



New South Wales

Local Government Amendment (Early Intervention) Bill 2013

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*) as follows:

- (a) to enable the Minister for Local Government (the *Minister*) or the Director-General of the Department of Premier and Cabinet (the *Director-General*) to direct a council, a councillor or the general manager of a council to provide information or documents about the council, its operations or its activities,
- (b) to enable the Minister to issue an order (a *performance improvement order*) to a council that directs certain actions to be taken to improve the performance of the council,
- (c) to provide for the appointment of temporary advisers to assist councils with complying with performance improvement orders,
- (d) to require councils to report on compliance with a performance improvement order,
- (e) to enable the Minister to suspend a council for a period of up to 3 months (with a possible extension of a further 3 months) if the Minister considers that the

appointment of an interim administrator is necessary to improve or restore the proper or effective functioning of a council,

- (f) to provide for the appointment of interim administrators,
- (g) to make further provision in relation to public inquiries under the principal Act, including by permitting the Minister to suspend a council during such an inquiry,
- (h) to make it clear that the Governor may appoint more than one administrator to exercise the functions of a dismissed council,
- (i) to make other minor and 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 the date of assent to the proposed Act, or on the date of commencement of the *Local Government Amendment (Conduct) Act 2012* (1 March 2013), whichever is the later.

Schedule 1 **Amendment of Local Government Act 1993 No 30**

Performance improvement orders

Under the amendments, the Minister will be able to issue a performance improvement order to a council if the Minister reasonably considers that action must be taken to improve the performance of the council. Actions to improve the performance of a council include any actions that the Minister considers necessary to improve or restore the proper or effective functioning of the council. The order may also require actions to be taken by individual councillors. The Minister must generally give a council notice of his or her intention to issue a performance improvement order and there will be a consultation period of not less than 21 days during which the council may make submissions to the Minister and the Minister must have regard to any submissions received during that time. The Minister may also appoint a temporary adviser to assist the council in complying with a performance improvement order. The council, councillors and members of staff of the council must co-operate with the adviser. A council will be required to provide the Minister with a report on its compliance with the order. See **Schedule 1 [41]**, proposed Part 6 of Chapter 13.

Temporary suspension of council

Under the amendments, the Minister may, by order published in the Gazette, suspend a council for a period (initially for up to 3 months, with a possible extension of a further 3 months) if the Minister reasonably believes that the appointment of an interim administrator is necessary to improve or restore the proper or effective functioning of the council. The Minister must appoint one or more interim

administrators to exercise all the functions of the council during the suspension period. The Minister must generally give a council notice of his or her intention to suspend the council and there will be a consultation period of not less than 14 days during which the council may make submissions to the Minister and the Minister must have regard to any submissions received during that time. An interim administrator is to give the Minister a written report about his or her administration of the council and the report is to include recommendations in relation to improving or restoring the proper and effective functioning of the council. Elections are not held while a council is suspended. See **Schedule 1 [41]**, proposed Part 7 of Chapter 13. **Schedule 1 [21]** is a consequential amendment.

Public inquiries

Schedule 1 [41] inserts proposed Part 8 into Chapter 13 of the principal Act. Proposed Part 8 re-enacts an existing provision that enables the Governor or the Minister to appoint one or more commissioners to hold a public inquiry into a council, a councillor or a member of staff of a council in relation to the carrying out of the provisions of the principal Act. In addition, the amendments provide that:

- (a) the expenses of such a public inquiry are to be borne by the council concerned in certain circumstances, and
- (b) the Minister may suspend a council, and appoint an interim administrator, if a public inquiry is held or to be held in relation to the council (the suspension has effect until it is terminated by the Minister or the council is dismissed), and
- (c) the Minister may issue a performance improvement order in respect of a council in response to the results of a public inquiry in relation to the council.

Currently the Governor may only dismiss a council if a public inquiry has been held and if the Minister recommends the dismissal after considering the results of the public inquiry. **Schedule 1 [10]** enables the Minister to recommend that the Governor dismiss a council after considering the results of the public inquiry or, if the Minister issues a performance improvement order in response to the results of the inquiry, after having considered whether the council has complied with the order.

Schedule 1 [3], [9], [13], [48], [49] and [54] are consequential amendments.

