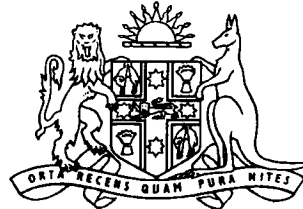


First print



New South Wales

Local Government Amendment (Anti-Corruption) 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 enable prompt action to be taken against councils, councillors and council staff involved in serious corrupt conduct.

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 the date of assent.

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 the amendment to the *Independent Commission Against Corruption Act 1988* set out in Schedule 2.

Schedule 1 Amendment of Local Government Act 1993

Under the Principal Act, a public inquiry is at present required before the Governor is authorised to remove all the members of a council and appoint an administrator of the council pending fresh council elections.

Schedule 1 [1] amends section 255 of the Principal Act in order to authorise the Governor to remove all the members of a council without holding a public inquiry if the Independent Commission Against Corruption has recommended in a report that consideration be given to their removal because of systemic corruption within the council.

Under the Principal Act, a councillor is disqualified from civic office in the circumstances set out in section 275 (which include being convicted of a criminal offence and sentenced to imprisonment or convicted of certain offences under the *Crimes Act 1900*). A councillor can also be disqualified from civic office by the Pecuniary Interest Tribunal for a period of up to 5 years. Members of staff of a council may be dismissed following disciplinary proceedings, but cannot be suspended without pay without specific statutory authority.

Schedule 1 [4] inserts proposed sections 440A to 440E into the Principal Act.

Proposed section 440A defines *serious corrupt conduct* as corrupt conduct under the *Independent Commission Against Corruption Act 1988* in connection with official duties that may constitute a serious indictable offence (namely, an offence for which the maximum penalty is imprisonment for 5 years or more).

Proposed section 440B enables the Governor to dismiss a councillor from civic office and disqualify the councillor from holding civic office for up to 5 years if the Independent Commission Against Corruption has recommended that consideration be given to the suspension of the person from civic office with a view to his or her dismissal for serious corrupt conduct. The dismissal power is contingent on a

suspension from office under proposed section 440C, the person being given an opportunity to show cause and the Minister advising the Governor that the dismissal is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions. The dismissal power is modelled on the inherent power of the NSW Legislature to expel a member on those grounds and not for the purpose of punishment (as confirmed by the Supreme Court in *Armstrong v Budd* (1969) 71 S.R (N.S.W.) 386).

Proposed section 440C enables the Minister to suspend, without notice or inquiry, a councillor from civic office if:

- (a) the Independent Commission Against Corruption has made the recommendation referred to in proposed section 440B, or
- (b) criminal proceedings are instituted against the councillor for serious corrupt conduct, or
- (c) the councillor makes an admission of serious corrupt conduct.

Proposed section 440D enables the general manager of a council to suspend a member of staff from duty (without pay) on similar grounds to those on which the Minister may suspend a councillor from office under proposed section 440C. The Minister is authorised to exercise the power in the case of the general manager's conduct or if the general manager fails to act without reasonable cause.

Proposed section 440E applies the proposed provisions to conduct occurring before, or proceedings instituted before, the commencement of the provisions.

Schedule 1 [2], [3] and [5] make consequential and ancillary amendments to the Principal Act.

Schedule 2 Amendment of Independent Commission Against Corruption Act 1988

Schedule 2 inserts proposed section 74C into the *Independent Commission Against Corruption Act 1988* to authorise the Independent Commission Against Corruption to make the recommendations that will trigger the proposed dismissal and suspension powers conferred by the proposed Act. The Commission is authorised to make the recommendations if of the opinion that prompt action is required in the public interest.



New South Wales

Local Government Amendment (Anti-Corruption) Bill 2002

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New South Wales

Local Government Amendment (Anti-Corruption) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Local Government Act 1993* to enable prompt action to be taken against councils, councillors and council staff involved in serious corrupt conduct; to amend the *Independent Commission Against Corruption Act 1988*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment (Anti-Corruption) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Local Government Act 1993 No 30	7
The <i>Local Government Act 1993</i> is amended as set out in Schedule 1.	8
4 Amendment of Independent Commission Against Corruption Act 1988 No 35	9 10
The <i>Independent Commission Against Corruption Act 1988</i> is amended as set out in Schedule 2.	11 12

Schedule 1	Amendment of Local Government Act 1993	1
	(Section 3)	2
[1]	Section 255 Governor may dismiss mayor and councillors	3
	Insert at the end of the section:	4
	(2) The Governor may, by proclamation, declare all civic offices in relation to a council to be vacant if the Independent Commission Against Corruption, in a report referred to in section 74C of the <i>Independent Commission Against Corruption Act 1988</i> , recommends that consideration be given to the making of such a declaration because of systemic corruption within the council.	5 6 7 8 9 10 11
	(3) If the Independent Commission Against Corruption makes such a recommendation, all civic offices in relation to the council may be declared vacant under subsection (2) without the holding of a public or other inquiry concerning the council. However, the making of such a recommendation does not preclude the holding of a public or other inquiry.	12 13 14 15 16 17
[2]	Section 329 Can the holder of a civic officer be dismissed?	18
	Insert “or by a decision of the Governor under section 440B” after “section 482” in section 329 (5).	19 20
[3]	Chapter 14, Part 1, Division heading	21
	Insert before section 439:	22
Division 1	Conduct generally	23

