



New South Wales

Environmental Planning and Assessment 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 amend the *Environmental Planning and Assessment Act 1979* to make provision for:

- (a) the suspension and revocation of development consents under that Act that are tainted by corrupt conduct, and
- (b) the appointment of an administrator to assume the environmental planning and assessment functions of a local council under that Act where the Independent Commission Against Corruption recommends that consideration be given to such an appointment because of serious corrupt conduct by any of the councillors in the exercise of those functions.

The Bill makes other minor or related amendments to that Act and makes a consequential amendment to the *Independent Commission Against Corruption Act 1988*.

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.

Clause 3 is a formal provision giving effect to the amendments to the *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Independent Commission Against Corruption Act 1988* set out in Schedule 2.

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [2] amends section 118 of the Principal Act to provide for the appointment of an administrator to assume the environmental planning and assessment functions of a local council under the Act where the Independent Commission Against Corruption recommends that consideration be given to such an appointment because of serious corrupt conduct by any of the councillors in the exercise of those functions (that is, corrupt conduct that is punishable by imprisonment for 5 years or more).

Schedule 1 [5] inserts section 124A into the Principal Act to provide for the suspension and revocation of development consents that are tainted by corrupt conduct. For the purposes of the new section, a decision of a consent authority to grant or modify a development consent is to be regarded as tainted by corrupt conduct if:

- (a) the Independent Commission Against Corruption recommends that consideration be given to the suspension of the decision with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification, or

- (b) if criminal proceedings for any such conduct are instituted or the consent authority, councillor or other officer or member of staff makes an admission of any such conduct.

Under the new section:

- (a) the jurisdiction of the Land and Environment Court to remedy or restrain a breach of the Principal Act is expressly extended to relevant decisions of a consent authority that are tainted by corrupt conduct, and
- (b) the Minister or the Court may suspend a decision that is tainted by corrupt conduct pending proceedings in the Court to revoke the decision, and
- (c) the Court may revoke a decision tainted by corrupt conduct so long as the revocation will not significantly disadvantage any person affected by the decision who was not a party to the corrupt conduct and so long as there has not been a substantial commencement of work authorised by the development consent.

Schedule 1 [1] inserts section 117A into the Principal Act to make provision for the Director-General of the Department of Planning to request the Director-General of the Department of Local Government to carry out an investigation under the *Local Government Act 1993* in relation to any aspect of the performance of a council's environmental planning and assessment functions.

Schedule 1 [3] amends section 118 of the Principal Act to make it clear that the actions of a planning administrator are valid even if the appointment of the administrator is subsequently found to be invalid.

Schedule 1 [4] inserts section 119A into the Principal Act to enable the removal of councillors under the *Local Government Act 1993* on the basis of a public inquiry under section 119 of the Principal Act.

Schedule 1 [6] allows regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Independent Commission Against Corruption Act 1988

Schedule 2 amends section 74C (to be inserted by the proposed *Local Government Amendment (Anti-Corruption) Act 2002*) to authorise the Independent Commission Against Corruption to make the recommendations that will trigger the proposed appointments of planning administrators and the proposed suspension of

development consents pending their revocation. The Commission will be authorised to make the recommendations if of the opinion that prompt action is required in the public interest.



New South Wales

Environmental Planning and Assessment Amendment (Anti-Corruption) Bill 2002

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	2
4 Amendment of Independent Commission Against Corruption Act 1988 No 35	2
Schedules	
1 Amendment of Environmental Planning and Assessment Act 1979	3
2 Amendment of Independent Commission Against Corruption Act 1988	7



New South Wales

Environmental Planning and Assessment Amendment (Anti- Corruption) Bill 2002

No. , 2002

A Bill for

An Act to amend the *Environmental Planning and Assessment Act 1979* to deal with development consents that are tainted by 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>Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Environmental Planning and Assessment Act 1979 No 203	8 9
The <i>Environmental Planning and Assessment Act 1979</i> is amended as set out in Schedule 1.	10 11
4 Amendment of Independent Commission Against Corruption Act 1988 No 35	12 13
The <i>Independent Commission Against Corruption Act 1988</i> is amended as set out in Schedule 2.	14 15

Schedule 1	Amendment of Environmental Planning and Assessment Act 1979	1
		2
	(Section 3)	3
[1]	Section 117A	4
	Insert after section 117:	5
117A	Inquiry into councils by Director-General of Department of Local Government	6
		7
	(1) The Director-General of the Department of Planning may request the Director-General of the Department of Local Government to authorise an investigation under section 430 of the <i>Local Government Act 1993</i> into any aspect of a council's performance of its environmental planning functions under this Act that requires investigation.	8
		9
		10
		11
		12
		13
	(2) The Director-General of the Department of Local Government is to provide the Director-General of the Department of Planning with advice on the outcome of any such request or investigation.	14
		15
		16
		17
[2]	Section 118 Appointment of environmental planning administrator	18
	Insert after section 118 (1):	19
	(2) In addition to the circumstances in which an appointment may be made under subsection (1), the Minister may appoint a person under that subsection 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 appointment because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of functions conferred or imposed on the council by or under this Act. The Minister may make the appointment without conducting an inquiry but, in that case, the Minister is to inquire into the matter as soon as practicable with a view to confirming or revoking the appointment.	20
		21
		22
		23
		24
		25
		26
		27
		28
		29
		30
		31
		32

