

[Act 2002 No 44]



New South Wales

Environmental Planning and Assessment 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 amend the *Environmental Planning and Assessment Act 1979* to make provision for:

- (a) the suspension and revocation of development consents under that Act that are tainted by corrupt conduct, and
 - (b) the appointment of an administrator to assume the environmental planning and assessment functions of a local council under that Act where the Independent Commission Against Corruption recommends that consideration be given to such an appointment because of serious corrupt conduct by any of the councillors in the exercise of those functions.
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The Bill makes other minor or related amendments to that Act and makes a consequential amendment to the *Independent Commission Against Corruption Act 1988*.

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 *Environmental Planning and Assessment Act 1979* set out in Schedule 1.

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

Schedule 1 Amendment of Environmental Planning and Assessment Act 1979

Schedule 1 [2] amends section 118 of the Principal Act to provide for the appointment of an administrator to assume the environmental planning and assessment functions of a local council under the Act where the Independent Commission Against Corruption recommends that consideration be given to such an appointment because of serious corrupt conduct by any of the councillors in the exercise of those functions (that is, corrupt conduct that is punishable by imprisonment for 5 years or more).

Schedule 1 [5] inserts section 124A into the Principal Act to provide for the suspension and revocation of development consents that are tainted by corrupt conduct. For the purposes of the new section, a decision of a consent authority to grant or modify a development consent is to be regarded as tainted by corrupt conduct if:

- (a) the Independent Commission Against Corruption recommends that consideration be given to the suspension of the decision with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification, or

- (b) if criminal proceedings for any such conduct are instituted or the consent authority, councillor or other officer or member of staff makes an admission of any such conduct.

Under the new section:

- (a) the jurisdiction of the Land and Environment Court to remedy or restrain a breach of the Principal Act is expressly extended to relevant decisions of a consent authority that are tainted by corrupt conduct, and
- (b) the Minister or the Court may suspend a decision that is tainted by corrupt conduct pending proceedings in the Court to revoke the decision, and
- (c) the Court may revoke a decision tainted by corrupt conduct so long as the revocation will not significantly disadvantage any person affected by the decision who was not a party to the corrupt conduct and so long as there has not been a substantial commencement of work authorised by the development consent.

Schedule 1 [1] inserts section 117A into the Principal Act to make provision for the Director-General of the Department of Planning to request the Director-General of the Department of Local Government to carry out an investigation under the *Local Government Act 1993* in relation to any aspect of the performance of a council's environmental planning and assessment functions.

Schedule 1 [3] amends section 118 of the Principal Act to make it clear that the actions of a planning administrator are valid even if the appointment of the administrator is subsequently found to be invalid.

Schedule 1 [4] inserts section 119A into the Principal Act to enable the removal of councillors under the *Local Government Act 1993* on the basis of a public inquiry under section 119 of the Principal Act.

Schedule 1 [6] allows regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.

Schedule 2 Amendment of Independent Commission Against Corruption Act 1988

Schedule 2 amends section 74C (to be inserted by the proposed *Local Government Amendment (Anti-Corruption) Act 2002*) to authorise the Independent Commission Against Corruption to make the recommendations that will trigger the proposed appointments of planning administrators and the proposed suspension of

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development consents pending their revocation. The Commission will be authorised to make the recommendations if of the opinion that prompt action is required in the public interest.