



New South Wales

Local Government Amendment (Governance and Planning) Act 2016 No 38

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Local Government Amendment (Governance and Planning) Act 2016 No 38

Act No 38, 2016

An Act to amend the *Local Government Act 1993* with respect to the governance and planning functions and auditing of councils; and for other purposes. [Assented to 30 August 2016]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Governance and Planning) Act 2016*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Schedule 1 [6], [8], [11], [12], [14], [17], [19]–[22], [88] and [89] commence on the date of assent to this Act.

Schedule 1 Amendment of Local Government Act 1993 No 30

[1] Section 7

Omit the section. Insert instead:

7 Purposes of Act

The purposes of this Act are as follows:

- (a) to provide the legal framework for the system of local government for New South Wales,
- (b) to set out the responsibilities and powers of councils, councillors and other persons and bodies that constitute the system of local government,
- (c) to provide for governing bodies of councils that are democratically elected,
- (d) to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government,
- (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

[2] Chapter 3

Omit the Chapter. Insert instead:

Chapter 3 Principles for local government

8 Object of principles

The object of the principles for councils set out in this Chapter is to provide guidance to enable councils to carry out their functions in a way that facilitates local communities that are strong, healthy and prosperous.

8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.

- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) **Decision-making**

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) **Community participation**

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services.

8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.

- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.

[3] Section 223

Omit the section. Insert instead:

223 Role of governing body

- (1) The role of the governing body is as follows:
 - (a) to direct and control the affairs of the council in accordance with this Act,
 - (b) to provide effective civic leadership to the local community,
 - (c) to ensure as far as possible the financial sustainability of the council,
 - (d) to ensure as far as possible that the council acts in accordance with the principles set out in Chapter 3 and the plans, programs, strategies and policies of the council,
 - (e) to develop and endorse the community strategic plan, delivery program and other strategic plans, programs, strategies and policies of the council,
 - (f) to determine and adopt a rating and revenue policy and operational plans that support the optimal allocation of the council's resources to implement the strategic plans (including the community strategic plan) of the council and for the benefit of the local area,
 - (g) to keep under review the performance of the council, including service delivery,
 - (h) to make decisions necessary for the proper exercise of the council's regulatory functions,
 - (i) to determine the process for appointment of the general manager by the council and to monitor the general manager's performance,
 - (j) to determine the senior staff positions within the organisation structure of the council,
 - (k) to consult regularly with community organisations and other key stakeholders and keep them informed of the council's decisions and activities,
 - (l) to be responsible for ensuring that the council acts honestly, efficiently and appropriately.

- (2) The governing body is to consult with the general manager in directing and controlling the affairs of the council.

[4] Section 224A Approval to reduce number of councillors

Omit section 224A (7)–(9). Insert instead:

- (7) An application may be made under this section only by a council that is prescribed by the regulations for the purposes of this section.
- (8) The application may be made after the commencement of this subsection (as substituted by the *Local Government Amendment (Governance and Planning) Act 2016*) and not later than 12 months before the next ordinary election of councillors after that commencement.
- (9) Nothing in this section prevents a council from making more than one application under this section or from taking action under section 224 to change the number of its councillors.

[5] Section 226

Omit the section. Insert instead:

226 Role of mayor

The role of the mayor is as follows:

- (a) to be the leader of the council and a leader in the local community,
- (b) to advance community cohesion and promote civic awareness,
- (c) to be the principal member and spokesperson of the governing body, including representing the views of the council as to its local priorities,
- (d) to exercise, in cases of necessity, the policy-making functions of the governing body of the council between meetings of the council,
- (e) to preside at meetings of the council,
- (f) to ensure that meetings of the council are conducted efficiently, effectively and in accordance with this Act,
- (g) to ensure the timely development and adoption of the strategic plans, programs and policies of the council,
- (h) to promote the effective and consistent implementation of the strategic plans, programs and policies of the council,
- (i) to promote partnerships between the council and key stakeholders,
- (j) to advise, consult with and provide strategic direction to the general manager in relation to the implementation of the strategic plans and policies of the council,
- (k) in conjunction with the general manager, to ensure adequate opportunities and mechanisms for engagement between the council and the local community,
- (l) to carry out the civic and ceremonial functions of the mayoral office,
- (m) to represent the council on regional organisations and at inter-governmental forums at regional, State and Commonwealth level,
- (n) in consultation with the councillors, to lead performance appraisals of the general manager,
- (o) to exercise any other functions of the council that the council determines.

[6] Section 230 For what period is a mayor elected?

Omit “1 year” from section 230 (1). Insert instead “2 years”.

[7] Section 232

Omit the section. Insert instead:

232 The role of a councillor

- (1) The role of a councillor is as follows:
 - (a) to be an active and contributing member of the governing body,
 - (b) to make considered and well informed decisions as a member of the governing body,
 - (c) to participate in the development of the integrated planning and reporting framework,
 - (d) to represent the collective interests of residents, ratepayers and the local community,
 - (e) to facilitate communication between the local community and the governing body,
 - (f) to uphold and represent accurately the policies and decisions of the governing body,
 - (g) to make all reasonable efforts to acquire and maintain the skills necessary to perform the role of a councillor.
- (2) A councillor is accountable to the local community for the performance of the council.

[8] Section 233A

Insert after section 233:

233A Oath and affirmation for councillors

- (1) A councillor must take an oath of office or make an affirmation of office at or before the first meeting of the council after the councillor is elected.
- (2) The oath or affirmation may be taken or made before the general manager of the council, an Australian legal practitioner or a justice of the peace and is to be in the following form:

Oath

I [*name of councillor*] swear that I will undertake the duties of the office of councillor in the best interests of the people of [*name of council area*] and the [*name of council*] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

Affirmation

I [*name of councillor*] solemnly and sincerely declare and affirm that I will undertake the duties of the office of councillor in the best interests of the people of [*name of council area*] and the [*name of council*] and that I will faithfully and impartially carry out the functions, powers, authorities and discretions vested in me under the *Local Government Act 1993* or any other Act to the best of my ability and judgment.

