submissions on both the Representation Options Paper and the Representation Review Report.

A **public notice** placed by the Council in the *SA Government Gazette* and a newspaper circulating generally throughout the State, with a copy of the notice in a newspaper circulating within its area, should:

- inform the public that a Representation Review is being undertaken by the Council, that a Representation Options Paper has been prepared and of its availability; and
- invite interested persons to make written submissions to the Council on the subject of the review within a period specified by the Council (being a period of at least 6 weeks).

Copies of the Representation Options Paper are to be available for inspection (without charge) and purchase (on payment of a fee fixed by the Council) at the principal office of the Council during the period allowed for submissions.

After carefully considering all the options and issues in the Representation Options Paper and any written submissions, **Council must prepare a report** on its deliberations and endorsed proposal for future composition and structure. The report must contain an analysis of how the proposal relates to the principles in s26(1)(c) and matters in s33, and the reasons why Council has decided not to adopt other alternatives for change explored in the Representation Options Paper or suggested in the public submissions.

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Council must then place a **second public notice** in the *SA Government Gazette* and a newspaper circulating generally throughout the State, with a copy of the notice published in a newspaper circulating within the Council area. It should advise that the Representation Review Report is available for inspection at the principal office of the Council or for purchase and invite written submissions allowing at least 3 weeks for receiving submissions on the matter.

A person who provides a written submission in response to the Council report must be given the **opportunity to be heard** in respect to their submission, either personally or by representative, before the Council or a committee.

Council must then determine its final position on the future composition and structure and **finalise the report** including recommendations with respect to such related or ancillary matters as it thinks fit.

8. What is included in the final Representation Review Report?

Following consultation, Council must finalise its report by including information about the submissions made and its response to these, which may involve making substantial or minor changes to the proposal (if any) it considers should be carried into effect. The report must contain evidence of the extent to which:

- the principles and matters contained in Sections 26 and 33 influenced the determination of the proposed composition and structure;
- the 'one vote one value' principle specified in Section 33(2) is observed including:
 - o details of the calculation used in arriving at the numbers of electors (House of Assembly and Council Voters Roll) in each proposed ward
 - o separate figures showing the number of House of Assembly electors and the number of persons entitled to vote under the Local Government (Elections) Act 1999 s14.

The Electoral Commissioner also requires other evidence to be provided, as follows:

- Copies, and dates of placement, of public notices
- A summary of all written submissions and a list of those who took the opportunity to appear before the Council or Council committee
- A copy of all written submissions
- Detailed maps showing the present and proposed boundaries of the area including ward boundaries if relevant; and
- All Council resolutions that are relevant to the review.

Refer to the Model Framework for Representation Review Report for an explanation of final Report requirements.

The Representation Review Report is then forwarded to the Electoral Commissioner for

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consideration of certification.

9. What is the role of the Electoral Commissioner in the Representation Review Process?

Council must refer the final report to the Electoral Commissioner who will determine if the statutory requirements have been met and if so a **certificate of compliance will be issued**.

If a certificate is issued by the Electoral Commissioner, the certificate will specify a day by which an appropriate notice must be published by the Council in the *SA Government Gazette* to provide for the operation of any proposal recommended by Council in its report.

If the Electoral Commissioner is of the opinion that the statutory requirements have not been satisfied, the matter will be referred back to Council with a written explanation of the reasons why a certificate was not given.

The Electoral Commissioner's determination cannot be questioned.

10. What is the difference between a Chairperson and a Mayor?

Under the current version of the *Local Government Act 1999*, Section 51 provides that a Council may be formed in two ways:

- **Mayor** - Constituted on the basis that the principal member is to be appointed or elected as a representative of the area as a whole (in which case the principal member is to be called a mayor); or
- **Chairperson** - Constituted on the basis that the principal member is to be chosen by the members of council from amongst their own number (in which case the principal member is to be called a Chairperson or some other title).

A Mayor is elected by the people (eligible voters) or in some cases, appointed by proclamation by the governor when a new council area is formed. A chairperson is nominated by elected members themselves.

Proposed Changes to Remove Chairperson – Statutes Amendment (Local Government Review) Bill 2020

The *Statutes Amendment (Local Government Review) Bill 2020* which is currently scheduled for review by the Legislative Council in February 2021, proposes in its current form to make changes to Section 51 of the *Local Government Act 1999*. A link to the Bill is located on [Parliament SA Website](#).

All provisions relating to Chairpersons have been removed which means that:

- a principal member can only be appointed by the Governor when a new council is formed or elected by eligible voters as a representative of the council area as a whole with the

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tile of Mayor.

Sections 12(11a)-(11d) which relate to the procedure for changing from either a mayor to a chairperson or visa-versa will be removed because under the new proposals, there can only be a mayor.