



New South Wales

Local Government Amendment (Early Intervention) Bill 2013

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Local Government Act 1993* (the *principal Act*) as follows:

- (a) to enable the Minister for Local Government (the *Minister*) or the Director-General of the Department of Premier and Cabinet (the *Director-General*) to direct a council, a councillor or the general manager of a council to provide information or documents about the council, its operations or its activities,
- (b) to enable the Minister to issue an order (a *performance improvement order*) to a council that directs certain actions to be taken to improve the performance of the council,
- (c) to provide for the appointment of temporary advisers to assist councils with complying with performance improvement orders,
- (d) to require councils to report on compliance with a performance improvement order,
- (e) to enable the Minister to suspend a council for a period of up to 3 months (with a possible extension of a further 3 months) if the Minister considers that the

appointment of an interim administrator is necessary to improve or restore the proper or effective functioning of a council,

- (f) to provide for the appointment of interim administrators,
- (g) to make further provision in relation to public inquiries under the principal Act, including by permitting the Minister to suspend a council during such an inquiry,
- (h) to make it clear that the Governor may appoint more than one administrator to exercise the functions of a dismissed council,
- (i) to make other minor and miscellaneous amendments.

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 to the proposed Act, or on the date of commencement of the *Local Government Amendment (Conduct) Act 2012* (1 March 2013), whichever is the later.

Schedule 1 Amendment of Local Government Act 1993 No 30

Performance improvement orders

Under the amendments, the Minister will be able to issue a performance improvement order to a council if the Minister reasonably considers that action must be taken to improve the performance of the council. Actions to improve the performance of a council include any actions that the Minister considers necessary to improve or restore the proper or effective functioning of the council. The order may also require actions to be taken by individual councillors. The Minister must generally give a council notice of his or her intention to issue a performance improvement order and there will be a consultation period of not less than 21 days during which the council may make submissions to the Minister and the Minister must have regard to any submissions received during that time. The Minister may also appoint a temporary adviser to assist the council in complying with a performance improvement order. The council, councillors and members of staff of the council must co-operate with the adviser. A council will be required to provide the Minister with a report on its compliance with the order. See **Schedule 1 [41]**, proposed Part 6 of Chapter 13.

Temporary suspension of council

Under the amendments, the Minister may, by order published in the Gazette, suspend a council for a period (initially for up to 3 months, with a possible extension of a further 3 months) if the Minister reasonably believes that the appointment of an interim administrator is necessary to improve or restore the proper or effective functioning of the council. The Minister must appoint one or more interim

administrators to exercise all the functions of the council during the suspension period. The Minister must generally give a council notice of his or her intention to suspend the council and there will be a consultation period of not less than 14 days during which the council may make submissions to the Minister and the Minister must have regard to any submissions received during that time. An interim administrator is to give the Minister a written report about his or her administration of the council and the report is to include recommendations in relation to improving or restoring the proper and effective functioning of the council. Elections are not held while a council is suspended. See **Schedule 1 [41]**, proposed Part 7 of Chapter 13. **Schedule 1 [21]** is a consequential amendment.

Public inquiries

Schedule 1 [41] inserts proposed Part 8 into Chapter 13 of the principal Act. Proposed Part 8 re-enacts an existing provision that enables the Governor or the Minister to appoint one or more commissioners to hold a public inquiry into a council, a councillor or a member of staff of a council in relation to the carrying out of the provisions of the principal Act. In addition, the amendments provide that:

- (a) the expenses of such a public inquiry are to be borne by the council concerned in certain circumstances, and
- (b) the Minister may suspend a council, and appoint an interim administrator, if a public inquiry is held or to be held in relation to the council (the suspension has effect until it is terminated by the Minister or the council is dismissed), and
- (c) the Minister may issue a performance improvement order in respect of a council in response to the results of a public inquiry in relation to the council.

Currently the Governor may only dismiss a council if a public inquiry has been held and if the Minister recommends the dismissal after considering the results of the public inquiry. **Schedule 1 [10]** enables the Minister to recommend that the Governor dismiss a council after considering the results of the public inquiry or, if the Minister issues a performance improvement order in response to the results of the inquiry, after having considered whether the council has complied with the order.

Schedule 1 [3], [9], [13], [48], [49] and [54] are consequential amendments.

Effect of suspension of council and councillors

If a council is suspended under the new provisions, the councillors will not be entitled, during the suspension period, to exercise any functions of the civic office or to receive any fee or remuneration, to receive expenses or to use council facilities.

Schedule 1 [42]–[44] ensure that whenever a councillor is suspended under the principal Act the councillor is not entitled to expenses or to the use of council facilities.

Schedule 1 [7] and [8] provide that a council must not pay any expenses to councillors during any suspension period.

Schedule 1 [19] makes it clear that a holder of civic office is not disqualified from being re-elected merely because the holder, or the council, is suspended.

Investigation of councils

Schedule 1 [26] provides that the Director-General may, at the request of the Minister or on the Director-General's own initiative, conduct an investigation into any aspect of a council or of its work and activities. Currently, the principal Act provides that the Director-General may authorise a Departmental representative to conduct such an investigation. **Schedule 1 [32]** requires the Director-General to report to the Minister on the results of any such investigation. **Schedule 1 [34] and [35]** expand the power of the Director-General to recover the expenses incurred in respect of an investigation to include the expenses of investigations relating to recurring problems with the administration of a council that have been the subject of previous Ministerial intervention (such as the issue of a performance improvement order or the temporary suspension of the council). **Schedule 1 [25], [27]–[31], [33] and [46]** are consequential amendments.