- (3) A councillor who fails, without a reasonable excuse, to take the oath of office or make an affirmation of office in accordance with this section is not entitled to attend a meeting as a councillor (other than the first meeting of the council after the councillor is elected to the office or a meeting at which the councillor takes the oath or makes the affirmation) until the councillor has taken the oath or made the affirmation.
- (4) Any absence of a councillor from an ordinary meeting of the council that the councillor is not entitled to attend because of this section is taken to be an absence without prior leave of the council.
- (5) Failure to take an oath of office or make an affirmation of office does not affect the validity of anything done by a councillor in the exercise of the councillor's functions.
- (6) The general manager must ensure that a record is to be kept of the taking of an oath or the making of an affirmation (whether in the minutes of the council meeting or otherwise).

[9] Section 234 When does a vacancy occur in a civic office?

Insert after section 234 (1) (g):

- (g1) in the case of the office of a councillor, is elected as mayor by the electors, or

[10] Section 234 (5)

Insert after section 234 (4):

- (5) The office of a mayor elected by councillors becomes vacant if the mayor ceases to hold office as a councillor.

[11] Section 242A Tribunal to give effect to declared government policy on remuneration for public sector staff

Insert after section 242A (2):

- (3) This section does not apply to a determination by the Remuneration Tribunal that changes the category of a council or mayoral office (whether or not the effect of the change is to increase the range of amounts payable to the councillors and mayor of a council).
- (4) To avoid doubt, this section extends to a determination of the minimum and maximum amounts payable for a category in existence when the determination is made.

[12] Section 252 Payment of expenses and provision of facilities

Omit "Within 5 months after the end of each year, a council" from section 252 (1).

Insert instead "Within the first 12 months of each term of a council, the council".

[13] Section 253 Requirements before policy concerning expenses and facilities can be adopted or amended

Omit section 253 (4).

[14] Section 253 (5)

Omit "each year".

[15] Section 258 Administrator

Insert “(including all the functions of a councillor and the mayor)” after “council” where firstly occurring in section 258 (1) (b).

[16] Section 258 (1B)

Insert after section 258 (1A):

- (1B) If more than one administrator is appointed, one of the administrators is to be specified in the instrument of appointment as the person who is to exercise the functions of the mayor of the council.

[17] Section 291A Countback to be held instead of by-election in certain circumstances

Insert after section 291A (5):

- (6) This section does not apply to a casual vacancy in the office of a councillor if the vacancy occurs before the day prescribed for the purposes of this section by the regulations.

[18] Section 329 Can the holder of a civic office be dismissed?

Omit “by a decision of the Civil and Administrative Tribunal under section 482 or” from section 329 (5).

[19] Section 332 Determination of structure

Omit section 332 (1). Insert instead:

- (1) A council must, after consulting the general manager, determine the following:
- (a) the senior staff positions within the organisation structure of the council,
 - (b) the roles and reporting lines (for other senior staff) of holders of senior staff positions,
 - (c) the resources to be allocated towards the employment of staff.
- (1A) The general manager must, after consulting the council, determine the positions (other than the senior staff positions) within the organisation structure of the council.
- (1B) The positions within the organisation structure of the council are to be determined so as to give effect to the priorities set out in the strategic plans (including the community strategic plan) and delivery program of the council.

[20] Section 332 (2) (b)

Omit “Part 3A of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executive office holders whose positions are graded Level 1 (General Management)”.

Insert instead “Part 3B of the *Statutory and Other Offices Remuneration Act 1975*) payable with respect to senior executives whose positions are graded Band 1 under the *Government Sector Employment Act 2013*”.

[21] Section 333 Re-determination and review of structure

Omit “by the council”. Insert instead “under this Part”.

[22] Section 333

Omit “It must be re-determined”.

Insert instead “The council must review, and may re-determine, the organisation structure”.

[23] Section 335

Omit the section. Insert instead:

335 Functions of general manager

The general manager of a council has the following functions:

- (a) to conduct the day-to-day management of the council in accordance with the strategic plans, programs, strategies and policies of the council,
- (b) to implement, without undue delay, lawful decisions of the council,
- (c) to advise the mayor and the governing body on the development and implementation of the strategic plans, programs, strategies and policies of the council,
- (d) to advise the mayor and the governing body on the appropriate form of community consultation on the strategic plans, programs, strategies and policies of the council and other matters related to the council,
- (e) to prepare, in consultation with the mayor and the governing body, the council’s community strategic plan, community engagement strategy, resourcing strategy, delivery program, operational plan and annual report,
- (f) to ensure that the mayor and other councillors are given timely information and advice and the administrative and professional support necessary to effectively discharge their functions,
- (g) to exercise any of the functions of the council that are delegated by the council to the general manager,
- (h) to appoint staff in accordance with the organisation structure determined under this Chapter and the resources approved by the council,
- (i) to direct and dismiss staff,
- (j) to implement the council’s workforce management strategy,
- (k) any other functions that are conferred or imposed on the general manager by or under this or any other Act.

[24] Section 339 Annual reporting of contracts for senior staff

Omit the section.

[25] Section 360

Omit the section. Insert instead:

360 Conduct of meetings of councils and committees

- (1) The regulations may prescribe a model code of meeting practice for the conduct of meetings of councils and committees of councils of which all the members are councillors.
- (2) The model code may contain both mandatory and non-mandatory provisions.
- (3) A council must, not later than 12 months after an ordinary election of councillors, adopt a code of meeting practice that incorporates the mandatory

provisions of the model code prescribed by the regulations. The adopted code may also incorporate the non-mandatory provisions and other provisions.

