

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

[2016-38]



New South Wales

Status Information

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **Note**

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Contents

Long title	3
1 Name of Act	3
2 Commencement	3
Schedule 1 Amendment of Local Government Act 1993 No 30	3

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



New South Wales

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.

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[1]-[3] (Repealed)

[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[5]-[17] (Repealed)

[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[19]-[24] (Repealed)

[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], [33] (Repealed)

[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]-[39] (Repealed)

[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]-[49] (Repealed)

[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]-[83] (Repealed)

[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], [89] (Repealed)

[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.