Schedule 1 [24] extends the power of the Minister and the Director-General to direct a council to provide information about the council or its operations or activities so that the Minister or the Director-General may direct a council, a councillor or the general manager of a council to provide information or documents. Failure to comply with such a direction is an offence under the principal Act with a maximum penalty of 20 penalty units (currently, \$2,200).

Schedule 1 [36] provides protection from self-incrimination for persons answering questions or providing information as directed by the Minister or the Director-General.

Schedule 1 [37]–[40] are consequential amendments that transfer existing functions relating to surcharging (currently conferred on Departmental representatives) to the Director-General. The Director-General can delegate the functions.

Appointment of administrators

Schedule 1 [2] and [12] make it clear that more than one administrator may be appointed in respect of a council at the same time. **Schedule 1 [1], [4], [5] and [14]–[18]** are consequential amendments.

Other amendments

Schedule 1 [41] (proposed Part 9 of Chapter 13) and [45] permit any orders, notices or documents required to be served on a council or a person by the Minister or the Director-General under the proposed provisions, or in relation to misconduct investigations and proceedings under Chapter 14 of the principal Act, to be served by email in certain circumstances.

Schedule 1 [50] enables a delegate of the Director-General of the Department of Premier and Cabinet to subdelegate to any member of staff of the Department any function delegated by the Director-General if authorised in writing to do so by the Director-General.

Schedule 1 [22] makes it clear that the usual quorum for a council meeting does not apply in the case of a council subject to a performance improvement order that contains directions by the Minister as to the quorum for council meetings.

Schedule 1 [11] provides that a reference in the principal Act to the dismissal of a council is a reference to a declaration by the Governor that all civic offices in relation to the council are vacant. **Schedule 1 [20]** is a consequential amendment.

Schedule 1 [6], [23] and [47] are minor consequential amendments.

Schedule 1 [53] contains consequential amendments to expressions defined in the Dictionary.

Schedule 1 [51] contains a savings provision that is consequent on the enactment of the *Local Government Amendment (Conduct) Act 2012*. That Act updated references to the Minister for Land and Water Conservation in sections 57–66 of the principal Act to the Minister for Primary Industries. However, administrative changes orders in effect before the amendment required the functions of the Minister for Land and Water Conservation under those sections to be exercised, in some specific cases, by a Minister other than the Minister for Primary Industries. The amendment makes it clear that the update to those sections does not affect the operation of any such order.

Schedule 1 [52] contains savings and transitional provisions consequent on the proposed amendments.

Schedule 2 Amendment of other legislation

Schedule 2.1 updates a cross-reference in the *Environmental Planning and Assessment Act 1979* as a consequence of the amendments to the principal Act relating to public inquiries.

Schedule 2.2 amends the *Government Information (Public Access) Regulation 2009* to provide that performance improvement orders given to a council are open access information and are required to be made publicly available.

First print



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New South Wales

Local Government Amendment (Early Intervention) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Local Government Act 1993* to improve the performance and accountability of councils; and for related purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Local Government Amendment (Early Intervention) Act 2013</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act, or on the date of commencement of the <i>Local Government Amendment (Conduct) Act 2012</i> , whichever is the later.	6 7 8

Schedule 1	Amendment of Local Government Act 1993 No 30	1
		2
[1]	Section 66 Appointment of administrator	3
	Insert “(the <i>appointing Minister</i>)” before “may” in section 66 (1).	4
[2]	Section 66 (1A)	5
	Insert after section 66 (1):	6
	(1A) If more than one administrator is appointed, each administrator has the functions of the council specified in the instrument of appointment.	7
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[3]	Section 66 (3)	10
	Omit “section 740”. Insert instead “Part 8 of Chapter 13”.	11
[4]	Section 66 (4)	12
	Omit the subsection. Insert instead:	13
	(4) An administrator is to be paid a salary determined by the appointing Minister, with the concurrence of the Minister for Local Government, from the council’s funds.	14
		15
		16
[5]	Section 66 (5A)	17
	Insert after section 66 (5):	18
	(5A) If more than one administrator is appointed for a council, the appointing Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one administrator.	19
		20
		21
		22
[6]	Section 234 When does a vacancy occur in a civic office? (as amended by the Local Government Amendment (Conduct) Act 2012)	23
	Omit “under section 440I, 482 or 482A” from section 234 (1) (d).	24
		25
	Insert instead “under this Act or because the council has been suspended under this Act”.	26
		27
[7]	Section 248A Annual fees or other remuneration not to be paid during period of suspension	28
	Insert “or any expenses,” before “to which a councillor”.	29
		30

[8] Section 248A (b)	1
Omit “any fee or other remuneration”.	2
Insert instead “any such fee or other remuneration, or expense,”	3
[9] Section 255 Governor may dismiss mayor and councillors	4
Omit “after considering the results of the inquiry,” from section 255 (1) (b).	5
[10] Section 255 (1A)	6
Insert after section 255 (1):	7
(1A) The Minister may recommend that the Governor make such a declaration only:	8
(a) after considering the results of the public inquiry, or	9
(b) if the Minister decides to issue a performance improvement order to the council in response to the results of the public inquiry—after issuing the order and considering whether the council has complied with the order.	10
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[11] Section 255 (4)	16
Insert after section 255 (3):	17
(4) For the purposes of this Act, a council is <i>dismissed</i> if the Governor declares all civic offices in relation to the council to be vacant.	18
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[12] Section 256 Governor may appoint administrator or order fresh election	21
Insert after section 256 (1):	22
(1A) More than one administrator may be appointed (with the same or different functions).	23
	24
[13] Section 257 Declaration of council as non-functioning	25
Omit “under section 255” from section 257 (1).	26
[14] Section 258 Administrator	27
Omit “When the administrator of a council takes office” from section 258 (1).	28
Insert instead “When an administrator of a council appointed under this Division takes office”.	29
	30