[4] Chapter 14, Part 1, Division 2	1
Insert after section 440:	2
Division 2 Serious corrupt conduct	3
440A Definition of “serious corrupt conduct”	4
In this Division:	5
<i>serious corrupt conduct</i> means corrupt conduct (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i>) that may constitute a serious indictable offence, being:	6
(a) in the case of conduct of the holder of a civic office—conduct in connection with the exercise or purported exercise of the functions of the civic office, or	7
(b) in the case of conduct of a member of staff of a council—conduct in connection with exercise or purported exercise of the duties of the member of staff.	8
440B Dismissal from civic office for serious corrupt conduct	9
(1) The Governor may dismiss a person from civic office and disqualify the person from holding civic office for a period not exceeding 5 years if:	10
(a) the Independent Commission Against Corruption, in a report referred to in section 74C of the <i>Independent Commission Against Corruption Act 1988</i> , recommends that consideration be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, and	11
(b) the person is suspended from the civic office by the Minister under this Division, and	12
(c) the Minister advises the Governor that the dismissal of the person is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions.	13
(2) Before advising the Governor on a dismissal, the Minister is to give the person a reasonable opportunity to show cause why he or she should not be dismissed from civic office.	14
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440C	Temporary suspension from civic office for serious corrupt conduct	1
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(1)	The Minister may, without notice or inquiry, suspend a person from civic office:	3
		4
(a)	if the Independent Commission Against Corruption, in a report referred to in section 74C of the <i>Independent Commission Against Corruption Act 1988</i> , recommends that consideration be given to the suspension of the person from office with a view to his or her dismissal for serious corrupt conduct, or	5
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(b)	if criminal proceedings for serious corrupt conduct are instituted against the person, or	11
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(c)	if the person makes an admission of serious corrupt conduct.	13
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(2)	A person, while suspended from civic office under this section:	15
(a)	is not entitled to exercise any of the functions of the civic office, and	16
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(b)	is not entitled to any fee or other remuneration to which the person would otherwise be entitled as the holder of the civic office.	18
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(3)	A suspension under this section may be removed by the Minister at any time.	21
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(4)	A suspension under this section is removed in the following circumstances:	23
		24
(a)	if the person is not dismissed from civic office, or criminal proceedings in connection with the serious corrupt conduct are not instituted, within 6 months after the suspension,	25
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(b)	in the case of a person against whom criminal proceedings are instituted in connection with the serious corrupt conduct—if the proceedings are withdrawn or dismissed.	29
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(5)	If a suspension is removed, any fee or other remuneration withheld may (if the Minister so directs) be subsequently paid to the person concerned.	33
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440D	Temporary suspension of staff in connection with serious corrupt conduct	1
		2
(1)	The general manager may suspend a member of staff of a council from duty:	3
		4
(a)	if the Independent Commission Against Corruption, in a report referred to in section 74C of the <i>Independent Commission Against Corruption Act 1988</i> , recommends that consideration be given to the suspension of the member of staff from duty with a view to the institution of disciplinary or other proceedings against the member of staff for serious corrupt conduct, or	5
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(b)	if criminal proceedings for serious corrupt conduct are instituted against the member of staff, or	13
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(c)	if the member of staff makes an admission of serious corrupt conduct.	15
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(2)	If the general manager so directs, a member of staff, while suspended from duty under this section, is not entitled to any salary or other remuneration to which the person would otherwise be entitled as a member of staff.	17
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(3)	A suspension under this section may be removed by the general manager at any time.	21
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(4)	A suspension under this section is removed in the following circumstances:	23
		24
(a)	if disciplinary or criminal proceedings in connection with the serious corrupt conduct are not instituted within 6 months after the suspension,	25
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(b)	in the case of a member of staff against whom disciplinary or criminal proceedings are instituted in connection with the serious corrupt conduct—if the proceedings are withdrawn or dismissed.	28
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(5)	If a suspension is removed, any salary or other remuneration withheld may (if the general manager so directs) be subsequently paid to the member of staff.	32
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(6)	The Minister may exercise the functions of the general manager under this section in connection with:	35
		36
(a)	conduct of a general manager, or	37

(b)	conduct of any other member of staff (but only if the Minister is satisfied that the general manager has failed to act under this section without reasonable cause).	1 2 3
(7)	This section does not limit any other power to suspend a member of staff from duty.	4 5
440E	Application of Division	6
	This Division applies to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after the commencement of this Division.	7 8 9 10
[5]	Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	11 12
	Insert at the end of clause 1 (1):	13
	<i>Local Government Amendment (Anti-Corruption) Act 2002</i>	14

Schedule 2	Amendment of Independent Commission Against Corruption Act 1988	1 2
	(Section 4)	3
Section 74C		4
Insert after section 74B:		5
74C	Reports relating to dismissal of local government authorities, councillors and staff	6 7
(1)	The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the making of a proclamation under the <i>Local Government Act 1993</i> that all civic offices in relation to a local government authority be declared vacant if the Commission is of the opinion that systemic corruption exists within the local government authority.	8 9 10 11 12 13 14
(2)	The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension of a councillor from civic office under the <i>Local Government Act 1993</i> with a view to his or her dismissal for serious corrupt conduct.	15 16 17 18 19
(3)	The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension from duty of a member of the staff of a local government authority with a view to the institution of disciplinary or criminal proceedings against the member of staff for serious corrupt conduct.	20 21 22 23 24 25
(4)	The Commission is not to make a recommendation under this section unless the Commission is of the opinion that prompt action is required in the public interest.	26 27 28

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- (5) This section does not limit any other recommendation that the Commission is authorised to include in a report under section 74 in relation to a local government authority, councillor or member of staff. 1
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 - (6) This section extends to a report in relation to a matter that has been the subject of an investigation conducted before the commencement of this section. 5
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