

[Act 2002 No 19]



New South Wales

## **Local Government Amendment (Anti-Corruption) Bill 2002**

### **Explanatory note**

This explanatory note relates to this Bill as introduced into Parliament.

### **Overview of Bill**

The object of this Bill is to enable prompt action to be taken against councils, councillors and council staff involved in serious corrupt conduct.

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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

**Clause 4** is a formal provision giving effect to the amendment to the *Independent Commission Against Corruption Act 1988* set out in Schedule 2.

## Schedule 1 Amendment of Local Government Act 1993

Under the Principal Act, a public inquiry is at present required before the Governor is authorised to remove all the members of a council and appoint an administrator of the council pending fresh council elections.

**Schedule 1 [1]** amends section 255 of the Principal Act in order to authorise the Governor to remove all the members of a council without holding a public inquiry if the Independent Commission Against Corruption has recommended in a report that consideration be given to their removal because of systemic corruption within the council.

Under the Principal Act, a councillor is disqualified from civic office in the circumstances set out in section 275 (which include being convicted of a criminal offence and sentenced to imprisonment or convicted of certain offences under the *Crimes Act 1900*). A councillor can also be disqualified from civic office by the Pecuniary Interest Tribunal for a period of up to 5 years. Members of staff of a council may be dismissed following disciplinary proceedings, but cannot be suspended without pay without specific statutory authority.

**Schedule 1 [4]** inserts proposed sections 440A to 440E into the Principal Act.

**Proposed section 440A** defines *serious corrupt conduct* as corrupt conduct under the *Independent Commission Against Corruption Act 1988* in connection with official duties that may constitute a serious indictable offence (namely, an offence for which the maximum penalty is imprisonment for 5 years or more).

**Proposed section 440B** enables the Governor to dismiss a councillor from civic office and disqualify the councillor from holding civic office for up to 5 years if the Independent Commission Against Corruption has recommended that consideration be given to the suspension of the person from civic office with a view to his or her dismissal for serious corrupt conduct. The dismissal power is contingent on a

suspension from office under proposed section 440C, the person being given an opportunity to show cause and the Minister advising the Governor that the dismissal is necessary in order to protect the public standing of the council concerned and the proper exercise of its functions. The dismissal power is modelled on the inherent power of the NSW Legislature to expel a member on those grounds and not for the purpose of punishment (as confirmed by the Supreme Court in *Armstrong v Budd* (1969) 71 S.R (N.S.W.) 386).

**Proposed section 440C** enables the Minister to suspend, without notice or inquiry, a councillor from civic office if:

- (a) the Independent Commission Against Corruption has made the recommendation referred to in proposed section 440B, or
- (b) criminal proceedings are instituted against the councillor for serious corrupt conduct, or
- (c) the councillor makes an admission of serious corrupt conduct.

**Proposed section 440D** enables the general manager of a council to suspend a member of staff from duty (without pay) on similar grounds to those on which the Minister may suspend a councillor from office under proposed section 440C. The Minister is authorised to exercise the power in the case of the general manager's conduct or if the general manager fails to act without reasonable cause.

**Proposed section 440E** applies the proposed provisions to conduct occurring before, or proceedings instituted before, the commencement of the provisions.

**Schedule 1 [2], [3] and [5]** make consequential and ancillary amendments to the Principal Act.

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

**Schedule 2** inserts proposed section 74C into the *Independent Commission Against Corruption Act 1988* to authorise the Independent Commission Against Corruption to make the recommendations that will trigger the proposed dismissal and suspension powers conferred by the proposed Act. The Commission is authorised to make the recommendations if of the opinion that prompt action is required in the public interest.