- (4) A code adopted or amended by the council must not contain provisions that are inconsistent with the mandatory provisions.
- (5) A council and a committee of the council of which all the members are councillors must conduct its meetings in accordance with the code of meeting practice adopted by it.

[26] Section 362 Adoption of draft code

Omit section 362 (1) (a). Insert instead:

- (a) to amend those provisions of its draft mandatory code that are non-mandatory provisions, or

[27] Section 365A

Insert after section 365:

365A Reduction in meetings

- (1) A council may resolve to make an application to the Minister to approve a reduction in the number of times that a council is required to meet each year to a number specified in the resolution.
- (2) The council must give not less than 42 days' public notice of its proposed resolution.
- (3) After passing the resolution the council must forward to the Minister a copy of the resolution, a summary of any submissions received by it and its comments concerning those submissions.
- (4) The Minister may approve the application or decline to approve it.
- (5) If the Minister approves the application, the council is required to meet at least as often as specified in the resolution.
- (6) An application may be made under this section only by the councils prescribed by the regulations for the purposes of this section.
- (7) The application may be made after the commencement of this section and not later than 12 months before the next ordinary election of councillors after that commencement.
- (8) Nothing in this section prevents a council from making more than one application under this section.

[28] Section 370A

Insert after section 370:

370A Powers of Minister in relation to meetings

- (1) The Minister may, conditionally or unconditionally, allow a councillor or a member of a council committee who has a pecuniary interest in a matter with which the council is concerned to be present at a meeting of the council or committee, to take part in the consideration or discussion of the matter and to vote on the matter if the Minister is of the opinion:
 - (a) that the number of councillors prevented from voting would be so great a proportion of the whole as to impede the transaction of business, or
 - (b) that it is in the interests of the electors for the area to do so.

- (2) A councillor or member of a council committee who attends a meeting in accordance with this section is not, for that reason only, taken to have engaged in misconduct within the meaning of Division 3 of Part 1 of Chapter 14.

[29] Section 372 Rescinding or altering resolutions

Omit “regulations made under section 360 and, if applicable,” from section 372 (1).

[30] Section 374 Certain circumstances do not invalidate council decisions

Omit “section 451” from section 374 (d). Insert instead “the council’s code of conduct”.

[31] Section 376 Attendance of general manager at meetings

Insert after section 376 (3):

- (4) The Audit, Risk and Improvement Committee of a council may also exclude the general manager from a meeting while it deals with any other matter, if it thinks it appropriate to do so in the circumstances of the case.

[32] Section 377 General power of council to delegate

Omit section 377 (1) (i). Insert instead:

- (i) the acceptance of tenders to provide services currently provided by members of staff of the council,

[33] Section 377 (1A)

Insert after section 377 (1):

- (1A) Despite subsection (1), a council may delegate its functions relating to the granting of financial assistance if:
- (a) the financial assistance is part of a specified program, and
 - (b) the program is included in the council’s draft operational plan for the year in which the financial assistance is proposed to be given, and
 - (c) the program’s proposed budget for that year does not exceed 5 per cent of the council’s proposed income from the ordinary rates levied for that year, and
 - (d) the program applies uniformly to all persons within the council’s area or to a significant proportion of all the persons within the council’s area.

[34] Section 402 Community strategic plan

Omit section 402 (3)–(7). Insert instead:

- (3) Following an ordinary election of councillors, the council must review the community strategic plan before 30 June following the election. The council may endorse the existing plan, or develop or endorse a new community strategic plan, as appropriate, to ensure that the area has a community strategic plan covering at least the next 10 years.

[35] Sections 402A–406

Omit sections 403–406. Insert instead:

402A Community engagement strategy

A council must establish and implement a strategy (called its *community engagement strategy*) for engagement with the local community when developing its plans, policies and programs and for the purpose of determining its activities (other than routine administrative matters).

403 Resourcing strategy

A council must have a long-term strategy (called its *resourcing strategy*) for the provision of the resources required to perform its functions (including implementing the strategies set out in the community strategic plan).

404 Delivery program

- (1) A council must have a program (called its *delivery program*) detailing the principal activities to be undertaken by the council to perform its functions (including implementing the strategies set out in the community strategic plan) within the resources available under the resourcing strategy.
- (2) The council must establish a new delivery program after each ordinary election of councillors to cover the principal activities of the council for the 4-year period commencing on 1 July following the election.

405 Operational plan

A council must have a plan (called its *operational plan*) that is adopted before the beginning of each year and details the activities to be engaged in by the council during the year as part of the delivery program covering that year.

406 Integrated planning and reporting guidelines

- (1) The regulations may make provision for or with respect to integrated planning and reporting guidelines (referred to in this Chapter as *the guidelines*) to be complied with by councils.
- (2) Without limiting subsection (1), the regulations may impose requirements in connection with the preparation, development, consultation on and review of, and the contents of, the community strategic plan, resourcing strategy, delivery program, operational plan, community engagement strategy, annual report and environment reporting of a council.

[36] Section 415 Auditing of financial reports

Insert after section 415 (3):

- (4) In auditing the financial reports of the council, a council's auditor must also audit the financial reports of any council entity and report on that audit as part of the report on the council by the auditor.
- (5) In this Part:
council entity means:
 - (a) a partnership, trust, corporation, joint venture, syndicate or other body (whether or not incorporated) that a council has formed or participated in forming or has acquired a controlling interest in, other than an entity of a class prescribed by the regulations, or
 - (b) any other entity of a class prescribed by the regulations.

