

Introduced by Mr David Barr, MP

First print



New South Wales

# Local Government Amendment (Ethics Review Panel) Bill 2002

## 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* (*the Principal Act*) to provide for the establishment of a Local Government Ethics Review Panel to monitor and investigate ethical matters relating to local councils and councillors.

## 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 3 months after the date of assent, unless commenced sooner by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to a consequential amendment to the *Defamation Act 1974* set out in Schedule 2.

**Schedule 1 [1]** inserts a new Part (Part 5 Local Government Ethics Review Panel) into Chapter 14 of the Principal Act (Honesty and disclosure of interests).

Proposed sections 490A–490C constitute the Local Government Ethics Review Panel as a body corporate and provide that it is to have the following principal functions:

- (a) to review the probity and ethical behaviour of councillors,
- (b) to ascertain whether councillors are complying with their duty under the Principal Act to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions,
- (c) to review the compliance of councillors with their relevant codes of conduct adopted by their councils under the Principal Act,
- (d) to make recommendations and provide advice to councillors on the ethical implications of their conduct,
- (e) where the Panel considers it appropriate, to publish such recommendations,
- (f) to report to Parliament regarding the ethical behaviour of councillors and any other matters considered by the Panel.

The Local Government Ethics Review Panel may also:

- (a) instruct, advise and assist councils, councillors and members of staff of councils on ways to improve ethical behaviour and practices, and
- (b) educate councils, councillors, members of staff of councils and the public on strategies to improve ethical behaviour and practices in local government, and
- (c) educate and disseminate information to the public on the detrimental effects of unethical behaviour in local government and the importance of maintaining the integrity of local government.

The Local Government Ethics Review Panel is to consist of:

- (a) one officer of the Department of Local Government appointed by the Minister for Local Government (who is to be Chairperson of the Panel), and
- (b) one person appointed by the Minister for Local Government on the nomination of the Local Government and Shires Associations of New South Wales (who is to be Deputy Chairperson of the Panel), and
- (c) two persons (not being members of the same organisation) appointed by the Minister for Local Government who, in the Minister's opinion, have experience or expertise in the field of ethics.

Proposed section 490D provides that certain provisions of the *Independent Commission Against Corruption Act 1988* are to apply to the Local Government Ethics Review Panel. The applied provisions relate to investigations and hearings that may be undertaken by the Local Government Ethics Review Panel.

Proposed section 490E provides that the Local Government Ethics Review Panel may delegate to an officer of the Department of Local Government any of the Panel's functions (other than this power of delegation). A Departmental officer may exercise such delegated functions and functions under another Part of the Act at the same time. For example, an officer of the Department exercising delegated functions under this Part may also act as a Departmental representative under Part 5 of Chapter 13 of the Principal Act.

Proposed section 490F provides that the Local Government Ethics Review Panel must prepare an annual report of its operations and furnish the report to the Minister for Local Government. Such a report must include the following:

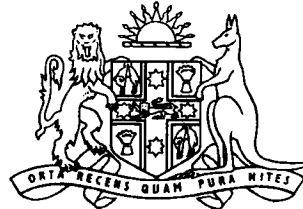
- (a) a description of the matters that were referred to the Panel,
- (b) a description of the matters investigated by the Panel,
- (c) any recommendations for changes in the laws of the State, or for administrative action, that the Panel considers should be made as a result of the exercise of its functions,
- (d) any other general recommendations regarding the ethical behaviour of councillors, councils' codes of conduct or other ethical issues relating to local government,
- (e) a description of its activities during that year in relation to its educating and advising functions.

The Local Government Ethics Review Panel's annual report is to form part of the annual report of the Department of Local Government which is submitted to Parliament.

**Schedule 1 [2]** inserts proposed Schedule 4A (Constitution and procedure of the Ethics Review Panel) into the Principal Act. The proposed Schedule contains machinery provisions relating to the constitution and procedure of the Local Government Ethics Review Panel.

**Schedule 1 [3]** inserts a definition of *Ethics Review Panel* into the Dictionary to the Principal Act.

**Schedule 2** makes a consequential amendment to the *Defamation Act 1974*. The Schedule inserts proposed section 17KB into that Act to provide for a defence of absolute privilege for publications to or by the Local Government Ethics Review Panel or to any member of that Panel as such a member.