[15] Section 258 (1A)	1
Insert after section 258 (1):	2
(1A) If more than one administrator is appointed, each administrator has the functions of the council specified in the instrument of appointment.	3 4 5
[16] Section 258 (2) and (4)	6
Omit “The administrator” wherever occurring.	7
Insert instead “An administrator”.	8
[17] Section 258 (2A)	9
Insert after section 258 (2):	10
(2A) If more than one administrator is appointed for a council, the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one administrator.	11 12 13 14
[18] Section 258 (3)	15
Omit “the administrator’s”. Insert instead “an administrator’s”.	16
[19] Section 277 May the holder of a civic office be re-elected?	17
Insert at the end of the section:	18
(2) The holder of a civic office is not disqualified from being re-elected merely because the holder, or the council, is suspended under this Act.	19 20 21
[20] Section 287 When is an ordinary election of councillors held?	22
Omit section 287 (2) (b). Insert instead:	23
(b) the council for the area is dismissed, or	24
[21] Section 290 When is an election of a mayor by the councillors to be held?	25
Insert at the end of the section (after the note):	26
Note. Elections are not held while a council is suspended under Part 7 or 8 of Chapter 13.	27 28
[22] Section 368 What is the quorum for a meeting?	29
Insert at the end of the section:	30
(2) This section does not apply if the quorum is required to be determined in accordance with directions of the Minister in a performance improvement order issued in respect of the council.	31 32 33

[23] Chapter 13, Introduction	1
Omit the second last paragraph of the introduction to Chapter 13.	2
Insert instead:	3
Councils are accountable to residents and ratepayers in their local government area. They are also accountable to the Minister. The Director-General has power to investigate a council, its work and its activities and report on the investigation to the Minister. The Minister has power to issue a performance improvement order in respect of a council, to suspend a council and to initiate a public inquiry into the operations of a council.	4 5 6 7 8 9 10
[24] Section 429	11
Omit the section. Insert instead:	12
429 Provision of documents or information about council	13
(1) The Minister or Director-General may at any time, by order, direct a council, a councillor or the general manager of a council to provide such documents or information concerning the council, its operations or its activities as the Minister or Director-General specifies in the order.	14 15 16 17 18
(2) A copy of the order must be served on the council or person required to provide the documents or information.	19 20
Note. Failure to comply with a direction is an offence under section 661.	21
[25] Section 429A Complaints about councils, councillors, delegates and staff	22 23
Omit “authorised under section 430” from section 429A (3) (a).	24
Insert instead “under this Division”.	25
[26] Section 430	26
Omit the section. Insert instead:	27
430 Director-General may investigate councils	28
The Director-General may, at the request of the Minister or on the Director-General’s own initiative, conduct an investigation into any aspect of a council or of its work and activities.	29 30 31
[27] Section 431 Powers in connection with investigation	32
Omit “purpose of exercising his or her functions” from section 431 (1).	33
Insert instead “purpose of conducting an investigation under this Division”.	34

[28] Section 431	1
Omit “a Departmental representative” and “the Departmental representative” wherever occurring.	2 3
Insert instead “the Director-General”.	4
[29] Section 431 (1), note	5
Insert at the end of section 431 (1):	6
Note. Failure to comply with a direction is an offence under section 661.	7
[30] Section 431 (3)	8
Omit “A Departmental representative”. Insert instead “The Director-General”.	9
[31] Section 432 Entry on to premises	10
Omit “, in relation to the functions of a Departmental representative, to the Director-General and a Departmental representative”.	11 12
Insert instead “to the Director-General when exercising functions in respect of an investigation under this Division”.	13 14
[32] Section 433 Report of investigation	15
Omit section 433 (1) and (2). Insert instead:	16
(1) The Director-General must report to the Minister on the results of an investigation under this Division and must send a copy of the report to the council concerned.	17 18 19
(2) The report may comment on any matter that, in the Director-General’s opinion, warrants special mention and may contain such recommendations as the Director-General considers appropriate.	20 21 22 23
[33] Section 434 Council’s response to report	24
Omit “a Departmental representative’s report” from section 434 (1).	25
Insert instead “a report made by the Director-General following an investigation under this Division”.	26 27
[34] Section 434B Expenses of investigation to be borne by council	28
Omit section 434B (1). Insert instead:	29
(1) The Director-General may recover the reasonable expenses incurred by the Director-General in respect of an investigation under this Division if the investigation relates to:	30 31 32
(a) the administration of an election by a general manager, or	33