[37] Section 419 Presentation of council's financial reports

Omit section 419 (2). Insert instead:

- (2) The council's auditor may attend the meeting at which the financial reports are presented.
- (3) A council's auditor who carries out the functions of the auditor under an appointment by the Auditor-General must attend the meeting at which the financial reports are presented if the council gives not less than 7 days notice in writing that it requires the auditor to do so.

[38] Chapter 13, Part 3, Divisions 2A and 3

Omit Division 3. Insert instead:

Division 2A Other audit functions

421A Definitions

In this Division:

audit includes examination and inspection.

performance audit means an audit under section 421B.

421B Performance audits

- (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of 1 or more councils to determine whether the councils are carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.
- (2) A performance audit is separate from, and does not affect, any other audit required by or under this or any other Act.
- (3) The Auditor-General is to report to the Departmental Chief Executive, the councils concerned and the Minister as to the following:
 - (a) the result of a performance audit,
 - (b) any other matters that the Auditor-General considers call for special notice.
- (4) At least 28 days before reporting on a performance audit, the Auditor-General must give to the Departmental Chief Executive, the councils concerned and the Minister a written summary of the Auditor-General's findings and recommendations in relation to the audit.
- (5) A report on a performance audit may be given before the expiration of 28 days if the Auditor-General has received any submissions and comments of, or notice that no submission or comment is to be made by, the Departmental Chief Executive and each council concerned.
- (6) A report on a performance audit:
 - (a) is to include any submissions or comments made by the Departmental Chief Executive or by a council in response to the findings of the audit, and
 - (b) may include any information that the Auditor-General thinks desirable in relation to the activities the subject of the audit, and
 - (c) may include any recommendations arising out of the audit that the Auditor-General thinks fit to make, and
 - (d) may be included in any other report of the Auditor-General.

421C Auditor-General may report on local government on sector-wide basis

- (1) The Auditor-General is to report annually on any local government sector-wide matters arising from the examination of financial statements of councils and the exercise by the Auditor-General of audit or other functions under this Act.

- (2) The Auditor-General is to give a copy of the proposed report to the Departmental Chief Executive and the Minister at least 28 days before the report is made.
- (3) The Auditor-General may include in the report any submissions or comments made by the Departmental Chief Executive or a summary, in an agreed form, of any such submissions or comments.

421D Tabling of reports

- (1) The Auditor-General is to lay (or cause to be laid) a report under this Division before both Houses of Parliament as soon as practicable after making the report.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to lay a report before it, the Auditor-General may present copies of the report to the Clerk of the House concerned.
- (3) The report:
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded:
 - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
 - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,on the first sitting day of the House after receipt of the report by the Clerk.

421E Other audit functions

- (1) The Auditor-General may provide any audit-related service to a council at the request of the council or at the request of the Minister or the Departmental Chief Executive.
- (2) The costs confirmed in writing by the Auditor-General as having been incurred by the Auditor-General in providing an audit-related service to a council at the request of the council must be paid by the council.

Division 3 Auditors

422 Auditor-General to be council auditor

- (1) The Auditor-General is to be the auditor for a council.
- (2) The Auditor-General may appoint, in writing, a person (whether or not that person is employed in the Public Service) or a firm to be an auditor for the purposes of this Act.
- (3) The costs confirmed in writing by the Auditor-General as having been incurred by the Auditor-General in auditing a council's financial reports (including any audit of a council entity) or in any other inspection or audit carried out by the Auditor-General under this Division (or at a council's request) must be paid by the council.

Note. An example of confirmation is an invoice.

- (4) Nothing in this Act entitles the Auditor-General to question the merits of policy objectives of a council or the Government, including:
- (a) the strategic objectives and policy objectives contained in a plan, strategy, policy or program of the council, and
 - (b) any policy objective of the Government contained in a record of a policy decision of Cabinet, and
 - (c) a policy direction of a Minister, and
 - (d) a policy statement in any Budget Paper or other document evidencing a policy direction of the Cabinet or a Minister.

423 Access to and production of documents

- (1) The Auditor-General or a person authorised by the Auditor-General is entitled at all reasonable times to full and free access to the council's accounting records and other records necessary in order to carry out the Auditor-General's functions under this or any other Act.
- (2) The Auditor-General or a person authorised by the Auditor-General may exercise the following functions for the purposes of any audit or inspection carried out by the Auditor-General under this Act:
- (a) direct a councillor, the general manager or any other member of staff of the council to produce books, records or other documents in the person's custody or under the person's control to the Auditor-General or person within a specified period,
 - (b) direct a councillor, the general manager or any other member of staff of the council to appear personally before the Auditor-General or person at a specified time and place to produce books, records or other documents in the person's custody or under the person's control,
 - (c) direct a councillor, the general manager or any other member of staff of the council to answer any question that is relevant to that purpose,
 - (d) direct a councillor, the general manager or any other member of staff of the council to provide any necessary authorities to gain access to books, records or other documents under the person's control,
 - (e) make copies of or take extracts from any document to which the Auditor-General or person gains access under this section.
- (3) If any document required by a direction to be produced is in electronic form or a form other than writing, the document is required to be produced in writing, unless the direction otherwise provides.
- (4) The Auditor-General or a person authorised by the Auditor-General is entitled to exercise functions under this section despite:
- (a) any rule of law which, in proceedings in a court of law, might justify an objection to access to books, records, other documents or information on grounds of public interest, or
 - (b) any privilege of a council that the council might claim in a court of law, other than a claim based on legal professional privilege, or
 - (c) any duty of secrecy or other restriction on disclosure applying to a council or a member of staff of a council.
- (5) Nothing in this section entitles the Auditor-General or any other person to have access to information that is Cabinet information under the *Government Information (Public Access) Act 2009*.
- (6) In this section, a reference to a council includes a reference to a council entity.