New South Wales

# Local Government Amendment (Ethics Review Panel) Bill 2000

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New South Wales

## **Local Government Amendment (Ethics Review Panel) Bill 2002**

No , 2002

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### **A Bill for**

An Act to amend the *Local Government Act 1993* to provide for the establishment of an Ethics Review Panel to monitor and investigate local councils and councillors; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Local Government Amendment (Ethics Review Panel) Act 2002</i> .	3 4
<b>2 Commencement</b>	5
This Act commences 3 months after the date of assent, unless commenced sooner by proclamation.	6 7
<b>3 Amendment of Local Government Act 1993 No 30</b>	8
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	9
<b>4 Amendment of Defamation Act 1974 No 18</b>	10
The <i>Defamation Act 1974</i> is amended as set out in Schedule 2.	11

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<b>Schedule 1</b>	<b>Amendment of Local Government Act 1993</b>	1
	(Section 3)	2
<b>[1]</b>	<b>Chapter 14, Part 5</b>	3
	Insert after section 490:	4
	<b>Part 5 Local Government Ethics Review Panel</b>	5
<b>490A</b>	<b>Establishment of Ethics Review Panel</b>	6
	There is constituted by this Act a body corporate with the corporate name of the Local Government Ethics Review Panel.	7 8
<b>490B</b>	<b>Constitution of Ethics Review Panel</b>	9
	(1) The Ethics Review Panel consists of the following members:	10
	(a) one officer of the Department appointed by the Minister (who is to be Chairperson of the Panel), and	11 12
	(b) one person appointed by the Minister on the nomination of the Local Government and Shires Associations of New South Wales (who is to be Deputy Chairperson of the Panel), and	13 14 15 16
	(c) two persons (not being members of the same organisation) appointed by the Minister who, in the Minister's opinion, have experience or expertise in the field of ethics.	17 18 19 20
	(2) Schedule 4A has effect with respect to the Ethics Review Panel.	21 22
<b>490C</b>	<b>Functions of Ethics Review Panel</b>	23
	(1) The principal functions of the Ethics Review Panel are as follows:	24 25
	(a) to review the probity and ethical behaviour of councillors,	26 27



Local Government Amendment (Ethics Review Panel) Bill 2002

Schedule 1

Amendment of Local Government Act 1993

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- (b) to ascertain whether councillors are complying with their duty under section 439 to act honestly and exercise a reasonable degree of care and diligence in carrying out their functions under this or any other Act, 1  
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  - (c) to review the compliance of councillors with their relevant codes of conduct adopted by their councils under section 440, 5  
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  - (d) to make recommendations and provide advice to councillors on the ethical implications of their conduct, 8  
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  - (e) where the Panel considers it appropriate, to publish recommendations made under paragraph (d), 10  
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  - (f) to report to Parliament regarding the ethical behaviour of councillors and any other matters considered by the Panel. 12  
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- (2) The Ethics Review Panel may, as it sees fit: 15
- (a) instruct, advise and assist councils, councillors and members of staff of councils on ways to improve ethical behaviour and practices, and 16  
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  - (b) educate councils, councillors, members of staff of councils and the public on strategies to improve ethical behaviour and practices in local government, and 19  
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  - (c) educate and disseminate information to the public on the detrimental effects of unethical behaviour in local government and the importance of maintaining the integrity of local government. 22  
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- (3) The Ethics Review Panel is to conduct its investigations with a view to determining: 26  
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- (a) whether any unethical conduct has occurred, is occurring or is about to occur, and 28  
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  - (b) whether any laws governing councils, councillors or members of staff of councils need to be changed for the purpose of reducing the likelihood of unethical conduct, and 30  
31  
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  - (c) whether any methods of work, practices or procedures of any council or councillor did or could allow, encourage or cause unethical conduct. 34  
35  
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- (4) The Ethics Review Panel may: 1
- (a) make findings and form opinions, on the basis of the 2  
results of its investigations, in respect of any conduct, 3  
circumstances or events with which its investigations 4  
are concerned, whether or not the findings or opinions 5  
relate to unethical conduct, and 6
  - (b) formulate recommendations for the taking of action that 7  
the Panel considers should be taken in relation to its 8  
findings or opinions or the results of its investigations. 9
- (5) The Ethics Review Panel is not to make a finding, form an 10  
opinion or formulate a recommendation that section 74B 11  
(Report not to include findings etc of guilt or recommending 12  
prosecution) of the *Independent Commission Against 13  
Corruption Act 1988*, as applied by section 490D of this Act, 14  
prevents the Panel from including in a report, but this 15  
subsection is the only restriction imposed by this Act on the 16  
Panel's powers under this section. 17
- (6) The following are examples of the findings and opinions 18  
permissible under subsection (4) but do not limit the Panel's 19  
power to make findings and form opinions: 20
- (a) findings that particular persons have engaged, are 21  
engaged or are about to engage in unethical conduct, 22
  - (b) opinions as to whether consideration should or should 23  
not be given to the prosecution of or the taking of other 24  
action against particular persons, 25
  - (c) findings of fact. 26
- 490D Application of provisions of Independent Commission Against 27  
Corruption Act 1988 28**
- (1) The provisions of the *Independent Commission Against 29  
Corruption Act 1988* listed in subsection (2) apply to and in 30  
relation to the Ethics Review Panel as if they were provisions 31  
of this Act and as if: 32
- (a) a reference to the Commission were a reference to the 33  
Ethics Review Panel, and 34
  - (b) a reference to the Commissioner were a reference to the 35  
Chairperson of the Ethics Review Panel, and 36
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- (c) a reference to an Assistant Commissioner were a reference to the Deputy Chairperson of the Ethics Review Panel, and
- (d) a reference to corrupt conduct were a reference to unethical conduct, and
- (e) a reference to a public official were a reference to a councillor, and
- (f) a reference to a public authority were a reference to a council, and
- (g) a reference to an officer of the Commission were a reference to an officer of the Department exercising delegated functions of the Ethics Review Panel under section 490E, and
- (h) the reference to section 74 in section 74B of that Act were a reference to section 490C of this Act,
- and with any other necessary modifications.
- (2) For the purposes of subsection (1), the following provisions of the *Independent Commission Against Corruption Act 1988* apply:
- (a) sections 10, 17, 18 and 19 (1) (other than section 10 (4) and (5)),
- (b) Division 2 of Part 4 (other than section 20 (4)),
- (c) Division 3 of Part 4 (other than sections 30 (2) and 36–36B),
- (d) section 53,
- (e) section 74B,
- (f) section 112.
- (3) For the purposes of section 661 of this Act, a notice under section 21 or 22 or a summons under section 35 of the *Independent Commission Against Corruption Act 1988* as so applied, is taken to be a direction given under Part 5 of Chapter 13 of this Act by a person authorised to give the direction.