Effect of suspension of council and councillors

If a council is suspended under the new provisions, the councillors will not be entitled, during the suspension period, to exercise any functions of the civic office or to receive any fee or remuneration, to receive expenses or to use council facilities.

Schedule 1 [42]–[44] ensure that whenever a councillor is suspended under the principal Act the councillor is not entitled to expenses or to the use of council facilities.

Schedule 1 [7] and [8] provide that a council must not pay any expenses to councillors during any suspension period.

Schedule 1 [19] makes it clear that a holder of civic office is not disqualified from being re-elected merely because the holder, or the council, is suspended.

Investigation of councils

Schedule 1 [26] provides that the Director-General may, at the request of the Minister or on the Director-General's own initiative, conduct an investigation into any aspect of a council or of its work and activities. Currently, the principal Act provides that the Director-General may authorise a Departmental representative to conduct such an investigation. **Schedule 1 [32]** requires the Director-General to report to the Minister on the results of any such investigation. **Schedule 1 [34] and [35]** expand the power of the Director-General to recover the expenses incurred in respect of an investigation to include the expenses of investigations relating to recurring problems with the administration of a council that have been the subject of previous Ministerial intervention (such as the issue of a performance improvement order or the temporary suspension of the council). **Schedule 1 [25], [27]–[31], [33] and [46]** are consequential amendments.

Schedule 1 [24] extends the power of the Minister and the Director-General to direct a council to provide information about the council or its operations or activities so that the Minister or the Director-General may direct a council, a councillor or the general manager of a council to provide information or documents. Failure to comply with such a direction is an offence under the principal Act with a maximum penalty of 20 penalty units (currently, \$2,200).

Schedule 1 [36] provides protection from self-incrimination for persons answering questions or providing information as directed by the Minister or the Director-General.

Schedule 1 [37]–[40] are consequential amendments that transfer existing functions relating to surcharging (currently conferred on Departmental representatives) to the Director-General. The Director-General can delegate the functions.

Appointment of administrators

Schedule 1 [2] and [12] make it clear that more than one administrator may be appointed in respect of a council at the same time. **Schedule 1 [1], [4], [5] and [14]–[18]** are consequential amendments.

Other amendments

Schedule 1 [41] (proposed Part 9 of Chapter 13) and [45] permit any orders, notices or documents required to be served on a council or a person by the Minister or the Director-General under the proposed provisions, or in relation to misconduct investigations and proceedings under Chapter 14 of the principal Act, to be served by email in certain circumstances.

Schedule 1 [50] enables a delegate of the Director-General of the Department of Premier and Cabinet to subdelegate to any member of staff of the Department any function delegated by the Director-General if authorised in writing to do so by the Director-General.

Schedule 1 [22] makes it clear that the usual quorum for a council meeting does not apply in the case of a council subject to a performance improvement order that contains directions by the Minister as to the quorum for council meetings.

Schedule 1 [11] provides that a reference in the principal Act to the dismissal of a council is a reference to a declaration by the Governor that all civic offices in relation to the council are vacant. **Schedule 1 [20]** is a consequential amendment.

Schedule 1 [6], [23] and [47] are minor consequential amendments.

Schedule 1 [53] contains consequential amendments to expressions defined in the Dictionary.

Schedule 1 [51] contains a savings provision that is consequent on the enactment of the *Local Government Amendment (Conduct) Act 2012*. That Act updated references to the Minister for Land and Water Conservation in sections 57–66 of the principal Act to the Minister for Primary Industries. However, administrative changes orders in effect before the amendment required the functions of the Minister for Land and Water Conservation under those sections to be exercised, in some specific cases, by a Minister other than the Minister for Primary Industries. The amendment makes it clear that the update to those sections does not affect the operation of any such order.

Schedule 1 [52] contains savings and transitional provisions consequent on the proposed amendments.

Schedule 2 Amendment of other legislation

Schedule 2.1 updates a cross-reference in the *Environmental Planning and Assessment Act 1979* as a consequence of the amendments to the principal Act relating to public inquiries.

Schedule 2.2 amends the *Government Information (Public Access) Regulation 2009* to provide that performance improvement orders given to a council are open access information and are required to be made publicly available.