424 Access to records of authorised deposit-taking institution

- (1) If an account for the banking of money of a council is kept with an authorised deposit-taking institution, the institution or the person in charge of the account must, if directed to do so by the Auditor-General or a person authorised by the Auditor-General:
 - (a) give to the Auditor-General or person, in accordance with the direction, a statement of the account or a certificate as to the balance of the account, and
 - (b) produce to the Auditor-General or person any book, record or other document relating to the council and under the custody or control of the institution or the person in charge.
- (2) If any document required by a direction to be produced is in electronic form or a form other than writing, the document is required to be produced in writing, unless the direction otherwise provides.
- (3) In this section, a reference to a council includes a reference to a council entity.

425 Secrecy

- (1) The Auditor-General or any person exercising the functions of the Auditor-General is to preserve and aid in preserving secrecy with respect to all matters and things that come to the knowledge of the Auditor-General or person in the exercise of the functions of the Auditor-General under this Act and is not to communicate to any person any such matter or thing.
- (2) Nothing in subsection (1) applies to or in respect of:
 - (a) the conduct of any matter necessary for the proper administration of this Act, or
 - (b) proceedings for an offence relating to public money, other money, public property or other property or for the recovery of public money, other money, public property or other property, or
 - (c) disciplinary proceedings brought against a councillor or a member of staff of a council, or
 - (d) a report or communication authorised or required to be made by or under this Act, or
 - (e) a report or communication that the Minister authorises the Auditor-General to make to a person for the purposes of a due diligence or similar process relating to the sale of any council undertaking.

426 Auditor-General is to communicate with Minister

- (1) The Auditor-General is to communicate with the Minister on all matters arising under this Act or the regulations and which, in the opinion of the Auditor-General, are sufficiently significant to be brought to the Minister's attention.
- (2) The Auditor-General is to provide to the Minister the name of any person failing to comply with any of the provisions of this Act or the regulations.

[39] Section 428 Annual reports

Insert "or material" after "information" in section 428 (4) (b).

[40] Section 428A State of the environment reports

Omit the section.

[41] Chapter 13, Part 4A

Insert after Part 4:

Part 4A Internal audit

428A Audit, Risk and Improvement Committee

- (1) A council must appoint an Audit, Risk and Improvement Committee.
- (2) The Committee must keep under review the following aspects of the council's operations:
 - (a) compliance,
 - (b) risk management,
 - (c) fraud control,
 - (d) financial management,
 - (e) governance,
 - (f) implementation of the strategic plan, delivery program and strategies,
 - (g) service reviews,
 - (h) collection of performance measurement data by the council,
 - (i) any other matters prescribed by the regulations.
- (3) The Committee is also to provide information to the council for the purpose of improving the council's performance of its functions.

428B Joint internal audit arrangements

A council may enter into an arrangement with another council, or a body prescribed by the regulations for the purposes of this section, to jointly appoint an Audit, Risk and Improvement Committee to exercise functions for more than one council or body.

[42] Section 438C Minister to give notice of intention to issue or vary performance improvement order

Insert "and any proposed appointment of a financial controller" after "the order" in section 438C (2) (a).

[43] Section 438G Appointment of temporary adviser

Insert after section 438G (2):

- (2A) The regulations may make provision for or with respect to the criteria to be considered by the Minister in deciding whether to appoint a temporary adviser.

[44] Section 438G (3)

Insert ", but only after the Minister has considered any criteria prescribed by the regulations" after "initiative".

[45] Sections 438HB and 438HC

Insert after section 438HA:

438HB Appointment of financial controller

- (1) If the Minister issues a performance improvement order in respect of a council, the Minister may appoint a person as a financial controller to the council.

- (2) A financial controller may be appointed in the performance improvement order or by subsequent order of the Minister served on the council.
- (3) The regulations may make provision for or with respect to the criteria to be considered by the Minister in deciding whether to appoint a financial controller.
- (4) If a financial controller is proposed to be appointed in a subsequent order and notice of the appointment was not given when notice of the performance improvement order was given, section 438C (other than section 438C (2)) applies to the proposed appointment as if it were a proposed performance improvement order.
- (5) A financial controller may be appointed on the recommendation of the council or on the Minister's own initiative, but only after the Minister has considered any criteria prescribed by the regulations.
- (6) The principal functions of a financial controller are as follows:
 - (a) to implement financial controls, and other functions relating to council finances, as specified by a performance improvement order or a subsequent order appointing the financial controller,
 - (b) any other related or ancillary functions specified in the order appointing the financial controller.
- (7) A financial controller is appointed for the term specified in the instrument by which he or she is appointed. The term must not exceed the period for compliance with the performance improvement order.
- (8) A financial controller must be paid a salary determined by the Minister from the council's funds.
- (9) The Minister may terminate a financial controller's appointment at any time.
- (10) A person may be appointed as both a financial controller and a temporary adviser.

438HC Operations of financial controller

- (1) If a financial controller is appointed to a council, a payment may not be made from any funds of the council unless payment is authorised by the financial controller.
- (2) A financial controller may refuse to authorise a payment from the funds of the council if the financial controller reasonably believes that the payment:
 - (a) may cause the council to become insolvent, or
 - (b) is unlawful, or
 - (c) is related to activities not identified in the council's integrated planning and reporting framework, or
 - (d) is from grant moneys and is not for a purpose for which the grant was given.
- (3) If a financial controller is appointed to a council, the council, councillors and members of the staff of the council are required to co-operate with the financial controller and to provide any information or assistance the financial controller reasonably requires to exercise his or her functions.
- (4) In particular, the council is to give the financial controller an opportunity to review any proposed compliance report at least 14 days before it is given to the Minister and is to give the Minister a copy of the financial controller's comments (if any) on the compliance report.