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<b>490E</b>	<b>Delegation to Departmental officer</b>	1
(1)	The Ethics Review Panel may delegate to an officer of the Department any of the Panel's functions under this Act, other than this power of delegation.	2 3 4
(2)	An officer of the Department may exercise delegated functions under this Part and any other Part of the Act at the same time.	5 6
	<b>Note.</b> For example, an officer of the Department exercising delegated functions under this Part may also act as a Departmental representative under Part 5 of Chapter 13 of the Act.	7 8 9
<b>490F</b>	<b>Annual reports</b>	10
(1)	The Ethics Review Panel must, within the period of 4 months after each 30 June, prepare a report of its operations during the year ended on that 30 June and furnish the report to the Minister.	11 12 13 14
(2)	A report by the Panel under this section in relation to a year must include the following:	15 16
(a)	a description of the matters that were referred to the Panel,	17 18
(b)	a description of the matters investigated by the Panel,	19
(c)	any recommendations for changes in the laws of the State, or for administrative action, that the Panel considers should be made as a result of the exercise of its functions,	20 21 22 23
(d)	any other general recommendations regarding the ethical behaviour of councillors, councils' codes of conduct or other ethical issues relating to local government,	24 25 26
(e)	a description of its activities during that year in relation to its educating and advising functions.	27 28
(3)	The report is to form part of the annual report of the Department.	29 30