(3) In subsection (2):	1
<i>serious corrupt conduct</i> means corrupt conduct (within the	2
meaning of the <i>Independent Commission Against Corruption</i>	3
<i>Act 1988</i>) that may constitute a serious indictable offence,	4
being conduct in connection with the exercise or purported	5
exercise of the functions of a councillor.	6
[3] Section 118 (6)	7
Insert “This subsection has effect even if the appointment is subsequently	8
found not to have been validly made.” after “ the person’s appointment.”.	9
[4] Section 119A	10
Insert after section 119:	11
119A Certain inquiries taken to be public inquiries for purposes of	12
Local Government Act 1993	13
An inquiry that is directed to be held under section 119 that	14
relates to the exercise, or the failure or refusal to exercise, by a	15
council of any of the functions conferred or imposed on it by	16
or under this Act may be relied on as a public inquiry for the	17
purposes of section 255 of the <i>Local Government Act 1993</i> .	18
[5] Section 124A	19
Insert after section 124:	20
124A Special provision where development consent tainted by	21
corruption	22
(1) For the purposes of this section, a decision of a consent	23
authority to grant or modify a development consent is tainted	24
by corrupt conduct:	25
(a) if the Independent Commission Against Corruption, in	26
a report referred to in section 74C of the <i>Independent</i>	27
<i>Commission Against Corruption Act 1988</i> ,	28
recommends that consideration be given to the	29
suspension of the development consent or modification	30
with a view to its revocation because of serious corrupt	31
conduct by the consent authority or by a councillor or	32

-
- | | |
|---|----|
| other officer or member of staff of the consent authority | 1 |
| in connection with the grant of the consent or | 2 |
| modification, or | 3 |
| (b) if criminal proceedings are instituted against the consent | 4 |
| authority or against a councillor or other officer or | 5 |
| member of staff of the consent authority for serious | 6 |
| corrupt conduct in connection with the grant of the | 7 |
| consent or modification, or | 8 |
| (c) if the consent authority, councillor or other officer or | 9 |
| member of staff makes an admission of such serious | 10 |
| corrupt conduct. | 11 |
| (2) A breach of this Act that may be remedied or restrained in | 12 |
| proceedings instituted under this Division includes a decision | 13 |
| of a consent authority to grant or modify a development | 14 |
| consent that is tainted by corrupt conduct. | 15 |
| (3) If a decision of a consent authority to grant or modify a | 16 |
| development consent is tainted by corrupt conduct, the Minister | 17 |
| may, without prior notice or inquiry, suspend the decision | 18 |
| pending the institution and determination of proceedings under | 19 |
| this Division in respect of the decision. The Minister is to give | 20 |
| the consent authority and the applicant for the grant or | 21 |
| modification of the development consent written notice of the | 22 |
| suspension as soon as practicable after it is imposed. | 23 |
| (4) A suspension imposed by the Minister may be lifted by the | 24 |
| Minister at any time and is taken to be lifted if the proceedings | 25 |
| concerned are not instituted within 6 months after the | 26 |
| suspension is imposed. | 27 |
| (5) The Court may, in proceedings to which this section applies, | 28 |
| suspend the decision of a consent authority to grant or modify | 29 |
| a development consent pending the determination of the | 30 |
| proceedings. The Court may lift a suspension imposed by the | 31 |
| Minister under this section. | 32 |
| (6) The Court may, in proceedings to which this section applies, | 33 |
| revoke the decision of a consent authority to grant or modify a | 34 |
| development consent if: | 35 |
| (a) the decision is tainted by corrupt conduct, and | 36 |

(b)	the Court is satisfied that the revocation of the decision will not significantly disadvantage any person affected by the decision who was not a party to the corrupt conduct.	1 2 3 4
	The Court retains its discretion in proceedings to which this section applies as to whether to revoke a decision that is tainted by corrupt conduct.	5 6 7
(7)	A development consent for the erection of a building, the carrying out of a work or the demolition of a building or work (or a modification of any such consent) is not to be suspended or revoked under this section if the building, work or demolition authorised by the consent (or by the modification) has been substantially commenced.	8 9 10 11 12 13
(8)	Section 101 does not apply to proceedings to which this section applies.	14 15
(9)	Compensation is not payable by the Minister or the State for any loss suffered by a person because:	16 17
(a)	a decision is suspended under this section (whether or not the Court decides to revoke the decision), or	18 19
(b)	a decision is revoked under this section.	20
(10)	This section applies:	21
(a)	to decisions made by a consent authority before or after the commencement of this section, and	22 23
(b)	to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after that commencement.	24 25 26
(11)	In this section:	27
	<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.	28 29 30
[6]	Schedule 6 Savings, transitional and other provisions	31
	Insert at the end of clause 1 (1):	32
	<i>Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002</i>	33 34

Schedule 2	Amendment of Independent Commission Against Corruption Act 1988	1
		2
	(Section 4)	3
Section 74C	Reports relating to local government authorities	4
	Insert after section 74C (3):	5
(3A)	The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the appointment of a person under section 118 of the <i>Environmental Planning and Assessment Act 1979</i> to administer functions of a council under that Act because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of those functions.	6 7 8 9 10 11 12
(3B)	The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension of a development consent granted by a consent authority under the <i>Environmental Planning and Assessment Act 1979</i> , or of a modification of such a consent, with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification.	13 14 15 16 17 18 19 20 21