- (5) A contravention of this section by a council is a failure to comply with a performance improvement order.
- (6) A financial controller is to report to the Minister on a council's compliance with a performance improvement order if the council fails to give the financial controller an opportunity to review a proposed compliance report in accordance with this section.

[46] Section 438M Appointment of interim administrator

Insert "(including all the functions of a councillor and the mayor)" after "the council" where firstly occurring in section 438M (5).

[47] Section 438M (5A)

Insert after section 438M (5):

- (5A) If more than one interim administrator is appointed, one of the interim administrators is to be specified in the instrument of appointment as the person who is to exercise the functions of the mayor of the council.

[48] Section 438Y Appointment of interim administrator

Insert "(including all the functions of a councillor and the mayor)" after "the council" where firstly occurring in section 438Y (5).

[49] Section 438Y (5A)

Insert after section 438Y (5):

- (5A) If more than one interim administrator is appointed, one of the interim administrators is to be specified in the instrument of appointment as the person who is to exercise the functions of the mayor of the council.

[50] Chapter 14

Omit the introductory note to the Chapter.

[51] Section 439AA

Insert before section 439:

439AA Interpretation

(1) Definitions

In this Chapter:

code of conduct means a code of conduct adopted under section 440.

model code means the model code of conduct prescribed by the regulations under this Part.

pecuniary interest means an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person.

pecuniary interests duty means an obligation imposed on a person by the provisions of a code of conduct that relate to the disclosure of pecuniary interests.

(2) Other persons' pecuniary interests included as pecuniary interests

For the purposes of this Chapter, a person has a pecuniary interest in a matter if the pecuniary interest is the interest of:

- (a) the person, or

- (b) the person's spouse or de facto partner or a relative of the person, or a partner or employer of the person, or
- (c) a company or other body of which the person, or a nominee, partner or employer of the person, is a shareholder or member.

Note. "De facto partner" is defined in section 21C of the *Interpretation Act 1987*.

- (3) However, a person is not taken to have a pecuniary interest in a matter as referred to in subsection (2) (b) or (c):
 - (a) if the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative, partner, employer or company or other body, or
 - (b) just because the person is a member of, or is employed by, a council or a statutory body or is employed by the Crown, or
 - (c) just because the person is a member of, or a delegate of a council to, a company or other body that has a pecuniary interest in the matter, so long as the person has no beneficial interest in any shares of the company or body.

(4) **Other exclusions**

A person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to the matter or if the interest is of a kind specified in a code of conduct as not being required to be disclosed.

[52] Section 439 Conduct of councillors, staff, delegates and administrators

Omit section 439 (2).

[53] Section 440 Codes of conduct

Omit section 440 (2). Insert instead:

- (2) The regulations may provide that the provisions of the model code relating to the disclosure of pecuniary interests are also to apply to the following persons:
 - (a) a member of a committee of a council (including the Audit, Risk and Improvement Committee),
 - (b) an adviser to a council.

[54] Section 440 (8)

Omit the subsection.

[55] Sections 440AAA and 440AAB

Insert after section 440:

440AAA Content of model code

- (1) A model code of conduct prescribed by the regulations under section 440 may relate to any conduct (whether by way of act or omission) of a person to whom the code applies in carrying out his or her functions that is likely to bring a council or holders of civic office into disrepute.
- (2) In particular, a model code may contain provisions for or with respect to the following conduct:
 - (a) conduct that contravenes all or specified provisions of this Act or the regulations in all or specified circumstances,

- (b) conduct that is detrimental to the pursuit of the guiding principles and functions of a council,
 - (c) improper or unethical conduct,
 - (d) abuse of power and other misconduct,
 - (e) action causing, comprising or involving any of the following:
 - (i) intimidation, harassment or verbal abuse,
 - (ii) discrimination, disadvantage or adverse treatment in relation to employment,
 - (iii) prejudice in the provision of a service to the community,
 - (f) conduct of a councillor causing, comprising or involving any of the following:
 - (i) directing or influencing, or attempting to direct or influence, a member of the staff of the council or a delegate of the council in the exercise of the functions of the member or delegate,
 - (ii) an act of disorder committed by the councillor at a meeting of the council or a committee of the council,
 - (g) disclosure of pecuniary interests.
- (3) The model code provisions relating to disclosure of pecuniary interests are to make provision for or with respect to the following:
- (a) the manner and form of disclosures of pecuniary interests,
 - (b) the pecuniary interests that must, or that are not required to be, disclosed,
 - (c) returns listing pecuniary interests, the form of returns and lodging of returns,
 - (d) disclosures of pecuniary interests at council or committee meetings,
 - (e) presence and participation at council meetings by persons who have relevant pecuniary interests,
 - (f) conduct of meetings and other actions if a disclosure of a pecuniary interest is made,
 - (g) prohibiting disclosing, or including in a return, false or misleading information relating to pecuniary interests,
 - (h) records of disclosures of pecuniary interests.
- (4) Nothing in this section limits the matters that may be included in a model code of conduct.

440AAB Register and tabling of returns

- (1) The general manager must keep a register of returns disclosing interests that are required to be lodged with the general manager under a code of conduct.
- (2) Returns required to be lodged with the general manager must be tabled at a meeting of the council, being the first meeting held after the last day specified by the code for lodgment, or if the code does not specify a day, as soon as practicable after the return is lodged.

[56] Section 440AA Administration of code of conduct

Omit “referred to in section 440” from section 440AA (1).

[57] Section 440F Definitions

Omit “In this Division” from section 440F (1). Insert instead “In this Chapter”.

[58] Section 440F (1), definition of “misconduct”

Omit “under section 440” from paragraph (b).

[59] Section 440F (2)

Omit the subsection, including the note. Insert instead:

- (2) For the purposes of determining whether a person has engaged in misconduct, the person does not breach a provision of a code of conduct that requires the disclosure of a pecuniary interest if the person did not know and could not reasonably be expected to have known that the matter under consideration at a meeting was a matter in which the person had a pecuniary interest.

