



New South Wales

Local Government Amendment (Open Meetings) Act 1997 No 145

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Local Government Amendment (Open Meetings) Act 1997 No 145

Act No 145, 1997

An Act to amend the *Local Government Act 1993* to specify the limited circumstances in which a local council or certain council committees may close part of a meeting to the public; to make further provision concerning the public's right to inspect and obtain copies of documents held by a council; and for other purposes. [Assented to 17 December 1997]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Open Meetings) Act 1997*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Section 9 Public notice of meetings

Omit section 9 (2). Insert instead:

- (2) A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the agenda and the associated business papers (such as correspondence and reports) for the meeting.
- (2A) In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public:
 - (a) the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and
 - (b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.

[2] Section 9 (5)

Omit “a business paper”.

Insert instead “an agenda or of a business paper”.

[3] Sections 10–10E

Omit section 10. Insert instead:

10 Who is entitled to attend meetings?

- (1) Except as provided by this Part:
 - (a) everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, and
 - (b) a council must ensure that all meetings of the council and of such committees are open to the public.

- (2) However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting:
 - (a) by a resolution of the meeting, or
 - (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.
- (3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.

10A Which parts of a meeting can be closed to the public?

- (1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises:
 - (a) the discussion of any of the matters listed in subclause (2), or
 - (b) the receipt or discussion of any of the information so listed.
- (2) The matters and information are the following:
 - (a) personnel matters concerning particular individuals,
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business,
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,
 - (e) information that would, if disclosed, prejudice the maintenance of law,

- (f) matters affecting the security of the council, councillors, council staff or council property,
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
- (3) A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public.
- (4) Members of the public must be allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed.
- (5) As soon as practicable after 30 June (and, in any case, no later than 31 August) in each year the council is to furnish the Minister with a report specifying the amount of time, expressed as a percentage of the total time spent in meetings of the council and those of its committees of which all the members are councillors, during which parts of those meetings were closed to the public.
- (6) As soon as practicable after 31 August in each year the Minister is to table, or cause to be tabled, in both Houses of Parliament a report:
- (a) setting out the information furnished to the Minister under this section, and
 - (b) identifying, in relation to each such item of information, the council that furnished the information.

10B Further limitations relating to closure of parts of meetings to public

- (1) A meeting is not to remain closed during the discussion of anything referred to in section 10A (2):
- (a) except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and

- (b) if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret—unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest.
- (2) A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A (2) (g) unless the advice concerns legal matters that:
 - (a) are substantial issues relating to a matter in which the council or committee is involved, and
 - (b) are clearly identified in the advice, and
 - (c) are fully discussed in that advice.
- (3) If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A (3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A (2)).
- (4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
 - (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council or committee.

Note. Subsection (4) is in similar terms to section 59A (Public interest) of the *Freedom of Information Act 7989*.

- (5) In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must have regard to any relevant guidelines issued by the Director-General.

10C Notice of likelihood of closure not required in urgent cases

Part of a meeting of a council, or of a committee of the council of which all the members are councillors, may be closed to the public while the council or committee considers a matter that has not been identified in the agenda for the meeting as a matter that is likely to be considered when the meeting is closed, but only if

- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in section 10A (2), and
- (b) the council or committee, after considering any representations made under section 10A (4), resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and
 - (ii) should take place in a part of the meeting that is closed to the public.

10D Grounds for closing part of meeting to be specified

- (1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting.
- (2) The grounds must specify the following:
 - (a) the relevant provision of section 10A (2),
 - (b) the matter that is to be discussed during the closed part of the meeting,
 - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an

explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest.

10E Minutes and business papers relating to closed parts of meetings

- (1) If a council or a committee of the council of which all the members are councillors closes any part of a meeting, it must, in accordance with this section, give any person reasonable access to the business papers for, and the minutes of, that part of the meeting.
- (2) The council or committee concerned must, at the meeting, determine by resolution the dates on and from which access to the business papers and the minutes is to be given.
- (3) The date determined in relation to the business papers may differ from the date determined in relation to the minutes.
- (4) The date determined in each case must be such as to allow reasonable access to both the business papers and the minutes before the council is entitled to destroy the business papers in accordance with the regulations.
- (5) The council or committee may, if it considers it appropriate to do so, by subsequent resolution alter a date determined under subsection (2) to a date that is earlier (but not later) than the date so determined.
- (6) The council must keep a register of business papers and minutes referred to in this section specifying, in relation to each business paper and minute, the date on and from which access to it is to be given.
- (7) However, this section does not require access to be given to such parts of the business papers or the minutes as deal with any of the following:
 - (a) personnel matters concerning particular individuals,
 - (b) the personal hardship of any resident or ratepayer,
 - (c) trade secrets,

- (d) a matter the disclosure of which would:
- (i) constitute an offence against an Act, or
 - (ii) found an action for breach of confidence.