	(b) a recurring problem with the administration of a council.	1
(1A)	A recurring problem with the administration of a council means any facts or circumstances with respect to the council, its work or its activities that have been the subject of previous Ministerial intervention, and that have continued to exist or have recurred, despite that Ministerial intervention.	2 3 4 5 6
(1B)	In this section, <i>Ministerial intervention</i> means:	7
	(a) the issue of a performance improvement order, or	8
	(b) the temporary suspension of a council under Part 7.	9
[35]	Section 434B (6) and (7)	10
	Omit section 434B (6). Insert instead:	11
	(6) In this section, expenses incurred in respect of an investigation under this Division include:	12 13
	(a) investigation expenses of the Director-General or departmental staff, and	14 15
	(b) remuneration paid to departmental staff assisting with the investigation, and	16 17
	(c) expenses associated with the preparation of a report in respect of the investigation.	18 19
	(7) The Director-General may certify that an investigation under this Division relates to a recurring problem with the administration of a council and that certificate is sufficient evidence, unless the contrary is proved, that the investigation relates to a recurring problem with the administration of the council.	20 21 22 23 24
[36]	Section 434C	25
	Insert after section 434B:	26
	434C Self-incrimination	27
	(1) A person is not excused from a requirement under this Division to provide records or information or to answer a question on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.	28 29 30 31
	(2) However, any information provided or answer given by a natural person in compliance or in purported compliance with a requirement under this Division is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence of failing to comply with the requirement or of providing information that is false or misleading) if the person	32 33 34 35 36 37

	objected at the time to doing so on the ground that it might incriminate the person.	1 2
(3)	Despite any such objection, any answer or information may be used in connection with a public inquiry or an investigation under this Division, or an investigation or the taking of disciplinary action against the person under Division 3 of Part 1 of Chapter 14, and is admissible in proceedings under this Act relating to misconduct.	3 4 5 6 7 8
(4)	Any record provided by a person in compliance with a requirement under this Division is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.	9 10 11 12
[37]	Section 435 Surcharging by Director-General	13
	Omit “a Departmental representative” from section 435 (1).	14
	Insert instead “the Director-General”.	15
[38]	Section 435 (2)	16
	Omit “A Departmental representative”. Insert instead “The Director-General”.	17
[39]	Section 435 (3)	18
	Omit the subsection.	19
[40]	Section 436 Procedure for surcharging	20
	Omit “Departmental representative” wherever occurring.	21
	Insert instead “Director-General”.	22
[41]	Chapter 13, Parts 6–9	23
	Insert after Part 5:	24
	Part 6 Performance management	25
438A	Performance improvement order	26
(1)	The Minister may issue an order in respect of a council if the Minister reasonably considers that action must be taken to improve the performance of the council.	27 28 29
(2)	An order issued under this section is a <i>performance improvement order</i> .	30 31

(3)	A performance improvement order is to specify:	1
(a)	the reasons why the Minister has decided to issue the order, and	2
(b)	the actions that the Minister requires to be taken to improve the performance of the council.	3
(4)	Actions to improve the performance of a council include any actions the Minister considers necessary to improve or restore the proper or effective functioning of the council.	4
(5)	The order may require action to be taken by the council, by individual councillors, or both.	5
(6)	A performance improvement order may require the quorum for a meeting of the council to be determined as specified by the Minister in the performance improvement order.	6
(7)	A copy of the performance improvement order is to be served on the council.	7
(8)	In relation to a performance improvement order, a reference to an action, or the taking of any action, includes a reference to doing any thing or refraining from doing any thing.	8
438B	Minister to give notice of intention to issue performance improvement order	9
(1)	The Minister is to give a council notice in writing of his or her intention to issue a performance improvement order in respect of the council.	10
(2)	The notice is to specify the following:	11
(a)	the terms of the proposed performance improvement order, including the period for compliance with the order,	12
(b)	the reasons why it is proposed to issue the performance improvement order (including any evidence supporting the Minister's opinion that improvement is required),	13
(c)	the actions that may be taken by the Minister if the performance improvement order is not complied with.	14
(3)	The notice must invite the council to make submissions in respect of the proposed performance improvement order within a consultation period specified in the notice.	15
(4)	The consultation period is to be a period of not less than 21 days from the date the notice is served on the council.	16

(5)	The Minister is to have regard to any submissions made by the council during the consultation period in deciding:	1
	(a) whether to issue the proposed performance improvement order, and	2
	(b) whether any changes should be made to the terms of the proposed performance improvement order.	3
(6)	The Minister is not required to give notice to a council of his or her intention to issue a performance improvement order in respect of the council if:	4
	(a) the Minister considers that the improvement in the council's performance is required as a matter of urgency, such that consultation must be dispensed with, or	5
	(b) the Minister considers that giving notice of the intention to issue the order would serve no useful purpose, or	6
	(c) the council is suspended under Part 7, or	7
	(d) the order is issued in response to the results of a public inquiry in relation to a council.	8
438C	Performance improvement order to be made public	9
(1)	The Director-General is to cause any performance improvement order issued by the Minister to be published on the Department's website.	10
(2)	A council is to cause any performance improvement order issued in respect of the council to be published on the council's website.	11
438D	Compliance with performance improvement order	12
(1)	The governing body of a council is responsible for ensuring the council's compliance with a performance improvement order.	13
(2)	A council complies with a performance improvement order only if the actions required by the performance improvement order (including any actions required to be taken by individual councillors) are taken to the satisfaction of the Minister.	14
438E	Compliance report	15
(1)	A council must provide the Minister with a written report on its compliance with a performance improvement order within the time required by the performance improvement order.	16
(2)	Such a report is referred to in this Part as a <i>compliance report</i> .	17