[60] Chapter 14, Part 2

Omit the Part.

[61] Chapter 14, Part 3

Omit the diagram at the beginning of the Part.

[62] Section 460 Complaints concerning failure to disclose pecuniary interests

Omit “person has or may have contravened Part 2” from section 460 (1).

Insert instead “person (other than a councillor, former councillor, administrator or former administrator) has or may have contravened a pecuniary interests duty”.

[63] Section 460 (2) (d)

Omit the paragraph.

[64] Section 460 (3)

Omit “(d)”.

[65] Section 464 Referral and investigation of complaints by other authorities

Omit “Part 2” from section 464 (1).

Insert instead “pecuniary interests duties by a person (other than a councillor, former councillor, administrator or former administrator)”.

[66] Section 467 Reports of investigation of complaints by authorities

Omit “Part 2”. Insert instead “a pecuniary interests duty”.

[67] Chapter 14, Part 3, Division 2, heading

Omit “—pecuniary interests matters”.

Insert instead “—pecuniary interests matters not involving councillors or administrators”.

[68] Section 482 Decision of NCAT—pecuniary interests matters not involving councillors or administrators

Omit section 482 (1). Insert instead:

- (1) This section applies to complaints relating to breaches of pecuniary interests duties by persons other than councillors, former councillors, administrators or former administrators.

[69] Section 482 (4A)

Insert after section 482 (4):

- (4A) The Civil and Administrative Tribunal may, if it finds a complaint against a delegate of a council (other than the general manager of a council) is proved:
- (a) counsel the delegate, or
 - (b) reprimand the delegate, or
 - (c) suspend the delegate from acting as a delegate for a period not exceeding 6 months, or
 - (d) disqualify the delegate from being a delegate of that council for a period not exceeding 5 years.

[70] Section 482 (6)

Omit the subsection.

[71] Section 486A Exclusive jurisdiction of NCAT over pecuniary interests contraventions (other than by councillors and administrators)

Omit “Part 2 of this Chapter” wherever occurring.

Insert instead “a pecuniary interests duty by a person other than a councillor, a former councillor, an administrator or a former administrator”.

[72] Section 490A Acts of disorder

Omit “Schedule 6A” wherever occurring. Insert instead “the code of conduct”.

[73] Section 490C Supreme Court order for recovery of monetary benefits as a result of non-disclosure by councillors (as inserted by the Local Government and Elections Legislation Amendment (Integrity) Act 2016)

Omit “Part 2 (Duties of disclosure)” from section 490C (1).

Insert instead “a pecuniary interests duty”.

[74] Section 490C (2) (as inserted by the Local Government and Elections Legislation Amendment (Integrity) Act 2016)

Omit “Part 2”. Insert instead “a pecuniary interests duty”.

[75] Section 532 Publication of draft operational plan

Omit “section 405” and “that section”. Insert instead “the regulations”.

[76] Chapter 15, Part 4, chart

Omit the chart at the end of the Part.

[77] Section 610F Public notice of fees

Omit “section 405” from section 610F (2). Insert instead “the regulations”.

[78] Section 673 Remedy or restraint of breaches of this Act—the Minister, the Departmental Chief Executive and councils

Omit “Part 2 (Duties of disclosure) of” from section 673 (2).

Insert instead “a pecuniary interests duty imposed under”.

[79] Section 674 Remedy or restraint of breaches of this Act—other persons

Omit section 674 (4) and the note to that subsection.

[80] Section 674A

Insert after section 674:

674A Provisions of Act that do not give rise to or affect legal proceedings

- (1) For the purposes of this section, the following are relevant provisions of this Act:
 - (a) a provision of (or that applies) Chapter 3,
 - (b) section 223,
 - (c) section 226,
 - (d) section 232,
 - (e) section 439,
 - (f) section 440.
- (2) The relevant provisions do not give rise to, and cannot be taken into account in, any civil cause of action and do not affect any rights or liabilities arising apart from the relevant provisions.
- (3) Without limiting subsection (2), a contravention of the relevant provisions is not a breach of this Act for which a remedy may be sought (whether under this Act or otherwise).

[81] Schedule 6 Regulations

Insert after item 8:

8A Financial management and auditing

[82] Schedule 6, item 13A

Insert after item 13:

13A Induction courses and other professional development for mayors and councillors

[83] Schedule 6, item 14

Insert at the end of the examples:

Procedures for elections of mayors by councillors

[84] Schedule 6, item 18, examples

Insert “, community engagement strategies” after “community strategic plans”.

[85] Schedule 6, item 18

Insert after the first example:

Criteria for community strategic plans, community engagement strategies, resourcing strategies, delivery programs and operational plans

Consultation on community strategic plans, community engagement strategies, resourcing strategies, delivery programs and operational plans

Performance measurement and reporting framework for councils

[86] Schedule 6, Item 19B

Insert after item 19A:

19B Audit, Risk and Improvement Committees

[87] Schedule 6A Code of conduct

Omit the Schedule.

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

Insert at the end of the Schedule, with appropriate Part and clause numbering:

Part Provisions consequent on enactment of Local Government Amendment (Governance and Planning) Act 2016

Definitions

In this Part:

amalgamation day means the beginning of the day on which a new council was constituted.

amending Act means the *Local Government Amendment (Governance and Planning) Act 2016*.

new council means the council of an area constituted on or after 12 May 2016 and before the commencement of the amendments made to Part 3 of Chapter 13 by the amending Act.

