



New South Wales

# Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002 No 44

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New South Wales

# **Environmental Planning and Assessment Amendment (Anti- Corruption) Act 2002 No 44**

Act No 44, 2002

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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.  
[Assented to 3 July 2002]

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

**1 Name of Act**

This Act is the *Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002*.

**2 Commencement**

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

**3 Amendment of Environmental Planning and Assessment Act 1979 No 203**

The *Environmental Planning and Assessment Act 1979* 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 Environmental Planning and Assessment Act 1979**

(Section 3)

### **[1] Section 117A**

Insert after section 117:

#### **117A Inquiry into councils by Director-General of Department of Local Government**

- (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 *Local Government Act 1993* into any aspect of a council's performance of its environmental planning functions under this Act that requires investigation.
- (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.

### **[2] Section 118 Appointment of environmental planning administrator**

Insert after section 118 (1):

- (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 *Independent Commission Against Corruption Act 1988*, 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.

(3) In subsection (2):

*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 conduct in connection with the exercise or purported exercise of the functions of a councillor.

**[3] Section 118 (6)**

Insert “This subsection has effect even if the appointment is subsequently found not to have been validly made.” after “ the person’s appointment.”.

**[4] Section 119A**

Insert after section 119:

**119A Certain inquiries taken to be public inquiries for purposes of Local Government Act 1993**

An inquiry that is directed to be held under section 119 that relates to the exercise, or the failure or refusal to exercise, by a council of any of the functions conferred or imposed on it by or under this Act may be relied on as a public inquiry for the purposes of section 255 of the *Local Government Act 1993*.

**[5] Section 124A**

Insert after section 124:

**124A Special provision where development consent tainted by corruption**

(1) For the purposes of this section, a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct:

(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 development consent or modification with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or

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- 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 are instituted against the consent authority or against a councillor or other officer or member of staff of the consent authority for serious corrupt conduct in connection with the grant of the consent or modification, or
  - (c) if the consent authority, councillor or other officer or member of staff makes an admission of such serious corrupt conduct.
- (2) A breach of this Act that may be remedied or restrained in proceedings instituted under this Division includes a decision of a consent authority to grant or modify a development consent that is tainted by corrupt conduct.
  - (3) If a decision of a consent authority to grant or modify a development consent is tainted by corrupt conduct, the Minister may, without prior notice or inquiry, suspend the decision pending the institution and determination of proceedings under this Division in respect of the decision. The Minister is to give the consent authority and the applicant for the grant or modification of the development consent written notice of the suspension as soon as practicable after it is imposed.
  - (4) A suspension imposed by the Minister may be lifted by the Minister at any time and is taken to be lifted if the proceedings concerned are not instituted within 6 months after the suspension is imposed.
  - (5) The Court may, in proceedings to which this section applies, suspend the decision of a consent authority to grant or modify a development consent pending the determination of the proceedings. The Court may lift a suspension imposed by the Minister under this section.
  - (6) The Court may, in proceedings to which this section applies, revoke the decision of a consent authority to grant or modify a development consent if:
    - (a) the decision is tainted by corrupt conduct, and

- (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.

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.

- (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) Section 101 does not apply to proceedings to which this section applies.
- (9) Compensation is not payable by the Minister or the State for any loss suffered by a person because:
- (a) a decision is suspended under this section (whether or not the Court decides to revoke the decision), or
- (b) a decision is revoked under this section.
- (10) This section applies:
- (a) to decisions made by a consent authority before or after the commencement of this section, and
- (b) to serious corrupt conduct, and to criminal proceedings instituted or admissions made in respect of serious corrupt conduct, before or after that commencement.
- (11) In this section:
- serious corrupt conduct* means corrupt conduct (within the meaning of the *Independent Commission Against Corruption Act 1988*) that may constitute a serious indictable offence.

**[6] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Environmental Planning and Assessment Amendment (Anti-Corruption) Act 2002*

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

(Section 4)

### **Section 74C Reports relating to local government authorities**

Insert after section 74C (3):

- (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 *Environmental Planning and Assessment Act 1979* 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.
- (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 *Environmental Planning and Assessment Act 1979*, 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.

[Second reading speech made in—  
Legislative Council on 18 June 2002  
Legislative Assembly on 27 June 2002]

BY AUTHORITY