(3)	A compliance report must specify any actions taken that demonstrate compliance with the performance improvement order.	1 2 3
(4)	A compliance report must comply with any requirements specified in the performance improvement order.	4 5
438F	Appointment of temporary adviser	6
(1)	If the Minister issues a performance improvement order in respect of a council, the Minister may appoint one or more persons as a temporary adviser to the council.	7 8 9
(2)	A temporary adviser may be appointed in the performance improvement order or by subsequent order of the Minister served on the council.	10 11 12
(3)	A temporary adviser may be appointed on the recommendation of the council or on the Minister's own initiative.	13 14
(4)	The principal functions of a temporary adviser are:	15
(a)	to provide advice and assistance to the council for the purpose of ensuring that it complies with the performance improvement order, and	16 17 18
(b)	to monitor the council's compliance with the performance improvement order.	19 20
(5)	A temporary adviser has such other functions as are specified in the instrument by which he or she is appointed.	21 22
(6)	A temporary adviser 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.	23 24 25 26
(7)	A temporary adviser must be paid a salary from the council's funds determined by the council (in the case of an adviser appointed on the recommendation of the council) or by the Minister (in any other case).	27 28 29 30
(8)	The Minister may terminate a temporary adviser's appointment at any time.	31 32
438G	Co-operation with temporary adviser	33
(1)	If a temporary adviser is appointed to a council, the council, councillors and members of the staff of the council are required to co-operate with the temporary adviser and to provide any information or assistance the temporary adviser reasonably requires to exercise his or her functions.	34 35 36 37 38

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| (2) | In particular, the council is to give the temporary adviser 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 temporary adviser's comments (if any) on the compliance report. | 1
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| (3) | A contravention of this section is a failure to comply with a performance improvement order. | 6
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Part 7 Temporary suspension of council 8

438H Power of Minister to suspend council 9

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| (1) | The Minister may, by order published in the Gazette, suspend a council for a period specified in the order if the Minister reasonably believes that the appointment of an interim administrator is necessary to improve or restore the proper or effective functioning of the council. | 10
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| (2) | An order under this section is referred to in this Part as a <i>suspension order</i> . | 15
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438I Minister to give notice of intention to suspend council 17

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|-----|--|----------------|--|----------|-----|--|----------|----------|
| (1) | The Minister is to give a council notice in writing of his or her intention to suspend the council. | 18
19 | | | | | | |
| (2) | The notice is to specify: <table border="0" style="margin-left: 20px;"> <tr> <td style="vertical-align: top;">(a)</td> <td style="vertical-align: top;">the reasons why it is proposed to suspend the council, and</td> <td style="vertical-align: top; text-align: right;">21</td> </tr> <tr> <td style="vertical-align: top;">(b)</td> <td style="vertical-align: top;">the duration of the proposed suspension.</td> <td style="vertical-align: top; text-align: right;">22</td> </tr> </table> | (a) | the reasons why it is proposed to suspend the council, and | 21 | (b) | the duration of the proposed suspension. | 22 | 20 |
| (a) | the reasons why it is proposed to suspend the council, and | 21 | | | | | | |
| (b) | the duration of the proposed suspension. | 22 | | | | | | |
| (3) | The notice must invite the council to make submissions in respect of the proposed suspension within a consultation period specified in the notice. | 23
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25 | | | | | | |
| (4) | The consultation period is to be a period of not less than 14 days from the date the notice is served on the council. | 26
27 | | | | | | |
| (5) | The Minister is to have regard to any submissions made by the council during the consultation period in deciding whether to suspend the council. | 28
29
30 | | | | | | |
| (6) | The Minister is not required to give notice to a council of his or her intention to suspend the council if the Minister considers that: <table border="0" style="margin-left: 20px;"> <tr> <td style="vertical-align: top;">(a)</td> <td style="vertical-align: top;">the suspension is required as a matter of urgency, such that consultation must be dispensed with, or</td> <td style="vertical-align: top; text-align: right;">33
34</td> </tr> <tr> <td style="vertical-align: top;">(b)</td> <td style="vertical-align: top;">giving notice of the intention to suspend the council would serve no useful purpose.</td> <td style="vertical-align: top; text-align: right;">35
36</td> </tr> </table> | (a) | the suspension is required as a matter of urgency, such that consultation must be dispensed with, or | 33
34 | (b) | giving notice of the intention to suspend the council would serve no useful purpose. | 35
36 | 31
32 |
| (a) | the suspension is required as a matter of urgency, such that consultation must be dispensed with, or | 33
34 | | | | | | |
| (b) | giving notice of the intention to suspend the council would serve no useful purpose. | 35
36 | | | | | | |

438J	Effect of suspension on councillors	1
(1)	During the period in which a council is suspended under this Part, any persons holding civic office in relation to the council are taken also to be suspended from office.	2 3 4
(2)	A person, while suspended from civic office under this section:	5
(a)	is not entitled to exercise any of the functions of the civic office, and	6 7
(b)	is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of any council facilities, to which the person would otherwise be entitled as the holder of the civic office.	8 9 10 11
438K	Appointment of interim administrator	12
(1)	The Minister must, in a suspension order or by subsequent order published in the Gazette, appoint an administrator of a council that is suspended.	13 14 15
(2)	The order is to specify the period for which the administrator is appointed, not exceeding the period during which the council is suspended.	16 17 18
(3)	An administrator appointed under this section is an <i>interim administrator</i> .	19 20
(4)	More than one interim administrator may be appointed for a council (with the same or different functions).	21 22
(5)	An interim administrator of a council has, during the period of appointment as administrator, all the functions of the council, or, if more than one interim administrator is appointed, the functions of the council specified in the instrument of appointment.	23 24 25 26
(6)	If more than one interim administrator is appointed for a council, the Minister may give directions for the purpose of resolving any issues that arise as a result of there being more than one interim administrator.	27 28 29 30
(7)	An interim administrator must be paid a salary from the council's funds determined by the Minister.	31 32
(8)	The Minister may, by order published in the Gazette, extend the period for which an interim administrator is appointed if the period during which the council is suspended is extended.	33 34 35
(9)	The Minister may terminate an interim administrator's appointment at any time.	36 37