[4] Section 11 Public access to correspondence and reports

Omit “section 10 (2)” from section 11 (3).
Insert instead “section 10A (2)”.

[5] Section 12 What information is publicly available?

Omit the thirteenth and fourteenth dot points and the matter following those dot points from section 12 (1).

Insert instead:

- agendas and business papers for council and committee meetings (but not including, until the relevant date determined under section 10E, business papers for matters considered when part of a meeting is closed to the public)
- minutes of council and committee meetings, but restricted, until the relevant date determined under section 10E (in the case of any part of a meeting that is closed to the public), to the recommendations of the meeting
- the register of business papers and minutes referred to in section 10E (6)

[6] Section 12 (1)

Insert after the seventeenth dot point:

- applications under Part 1 of Chapter 7 for approval to erect a building, and associated documents
- development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and associated documents

[7] Section 12 (1A)

Insert after section 12 (1):

- (1A) Despite subsection (1) and the other provisions of this Act, a person does not have the right to inspect so much of a development application, or an application under Part 1 of Chapter 7 for approval to erect a building, as consists of:
- (a) the plans and specifications for any residential parts of a proposed building, other than plans that merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or
 - (b) commercial information, if the information would be likely:
 - (i) to prejudice the commercial position of the person who supplied it, or
 - (ii) to reveal a trade secret.

[8] Section 12 (4)

Omit the subsection.

[9] Section 12 (6)

Omit the subsection. Insert instead:

- (6) The council must allow inspection of its other documents free of charge unless, in the case of a particular document, it is satisfied that allowing inspection of the document would, on balance, be contrary to the public interest.
- (7) However, subsection (6) does not apply to the part (if any) of a document that deals with any of the following:
 - (a) personnel matters concerning particular individuals,
 - (b) the personal hardship of any resident or ratepayer,

- (c) trade secrets,
- (d) a matter the disclosure of which would:
 - (i) constitute an offence against an Act, or
 - (ii) found an action for breach of confidence.
- (8) For the purpose of determining whether allowing inspection of a document would be contrary to the public interest, it is irrelevant that the inspection of the document may:
 - (a) cause embarrassment to the council or to councillors or to employees of the council, or
 - (b) cause a loss of confidence in the council, or
 - (c) cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

Note. Subsection (8) is in similar terms to section 59A (Public interest) of the *Freedom of Information Act 1989*.

[10] Sections 12A and 12B

Insert after section 12:

12A Restriction of access to information

- (1) If the general manager or any other member of the staff of a council decides that access to a document or other information held by the council should not be given to the public or a councillor, the person concerned must provide the council with written reasons for the restriction.
- (2) The reasons must be publicly available.
- (3) The council must review any such restriction no later than 3 months after it is imposed.
- (4) The council must, at the request of any person made after the expiry of a period of 3 months after that review (or of a period of 3 months after the most recent of any subsequent reviews), carry out a further review of the restriction.

- (5) The council must remove the restriction if, at any time:
 - (a) it finds that there are no grounds for the restriction, or
 - (b) access to the relevant document or other information is obtained under the *Freedom of Information Act 1989*.
- (6) A review is not required under this section if the restriction concerned has been removed.

12B Copies of documents

- (1) A right under this Act to inspect a document includes the right to take away a copy of the document.
- (2) Accordingly, a council must have a copy of all relevant documents available for copying by, or on behalf of, any person who asks for one.
- (3) The copies may be taken away either free of charge or on payment of reasonable copying charges, as the council chooses (except as otherwise specifically provided by or under this Act).
- (4) This section does not apply to the following:
 - (a) the residential roll of electors referred to in section 302 (1),
 - (b) the resumes of candidates for election referred to in section 308,
 - (c) building certificates.

Note. Section 174 (3) provides that a person may obtain a copy of a building certificate from the council's record with the consent of the owner of the building (and on payment of the approved fee).

[11] Section 367 Notice of meetings

Omit "business paper relating to" from section 367 (3).
Insert instead "agenda for, and the business papers relating to,".

[12] Section 367 (3)

Omit "and the business paper in".
Insert instead ", agenda and business papers in".

[13] Section 664 Disclosure and misuse of information

Omit “a meeting or part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10 (2)” from section 664 (1A).

Insert instead “part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10A (1)”.

[14] Section 731

Omit the section. Insert instead:

731 Liability of councillors, employees and other persons

A matter or thing done by the Minister, the Director-General, a council, a councillor, a member of a committee of the council or an employee of the council or any person acting under the direction of the Minister, the Director-General, the council or a committee of the council does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, and for and on behalf of the Minister, the Director-General, the council or a committee of the council, subject a councillor, a member, an employee or a person so acting personally to any action, liability, claim or demand.

[Minister's second reading speech made in—
Legislative Assembly on 14 November 1997 p.m.
Legislative Council on 27 November 1997]