<b>[2] Schedule 4A</b>	1
Insert after Schedule 4:	2
<b>Schedule 4A Constitution and procedure of the Ethics Review Panel</b>	3
(Section 490B)	4
	5
<b>Part 1 General</b>	6
<b>1 Definitions</b>	7
In this Schedule:	8
<i>Chairperson</i> means the Chairperson of the Panel.	9
<i>Panel</i> means the Ethics Review Panel.	10
<i>member</i> means any member of the Panel.	11
<b>Part 2 Constitution</b>	12
<b>2 Terms of office of members</b>	13
Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	14
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<b>3 Remuneration</b>	18
A member (other than the Chairperson) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	19
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<b>4 Deputies</b>	23
(1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.	24
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- (2) In the absence of a member, the member's deputy may, if available, act in the place of the member. 1  
2
- (3) While acting in the place of a member, a person: 3
- (a) has all the functions of the member and is taken to be a member, and 4  
5
- (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person. 6  
7  
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- (4) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member. 10  
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- 5 Vacancy in office of member** 12
- (1) The office of a member becomes vacant if the member: 13
- (a) dies, or 14
- (b) completes a term of office and is not re-appointed, or 15
- (c) resigns the office by instrument in writing addressed to the Minister, or 16  
17
- (d) is removed from office by the Minister under this clause, or 18  
19
- (e) is absent from 4 consecutive meetings of the Panel of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or 20  
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- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 25  
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- (g) becomes a mentally incapacitated person, or 30
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable. 31  
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(2) The Minister may at any time remove a member from office.	1
<b>6 Filling of vacancy in office of member</b>	2
If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	3 4
<b>7 Chairperson and Deputy Chairperson</b>	5
(1) In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.	6 7
(2) While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.	8 9 10
<b>8 Disclosure of pecuniary interests</b>	11
(1) If:	12
(a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Panel, and	13 14 15
(b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,	16 17 18
the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Panel.	19 20 21
(2) A disclosure by a member at a meeting of the Panel that the member:	22 23
(a) is a member, or is in the employment, of a specified company or other body, or	24 25
(b) is a partner, or is in the employment, of a specified person, or	26 27
(c) has some other specified interest relating to a specified company or other body or to a specified person,	28 29
is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).	30 31 32 33

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- (3) Particulars of any disclosure made under this clause must be recorded by the Panel in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the Panel. 1  
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4
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Panel otherwise determines: 5  
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7
- (a) be present during any deliberation of the Panel with respect to the matter, or 8  
9
- (b) take part in any decision of the Panel with respect to the matter. 10  
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- (5) For the purposes of the making of a determination by the Panel under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not: 12  
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15
- (a) be present during any deliberation of the Panel for the purpose of making the determination, or 16  
17
- (b) take part in the making by the Panel of the determination. 18  
19
- (6) A contravention of this clause does not invalidate any decision of the Panel. 20  
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- 9 Effect of certain other Acts** 22
- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member. 23  
24
- (2) If by or under any Act provision is made: 25
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 26  
27  
28
- (b) prohibiting the person from engaging in employment outside the duties of that office, 29  
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- the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member. 31  
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<b>Part 3 Procedure</b>	1
<b>10 General procedure</b>	2
The procedure for the calling of meetings of the Panel and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Panel.	3 4 5
<b>11 Quorum</b>	6
The quorum for a meeting of the Panel is a majority of its members, of whom one must be the Chairperson or Deputy Chairperson.	7 8 9
<b>12 Presiding member</b>	10
(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Panel.	11 12
(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	13 14
<b>13 Voting</b>	15
A decision supported by a majority of the votes cast at a meeting of the Panel at which a quorum is present is the decision of the Panel.	16 17 18
<b>14 Transaction of business outside meetings or by telephone</b>	19
(1) The Panel may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Panel for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Panel.	20 21 22 23 24
(2) The Panel may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	25 26 27 28 29
(3) For the purposes of:	30
(a) the approval of a resolution under subclause (1), or	31

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(b)	a meeting held in accordance with subclause (2),	1
	the Chairperson and each member have the same voting rights	2
	as they have at an ordinary meeting of the Panel.	3
(4)	A resolution approved under subclause (1) is, subject to the	4
	regulations, to be recorded in the minutes of the meetings of the	5
	Panel.	6
(5)	Papers may be circulated among the members for the purposes	7
	of subclause (1) by facsimile or other transmission of the	8
	information in the papers concerned.	9
<b>15</b>	<b>First meeting</b>	10
	The Minister may call the first meeting of the Panel in such	11
	manner as the Minister thinks fit.	12
<b>[3]</b>	<b>Dictionary</b>	13
	Insert in appropriate order:	14
	<i>Ethics Review Panel</i> means the Local Government Ethics	15
	Review Panel constituted by this Act.	16

<b>Schedule 2</b>	<b>Amendment of Defamation Act 1974</b>	1
	(Section 4)	2
<b>Section 17KB</b>		3
Insert after section 17KA:		4
<b>17KB</b>	<b>Matters relating to Local Government Ethics Review Panel</b>	5
(1)	There is a defence of absolute privilege for a publication to or by the Local Government Ethics Review Panel constituted under the <i>Local Government Act 1993</i> or to any member of that Panel as such a member.	6 7 8 9
(2)	This section applies in relation to any hearing before the Local Government Ethics Review Panel or any other matter relating to the powers, authorities, duties or functions of that Panel.	10 11 12
(3)	This section extends to publications made before the commencement of this section.	13 14