(10)	A reference in this or any other Act, or any statutory instrument, to an administrator of a council includes, unless the context otherwise requires, a reference to an interim administrator.	1 2 3
438L	Report by interim administrator	4
(1)	An interim administrator is to give the Minister a written report about his or her administration of the council.	5 6
(2)	The report is to include any recommendations of the interim administrator in relation to improving or restoring the proper and effective functioning of the council.	7 8 9
(3)	The interim administrator is to provide the report to the Minister no less than 14 days before the end of the initial suspension period of the council.	10 11 12
(4)	The initial suspension period of the council is the suspension period as initially specified in the suspension order, before any extension of the period by further order.	13 14 15
(5)	If the Minister amends a suspension order to extend the suspension period of a council, the interim administrator is to prepare a further report under this section in respect of that extended period and give that report to the Minister no less than 14 days before the end of the extended suspension period.	16 17 18 19 20
438M	Suspension period	21
(1)	The maximum period for which a council can initially be suspended by a suspension order is 3 months.	22 23
(2)	However, the Minister may, by order published in the Gazette on or before the end of the period during which the council is suspended, amend the suspension order to extend or further extend the period during which the council is suspended.	24 25 26 27
(3)	A suspension may be extended only if the Minister reasonably believes that an extension is necessary to improve or restore the proper or effective functioning of the council.	28 29 30
(4)	The maximum total period for which a council can be suspended by a suspension order, as amended under this section, is 6 months.	31 32 33
(5)	The Minister is not required to give notice to the council of his or her intention to extend the period during which a council is suspended.	34 35 36

438N	Performance improvement orders during suspension period	1
(1)	A performance improvement order may be issued in respect of a council even if it is suspended under this Part.	2 3
(2)	An order issued in such a case may require action to be taken by individual councillors, even though they are suspended by the suspension order.	4 5 6
438O	Maximum number of suspensions	7
(1)	The Minister cannot, during the term of a council, make a suspension order in respect of the council more than twice on the basis of the same facts or circumstances.	8 9 10
(2)	This section does not limit the power of the Minister under this Part to extend the period during which a council is suspended by a suspension order.	11 12 13
438P	Ordinary election during suspension period	14
	If an ordinary election of councillors of a council is held during the period in which the council is suspended under this Part, a suspension under this Part:	15 16 17
(a)	is taken to continue after that election, even if it would otherwise have ended, and	18 19
(b)	is taken to end immediately before the first meeting of the council after the election.	20 21
438Q	Election of mayor during suspension period	22
(1)	An election of the mayor by councillors is not required to be held during a period in which the council is suspended under this Part.	23 24
(2)	However, any election that would, but for this section, be required to be held during a period in which the council is suspended must instead be held within 14 days after the end of the suspension period.	25 26 27 28
(3)	Subsection (2) does not apply if the council is dismissed, or an ordinary election of councillors is held, before the end of the suspension period.	29 30 31
	Part 8 Public inquiries	32
438R	Public inquiries	33
(1)	The Governor or the Minister may appoint a person as commissioner, or two or more persons as commissioners, to hold	34 35

a public inquiry and to report to the Governor or the Minister with respect to:	1
(a) any matter relating to the carrying out of the provisions of this Act or any other Act conferring or imposing functions on a council, and	2
(b) any act or omission of a member of a council, any employee of a council or any person elected or appointed to any office or position under this or any other Act conferring or imposing functions on a council, being an act or omission relating to the carrying out of the provisions of the Act concerned, or to the office or position held by the member, employee or person under the Act concerned, or to the functions of that office or position.	3
(2) For the purposes of any inquiry under this section, any person appointed to hold the inquiry has the powers, authorities, protections and immunities conferred on a commissioner, as well as the powers, authorities, protections and immunities conferred by Division 1 of Part 2 of the <i>Royal Commissions Act 1923</i> :	4
(a) on a sole commissioner (if the person is the only person appointed to hold the inquiry), or	5
(b) on a chairperson of a commission (if the person is one of two or more persons appointed to hold the inquiry and has been appointed as chairperson of the inquiry).	6
(3) The provisions of section 24 of the <i>Local Court Act 2007</i> apply to any witness or person summoned by or appearing before the person so appointed in the same way as it applies to witnesses and persons in proceedings under that Act.	7
(4) The provisions of the <i>Royal Commissions Act 1923</i> (section 13 and Division 2 of Part 2 excepted) apply, with any necessary adaptations, to and in respect of any inquiry under this section and to and in respect of any witness or person summoned by or appearing before the person or persons holding the inquiry.	8
(5) The Minister is to cause the report of the person or persons who have held an inquiry under this section to be laid before both Houses of Parliament. If neither House of Parliament is sitting, section 14B of the <i>Royal Commissions Act 1923</i> applies.	9
438S Expenses of public inquiry to be borne by council in certain circumstances	10
(1) The Director-General, on behalf of the State, may recover the reasonable expenses incurred by the State in holding a public	11

