



New South Wales

# Local Government Amendment (Anti-Corruption) Act 2002 No 19

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New South Wales

## **Local Government Amendment (Anti-Corruption) Act 2002 No 19**

Act No 19, 2002

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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. [Assented to 17 June 2002]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Local Government Amendment (Anti-Corruption) Act 2002*.

**2 Commencement**

This Act commences on the date of assent.

**3 Amendment of Local Government Act 1993 No 30**

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

**4 Amendment of Independent Commission Against Corruption Act 1988 No 35**

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 2.

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## **Schedule 1 Amendment of Local Government Act 1993**

(Section 3)

### **[1] Section 255 Governor may dismiss mayor and councillors**

Insert at the end of the section:

- (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 *Independent Commission Against Corruption Act 1988*, recommends that consideration be given to the making of such a declaration because of systemic corruption within the council.
- (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.

### **[2] Section 329 Can the holder of a civic officer be dismissed?**

Insert “or by a decision of the Governor under section 440B” after “section 482” in section 329 (5).

### **[3] Chapter 14, Part 1, Division heading**

Insert before section 439:

#### **Division 1 Conduct generally**

**[4] Chapter 14, Part 1, Division 2**

Insert after section 440:

**Division 2 Serious corrupt conduct**

**440A Definition of “serious corrupt conduct”**

In this Division:

*serious corrupt conduct* means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence, being:

- (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
- (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.

**440B Dismissal from civic office for serious corrupt conduct**

- (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:
  - (a) the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, 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
  - (b) the person is suspended from the civic office by the Minister under this Division, and
  - (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.
- (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.

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**440C Temporary suspension from civic office for serious corrupt conduct**

- (1) The Minister may, without notice or inquiry, suspend a person from civic office:
  - (a) if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, 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
  - (b) if criminal proceedings for serious corrupt conduct are instituted against the person, or
  - (c) if the person makes an admission of serious corrupt conduct.
- (2) A person, while suspended from civic office under this section:
  - (a) is not entitled to exercise any of the functions of the civic office, and
  - (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.
- (3) A suspension under this section may be removed by the Minister at any time.
- (4) A suspension under this section is removed in the following circumstances:
  - (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,
  - (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.
- (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.

**440D Temporary suspension of staff in connection with serious corrupt conduct**

- (1) The general manager may suspend a member of staff of a council from duty:
  - (a) if the Independent Commission Against Corruption, in a report referred to in section 74C of the *Independent Commission Against Corruption Act 1988*, 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
  - (b) if criminal proceedings for serious corrupt conduct are instituted against the member of staff, or
  - (c) if the member of staff makes an admission of serious corrupt conduct.
- (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.
- (3) A suspension under this section may be removed by the general manager at any time.
- (4) A suspension under this section is removed in the following circumstances:
  - (a) if disciplinary or criminal proceedings in connection with the serious corrupt conduct are not instituted within 6 months after the suspension,
  - (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.
- (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.
- (6) The Minister may exercise the functions of the general manager under this section in connection with:
  - (a) conduct of a general manager, or

(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).

(7) This section does not limit any other power to suspend a member of staff from duty.

**440E Application of Division**

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.

**[5] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts**

Insert at the end of clause 1 (1):

*Local Government Amendment (Anti-Corruption) Act 2002*



## **Schedule 2 Amendment of Independent Commission Against Corruption Act 1988**

(Section 4)

### **Section 74C**

Insert after section 74B:

#### **74C Reports relating to dismissal of local government authorities, councillors and staff**

- (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 *Local Government Act 1993* 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.
- (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 *Local Government Act 1993* with a view to his or her dismissal for serious corrupt conduct.
- (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.
- (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.

- (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.
- (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.

[Second reading speech made in—  
Legislative Assembly on 28 May 2002  
Legislative Council on 13 June 2002]