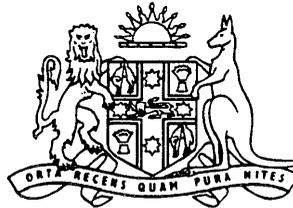


[Act 1997 No 145]



New South Wales

## Local Government Amendment (Open Meetings) Bill 1997

### Explanatory note

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

### Overview of Bill

The objects of this Bill are:

- (a) to specify the limited circumstances in which a local council (and those of its committees of which all members are councillors) may close part of a council or committee meeting to the public, and
- (b) to require a council to allow public inspection and copying of its documents (subject to certain exceptions), and
- (c) to ensure that non-councillor members of council committees are afforded exemption from personal liability in respect of matters or things done in good faith for the purpose of executing the *Local Government Act 1993* or any other Act.

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\* Amended in committee—see table at end of volume.

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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 a day or days to be appointed by proclamation.

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

### Public attendance at council meetings

**Schedule 1 [1]** repeals section 9 (2) of the *Local Government Act 1993* (*the Act*) and inserts proposed section 9 (2) and (2A) to expand the obligations of local councils in giving notice of proposed meetings. **Schedule 1 [2], [11]** and **[12]** make consequential amendments.

**Schedule 1 [3]** repeals section 10 (Who is entitled to attend meetings?) and replaces it with proposed sections 10–10E.

Proposed section 10 largely restates the current section 10 (1) and (4), which makes it clear that, except as otherwise provided in Part 1 of Chapter 4 of the Act, everyone is entitled to attend a meeting of a local council (and meetings of council committees of which all the members are councillors) unless the person has been expelled from the meeting. (The proposed section inserts a new provision to the effect that a person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.)

Proposed section 10A empowers a local council to close a meeting to the public during its receipt or discussion of the matters specified in the proposed section. The proposed section is largely a restatement of the current section 10 (2), but it omits certain grounds for closure set out in that subsection (such as the discussion of proposals for the sale or purchase of land), narrows the scope of certain other grounds (such as the discussion of commercial information) and introduces a new ground (the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting, or proposes to conduct, business).

Proposed section 10B limits the extent to which part of a meeting may be closed in accordance with proposed section 10A.

Proposed section 10C allows, in urgent cases, the closure of part of a meeting without the notice required by section 9.

Proposed section 10D expands the requirements of the current section 10 (3) in relation to the taking of a decision to close part of a meeting and the recording of that decision in the minutes of the meeting.

Proposed section 10E is a new provision. It requires a council (or a council committee) that closes part of a meeting to the public to determine a date (or dates) on which the public is to be given reasonable access to the minutes of the closed part of the meeting and the associated business papers. However, that access is not required to be given to the parts of the minutes or the business papers that deal with matters specified in the proposed section (such as the personal hardship of any resident or ratepayer).

**Schedule 1 [4]** and **[13]** are consequential on the proposed repeal of section 10 (2) and the proposed enactment of section 10A.

**Schedule 1 [5]** is consequential on the proposed enactment of section 10E.

### **Public access to council documents**

**Schedule 1 [6]** amends section 12 (What information is publicly available?) of the Act so as to include development applications (made under the *Environmental Planning and Assessment Act 1979*) and building applications, and documents associated with such applications, among the council documents that everyone is entitled to inspect free of charge. However, proposed section 12 (1A) (inserted by **Schedule 1 [7]**) provides that the right to inspect development applications and building applications does not extend to the inspection of certain parts of the plans and specifications, and certain commercial information, associated with those applications.

**Schedule 1 [9]** repeals section 12 (6), which currently provides that the council's obligations under section 12 in relation to public inspection of the documents specified in that section do not prevent it from allowing inspection (free of charge) of any other of its documents. Schedule 1 [9] replaces section 12 (6) with proposed subsections (6)–(8). Rather than merely empowering a council to *allow* inspection of its other documents free of charge, proposed section 12 (6) *requires* a council to do so, unless the council is satisfied that allowing inspection of the document would, on balance, be contrary to the public interest. Proposed section 12 (7) exempts some documents from this requirement (the same documents as are exempted from the requirements of the proposed section 10E), and proposed section 12 (8) precludes a council from determining that inspection is not in the public interest on the grounds that the inspection may cause embarrassment to the council or on similar grounds.

**Schedule 1 [10]** inserts proposed sections 12A and 12B.

Proposed section 12A requires any member of the staff of a council who restricts access to a council document or other council information to provide the council with written reasons for the restriction. The proposed section also makes provision for council review and removal of such a restriction.

Proposed section 12B is to the effect that a right under the Act to inspect a document includes the right to take away a copy of the document. The proposed section is largely a restatement and expansion of the current section 12 (4) (which is concerned only with the documents specified in section 12 (1) and is consequentially repealed by **Schedule 1 [8]**). Certain documents (such as building certificates) are exempted from the operation of the section.

### **Personal liability of members of council committees**

**Schedule 1 [14]** repeals and re-enacts section 73I (Liability of councillors, employees and other persons) to make it clear that the current exemption from personal liability conferred on the persons specified in that section extends to non-councillor members of council committees and persons acting under the direction of such Committees.