	inquiry if the inquiry relates to a recurring problem with the administration of a council.	1 2
(2)	A recurring problem with the administration of a council means any facts or circumstances with respect to the council, its work or its activities that have been the subject of previous Ministerial intervention, and that have continued to exist or have recurred, despite that Ministerial intervention.	3 4 5 6 7
(3)	In this section, <i>Ministerial intervention</i> means:	8
	(a) the issue of a performance improvement order, or	9
	(b) the temporary suspension of a council under Part 7.	10
(4)	The Director-General may make a determination of the amount of the expenses referred to in subsection (1) and serve a notice on the council requiring the amount so determined be paid in recovery of the expenses.	11 12 13 14
(5)	An amount equal to the expenses as so determined, unless the Director-General otherwise decides, is payable to the Director-General as a debt by the council concerned.	15 16 17
(6)	The council may apply to the Administrative Decisions Tribunal for a review of whether any part of the expenses so determined are not reasonable expenses.	18 19 20
(7)	The Director-General must give effect to any decision of the Tribunal on a review of the determination of the amount of the expenses.	21 22 23
(8)	In this section, expenses incurred in holding a public inquiry include:	24 25
	(a) remuneration paid to the commissioner or commissioners who hold the public inquiry, and	26 27
	(b) remuneration paid to staff assisting with the inquiry, and	28
	(c) expenses associated with the attendance of witnesses or other persons at the inquiry.	29 30
(9)	The Director-General may certify that a public inquiry relates to a recurring problem with the administration of a council and that certificate is sufficient evidence, unless the contrary is proved, that the public inquiry relates to a recurring problem with the administration of the council.	31 32 33 34 35
438T	Suspension of council during public inquiry	36
(1)	The Minister may, by order published in the Gazette, suspend a council if a public inquiry relating to the council is held or to be	37 38

held and the Minister considers it in the public interest to suspend the council.	1
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(2) The suspension:	3
(a) starts on the date appointed by the Minister in the order as the start date for the suspension (being a date no earlier than the date the appointment of one or more commissioners to hold the inquiry takes effect), and	4
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(b) ends when the suspension is terminated or if the council is dismissed.	8
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438U Effect of suspension	10
(1) During the period in which a council is suspended under this Part, any persons holding civic office in relation to the council are taken also to be suspended from office.	11
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(2) A person, while suspended from civic office under this section:	14
(a) is not entitled to exercise any of the functions of the civic office, and	15
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(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of any council facilities, to which the person would otherwise be entitled as the holder of the civic office.	17
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438V Appointment of interim administrator	21
(1) The Minister must, in an order suspending a council under this Part or by subsequent order published in the Gazette, appoint an administrator of a council that is suspended.	22
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(2) The order is to specify the period for which the administrator is appointed, not exceeding the period during which the council is suspended.	25
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(3) An administrator appointed under this section is an <i>interim administrator</i> .	28
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(4) More than one interim administrator may be appointed under this section (with the same or different functions).	30
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(5) An interim administrator of a council has, during the period of appointment as administrator, all the functions of the council, or, if more than one interim administrator is appointed, the functions of the council specified in the instrument of appointment.	32
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(6) If more than one interim administrator is appointed for a council, the Minister may give directions for the purpose of resolving any	36
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	issues that arise as a result of there being more than one interim administrator.	1 2
(7)	An interim administrator must be paid a salary from the council's funds determined by the Minister.	3 4
(8)	The Minister may terminate an interim administrator's appointment at any time.	5 6
(9)	A reference in this or any other Act, or any statutory instrument, to an administrator of a council includes, unless the context otherwise requires, a reference to an interim administrator.	7 8 9
438W	Termination of suspension	10
(1)	The Minister may, by order published in the Gazette, terminate the suspension of a council under this Part.	11 12
(2)	The Minister is to terminate the suspension of a council under this Part no later than 30 days after the inquiry report date, unless the council is dismissed on or before that date.	13 14 15
(3)	However, a failure to terminate the suspension within that 30-day period does not affect the validity of an order terminating the suspension that is made after that 30-day period.	16 17 18
(4)	For the purposes of this section, the <i>inquiry report date</i> is the date the report of the person or persons who held the public inquiry is provided to the Governor or the Minister, as the case requires.	19 20 21
438X	Ordinary election during suspension period	22
	If an ordinary election of councillors of a council is held during the period in which the council is suspended under this Part, a suspension under this Part:	23 24 25
(a)	is taken to continue after that election, even if it would otherwise have ended, and	26 27
(b)	is taken to end immediately before the first meeting of the council after the election.	28 29
438Y	Election of mayor during suspension period	30
(1)	An election of the mayor by councillors is not required to be held during a period in which the council is suspended under this Part.	31 32
(2)	However, any election that would, but for this section, be required to be held during a period in which the council is suspended must instead be held within 14 days after the suspension ends.	33 34 35 36

(3)	Subsection (2) does not apply if the suspension ends because the council is dismissed or if an ordinary election of councillors is held before the suspension ends.	1 2 3
438Z	Issue of performance improvement orders in response to public inquiry	4 5
(1)	A performance improvement order may be issued in response to the results of a public inquiry in relation to a council.	6 7
(2)	For the purposes of this Act, a performance improvement order is taken to be issued in response to the results of a public inquiry if:	8 9
(a)	a public inquiry in relation to a council is held, and	10
(b)	the performance improvement order specifies, in the reasons why the Minister has decided to issue the order, that it has been issued in response to the results of the public inquiry.	11 12 13 14
	Note. Under section 255, the Minister may, after considering whether the council has complied with the performance improvement order, recommend that the council be dismissed.	15 16 17
	 Part 9 General	 18
438ZA	Service of Ministerial and departmental documents	19
(1)	Any order, notice or other document that the Minister or Director-General is required to serve on or give to a council or a person under this Chapter may be served on or given to the council or person by electronic means if the council or person has given the Department an email address for the service of documents.	20 21 22 23 24 25
(2)	Service is effected when a copy of the order, notice or other document is sent to that email address.	26 27
(3)	This section does not prevent service by post or by any other method permitted by or under this Act.	28 29
[42]	Section 440C Temporary suspension from civic office for serious corrupt conduct	30 31
	Insert “, or to the payment of expenses or to the use of council facilities,” after “remuneration” in section 440C (2) (b).	32 33