Periods for abolishing wards and changing councillor numbers or meeting times

- (1) This clause applies to a council for which an ordinary election is held within 12 months after the commencement of section 224A (8) or 365A (as inserted by the amending Act).
- (2) A requirement in any of those provisions that a council do a thing not later than 12 months before the next ordinary election after the commencement of the provision is to be read as a requirement that the thing be done not later than 12 months before the second ordinary election of councillors after that commencement.

Terms of existing mayors

The amendment made by the amending Act to section 230 applies to a mayor elected following an election for a council that occurs after the commencement of that amendment.

Model meeting codes

- (1) A council is not required to adopt a code of meeting practice in accordance with section 360, as substituted by the amending Act, until after the next ordinary election of councillors following that substitution.
- (2) If a code containing mandatory provisions is prescribed under that section before a council adopts a code of meeting practice in accordance with that section, any existing code of meeting practice of the council has no effect to the extent that it is inconsistent with any mandatory provision.

Strategies and programs

A council is not required to establish and implement a community engagement strategy in accordance with section 402A, as inserted by the amending Act, until 12 months after the next ordinary election of councillors following that amendment.

Integrated planning and reporting guidelines

The integrated planning and reporting guidelines, as in force under section 406 immediately before the substitution of that section by the amending Act, continue to apply for the purposes of the Act, pending the making of a regulation under the substituted section that establishes new guidelines.

Existing auditing arrangements for councils other than new councils

- (1) Part 3 of Chapter 13, as in force before its amendment by the amending Act, continues to apply to a council in respect of any financial year commencing before 1 July 2016.
- (2) The Part, as so amended, applies in respect of any financial year commencing on or after 1 July 2016.
- (3) Subclause (2) does not prevent a council from entering into an arrangement with the Auditor-General to carry out auditing functions for the council for a previous financial year.
- (4) On the commencement of Division 3 of Part 3 of Chapter 13, as substituted by the amending Act, or 31 December 2016, whichever occurs later:
 - (a) the appointment of a council auditor (other than the Auditor-General or a person appointed by the Auditor-General) ceases to have effect, and
 - (b) any agreement between a council and any such person to provide auditing services to a council ceases to have effect whether or not it relates to a period after 30 June 2016.
- (5) The regulations may modify the provisions made by this clause.
- (6) Section 674A, as inserted by the amending Act, applies in relation to this clause as if this clause were a relevant provision.
- (7) A council must, on or before 31 December 2016, notify the Auditor-General in writing of any council entities of the council (within the meaning of section 415, as amended by the amending Act) as at 1 July 2016.
- (8) This clause does not apply to a new council.

Existing auditing arrangements for new councils

- (1) Part 3 of Chapter 13, as in force before its amendment by the amending Act, continues to apply to a new council in respect of the period before the day after

- the amalgamation day, subject to any provisions of the proclamation constituting the council's area.
- (2) The Part, as so amended, applies to a new council in respect of any period beginning on the day after the day on which the new council was constituted, except as provided by this Part.
 - (3) On the commencement of Division 3 of Part 3 of Chapter 13, as substituted by the amending Act:
 - (a) any agreement between a new council and any person appointed by a new council to provide auditing services to the council (an *existing auditor*) ceases to have effect insofar as it relates to any period after the day on which the new council was constituted, and
 - (b) the existing auditor is, if the existing auditor agrees, to be taken to be a person appointed by the Auditor-General to carry out auditing functions for the council for the period ending on 30 June 2017. The terms of the appointment are to be agreed in writing between the Auditor-General and the person.
 - (4) Nothing in this clause prevents the Auditor-General from being able to revoke an appointment made under subclause (3).
 - (5) The regulations may modify the provisions made by this clause.
 - (6) Section 674A, as inserted by the amending Act, applies in relation to this clause as if this clause were a relevant provision.
 - (7) A new council must, on or before 31 December 2016, notify the Auditor-General in writing of any council entities of the council (within the meaning of section 415, as amended by the amending Act) as at 1 July 2016.
 - (8) This clause has effect despite any provisions of the proclamation under which a new council is constituted.

Annual sector-wide reports

The first report by the Auditor-General under section 421C, as inserted by the amending Act, is not required to be provided before 31 March 2018.

Audit, Risk and Improvement Committees

A council is not required to establish an Audit, Risk and Improvement Committee in accordance with Part 4A of Chapter 13, as inserted by the amending Act, until 6 months after the next ordinary election of councillors following the commencement of that Part.

Disclosure of pecuniary interests provisions

- (1) The following provisions of this Act and the regulations (as in force immediately before the repeal of Part 2 of Chapter 14 by the amending Act) are taken to be included in the model code (as in force immediately before the repeal) and in any adopted code incorporating the provisions of that code (whether made before or after that repeal):
 - (a) sections 444–447, 448 (other than section 448 (g)), 449, 451–456 and 459,
 - (b) regulations made under, or for the purposes of, that Part.
- (2) The provisions so included apply with any necessary modifications.
- (3) The regulations may modify or exclude any of the provisions taken to be included in a code for the purposes of this clause.

- (4) The complaint procedures for a model code or an adopted code do not apply to any matter for which a complaint may be made under Part 3 of Chapter 14.
- (5) Expressions used in this clause have the same meaning as they have in section 440.
- (6) A reference in any instrument to Part 2 of Chapter 14 is taken to be a reference to the provisions of a code of conduct (within the meaning of that Chapter) relating to the disclosure of pecuniary interests.

[89] Dictionary

Omit “Division 1 of” in the definition of *area*.

[90] Dictionary, definition of “designated person”

Omit the definition.

[91] Dictionary, definition of “integrated planning and reporting framework”

Insert in alphabetical order:

integrated planning and reporting framework means the plans, programs and strategies required to be prepared by a council under Part 2 of Chapter 13.

[Second reading speech made in—

Legislative Assembly on 22 June 2016

Legislative Council on 9 August 2016]