



New South Wales

Local Government Amendment (Conduct) Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* as follows:

- (a) to authorise the Director-General of the Department of Premier and Cabinet (the *Director-General*) to conduct an investigation to determine whether a councillor has engaged in misconduct and to enable the Director-General to require a councillor or a council staff member, delegate or administrator to provide information or documents for the purpose of such an investigation,
- (b) to enable the Director-General to take a range of disciplinary action against a councillor found to have engaged in misconduct, including counselling or reprimanding the councillor, issuing an order directing the councillor to apologise for the misconduct or to participate in training or mediation, and suspending the councillor, or the councillor's right to be paid, for up to 3 months,
- (c) to enable a decision by the Director-General to take disciplinary action to be made public,

- (d) to provide that a failure by a councillor to comply with an order issued by the Director-General in relation to an investigation or as part of disciplinary action constitutes misconduct by the councillor,
- (e) to enable the Local Government Pecuniary Interest and Disciplinary Tribunal (the *Tribunal*) to disqualify a councillor found to have engaged in misconduct from holding civic office for up to 5 years,
- (f) to require administrators of councils to comply with the code of conduct applicable to councillors and to enable the Director-General to investigate allegations of misconduct by administrators,
- (g) to enable the Director-General to investigate allegations of misconduct by former councillors and to refer such matters to the Tribunal for consideration and to make it clear that the Tribunal has power to deal with matters relating to former councillors,
- (h) to provide that the regulations may prescribe a procedure for administering the code of conduct and dealing with alleged contraventions of the code (which will be mandatory for councillors, members of staff, delegates of a council and administrators of a council),
- (i) to enable council meetings at which allegations of misconduct by councillors are discussed to be closed to the public,
- (j) to make other minor miscellaneous amendments.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Local Government Act 1993 No 30

Misconduct of councillors

Schedule 1 [12] inserts new provisions relating to misconduct by councillors, the investigation by the Director-General of allegations of misconduct and the taking of disciplinary action by the Director-General against councillors found to have engaged in misconduct.

Misconduct (previously referred to as misbehaviour) includes a contravention of the *Local Government Act 1993* or the regulations under that Act, a failure by a councillor to comply with an applicable requirement of the code of conduct (which is a code adopted by a council based on a model prescribed by the regulations) and a failure by a councillor to comply with any order issued by the Director-General in relation to a misconduct investigation or issued as a form of disciplinary action.

At present, the Director-General may only initiate proceedings for the suspension of a councillor on limited grounds and in limited circumstances and may take no other disciplinary action. Under the new provisions, the Director-General may conduct an investigation for the purpose of determining whether a councillor has engaged in misconduct. For the purpose of the investigation, the Director-General may order a councillor or a council staff member, delegate or administrator to provide information or documents and may arrange for a departmental report to be prepared in relation to the investigation.

The Director-General will have broad powers to take disciplinary action against a councillor if satisfied that the councillor has engaged in misconduct and that disciplinary action is warranted. The Director-General will be able to counsel or reprimand a councillor and issue various orders requiring the councillor to cease engaging in the misconduct, apologise for the misconduct or participate in training or mediation. The Director-General will also continue to be able to suspend a councillor, and to suspend the councillor's right to be paid, but the period for which a suspension may be imposed is increased from 1 month to 3 months.

In determining which disciplinary action, if any, to take against a councillor who has engaged in misconduct, the Director-General may take into account any previous incidents of misconduct by the councillor, any disciplinary action previously taken against the councillor and any other relevant matters.

The Director-General is required to make any decision to suspend a councillor from civic office or to suspend a councillor's right to be paid publicly available and may make decisions to take other forms of disciplinary action publicly available. There is no liability for defamation in respect of such publication.

The Director-General may, instead of taking disciplinary action, decide to refer the matter to the council concerned with recommendations as to how the council might resolve the matter. The Director-General may also refer the matter to the Tribunal for consideration.

A councillor against whom disciplinary action is taken by the Director-General may appeal to the Tribunal within 28 days.

The Director-General may conduct an investigation for the purpose of determining whether an administrator of a council has engaged in misconduct.

The Director-General may also investigate allegations of misconduct by former councillors and may refer such matters to the Tribunal for consideration.

Existing provisions that provide that a council may by resolution at a meeting formally censure a councillor for misconduct and that provide for the recovery from a council of reasonable expenses incurred by the Department of Premier and Cabinet in the conduct of an investigation into a councillor at that council are retained.

Schedule 1 [4], [6]–[8], [13]–[15] and [19]–[21] are consequential amendments.

Administration of code of conduct

Schedule 1 [11] provides that the regulations may prescribe a model procedure for administering the model code of conduct, which will set out the procedure for dealing

with alleged contraventions of the code of conduct. A council must adopt a procedure based on the model procedure. Councillors, members of staff, delegates of a council and administrators of a council must comply with the adopted procedure. However, contravention of the procedure will not constitute misconduct.

Conduct of administrators

Schedule 1 [9] and [10] provide that the requirements imposed on councillors, members of staff of councils and delegates of councils to act honestly and with care and diligence and to comply with the code of conduct also apply to administrators of councils (other than administrators appointed to exercise the functions of a council in relation to water supply, sewerage and stormwater drainage).

Local Government Pecuniary Interest and Disciplinary Tribunal

Schedule 1 [16] and [18] make it clear that the Tribunal has the power to take action against a former councillor in matters involving complaints relating to the non-disclosure of pecuniary interests and misconduct matters. The Tribunal will also be able to take into account previous pecuniary interest complaints proved against a councillor (or council employee, advisor or member of a council committee), previous incidents of misconduct by a councillor and any previous action taken against the person in determining which, if any, disciplinary action to take against the person.

Schedule 1 [17] gives the Tribunal the power to disqualify a councillor who has engaged in misconduct from civic office for up to 5 years. The Tribunal can currently disqualify councillors against whom pecuniary interest complaints are proved.

Other amendments

Schedule 1 [1] provides that any part of a council meeting in which alleged contraventions of the code of conduct by a councillor is discussed may be closed to the public.

Schedule 1 [3] updates references to a Minister and **Schedule 1 [2]** omits a redundant note as a consequence. **Schedule 1 [5]** updates references to an Act.

Schedule 1 [22] enables savings and transitional arrangements to be made as a consequence of the proposed Act and any other Act that amends the *Local Government Act 1993*.

Schedule 1 [23] inserts savings and transitional provisions.