[43] Section 440K Suspension of a councillor (as substituted by the Local Government Amendment (Conduct) Act 2012)	1 2
Omit section 440K (1). Insert instead:	3
(1) A councillor, while suspended from office under this Division:	4
(a) is not entitled to exercise any of the functions of the civic office, and	5 6
(b) is not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities, to which he or she would otherwise be entitled as the holder of the civic office.	7 8 9 10
[44] Section 440L Appeals against disciplinary action (as substituted by the Local Government Amendment (Conduct) Act 2012)	11 12
Insert “, or expenses,” after “remuneration” in section 440L (6).	13
[45] Section 440P	14
Insert after section 440O (as substituted by the <i>Local Government Amendment (Conduct) Act 2012</i>):	15 16
440P Service of departmental documents	17
(1) Any order, notice or other document that the Director-General is required to serve on or give to a person under this Division may be served on or given to the person by electronic means if the person has given the Department an email address for the service of documents.	18 19 20 21 22
(2) Service is effected when a copy of the order, notice or other document is sent to that email address.	23 24
(3) This section does not prevent service by post or by any other method permitted by or under this Act.	25 26
[46] Section 660 Obstruction	27
Omit the third dot point.	28
[47] Section 660	29
Omit “appointed as referred to in section 256” from the eighth dot point.	30
Insert instead “of a council appointed under this Act”.	31
[48] Chapter 18, Introduction	32
Omit the fourth dot point from the introduction to Chapter 18.	33

[49] Section 740 Public inquiries	1
Omit the section.	2
[50] Section 745 Delegation of functions by the Director-General	3
Insert at the end of the section:	4
(2) A delegate may subdelegate to a member of staff of the Department any function delegated by the Director-General if the delegate is authorised in writing to do so by the Director-General.	5 6 7
[51] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts	8 9
Insert at the end of the Part containing provisions consequent on the enactment of the <i>Local Government Amendment (Conduct) Act 2012</i> with appropriate clause numbering:	10 11 12
References to Minister for Primary Industries in sections 57–66	13
(1) A reference to the Minister for Primary Industries in sections 57–66, as amended by the amending Act, is to be construed in the same way as a reference to the Minister for Land and Water Conservation in those sections was required to be construed, immediately before 1 March 2013, as a result of any administrative changes order that had effect before those sections were amended by the amending Act.	14 15 16 17 18 19 20
(2) This clause is taken to have commenced on 1 March 2013.	21
(3) This clause does not affect the operation of any administrative changes order made after 1 March 2013.	22 23
(4) In this clause: <i>administrative changes order</i> means an order under Part 4.2 of Chapter 4 of the <i>Public Sector Employment and Management Act 2002</i> .	24 25 26 27

[52] Schedule 8	1
Insert at the end of the Schedule with appropriate Part and clause numbering:	2
Part Provisions consequent on enactment of Local Government Amendment (Early Intervention) Act 2013	3 4 5
Definition	6
In this Part:	7
<i>amending Act</i> means the <i>Local Government Amendment (Early Intervention) Act 2013</i> .	8 9
Investigations	10
(1) Any investigation the Director-General authorised a person to conduct under section 430, before its substitution by the amending Act, that has not been completed, is taken on that substitution to be an investigation by the Director-General under section 430.	11 12 13 14 15
(2) A Departmental representative authorised under section 430, before its substitution by the amending Act, to investigate any aspect of a council or of its work and activities and whose authority is in force immediately before that substitution is taken to have been delegated:	16 17 18 19 20
(a) the functions of the Director-General under sections 431 and 432 in connection with the investigation, and	21 22
(b) the functions of the Director-General under Division 2 of Part 5 of Chapter 13 (Surcharging).	23 24
(3) The delegation may be varied or revoked by the Director-General.	25 26
Public inquiries	27
(1) The provisions of sections 255 (1A) and 438Z, as inserted by the amending Act, extend to a public inquiry under section 740 held or commenced before those provisions commenced.	28 29 30
(2) Section 740, as in force before its repeal by the amending Act, continues to apply in respect of any inquiry under that section that commenced before that repeal.	31 32 33

[53] Dictionary	1
Omit the definition of <i>Departmental representative</i> .	2
Insert in alphabetical order:	3
<i>dismissal</i> of a council—see section 255.	4
<i>interim administrator</i> means an interim administrator of a council appointed under Part 7 or 8 of Chapter 13.	5
<i>performance improvement order</i> means an order issued under section 438A.	6
[54] Dictionary, definition of “public inquiry”	7
Omit “section 740”. Insert instead “Part 8 of Chapter 13”.	8
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Schedule 2	Amendment of other legislation	1
2.1	Environmental Planning and Assessment Act 1979 No 203	2
	Section 117A Inquiry into councils by Director-General of Department of Premier and Cabinet	3
		4
	Omit “authorise” from section 117A (1). Insert instead “conduct”.	5
2.2	Government Information (Public Access) Regulation 2009	6
	Schedule 1 Additional open access information—local authorities	7
	Insert after clause 4 (i):	8
	(j) performance improvement orders issued to a council under Part 6 of Chapter 13 of the LGA.	9
		10