

Circular Details	15-41 / 17 December 2015 / A446439
Previous Circular	
Who should read this	Councillors / General Managers / Complaints Coordinators
Contact	Council Governance Team / 4428 4100
Action required	Information

Commencement of the Local Government Amendment (Councillor Misconduct and Poor Performance Act) 2015

What's new or changing

- Amendments to the *Local Government Act 1993* made by the *Local Government Amendment (Councillor Misconduct and Poor Performance) Act 2015* commenced on **13 November 2015**.

What this will mean for your Council

Councillors and General Managers must note the following:

- As of the commencement date, Councillors who have previously been suspended on two or more occasions will be automatically disqualified from holding office in a Council for 5 years if they are suspended on a further occasion. The Office has written directly to Councillors who have been suspended on two or more occasions to inform them of this change.
- The definition of "misconduct" has been expanded to include acts or omissions by Councillors that are intended to prevent the proper or effective functioning of a council or a committee of a Council (e.g. by disrupting decision making). Penalties for Councillor misconduct include suspension and disqualification from holding office.
- Councillors will no longer be permitted to participate in the consideration of the making, amendment, alteration or repeal of an environmental planning instrument applying to the whole or a significant part of their local government area they have pecuniary interests in unless:
 - the only interests affected by the changes are the interests they or their relatives have in their principal places of residence; **and**
 - they have made a special disclosure of the affected interests.
- This amendment is complemented by an amendment to clause 4.29 of the *Model Code of Conduct for Local Councils in NSW* which also commenced on 13 November 2015. The amendment will mean that councillors with significant non-pecuniary conflicts of interests in the making, amendment, alteration or repeal of an environmental planning instrument applying to the whole or a significant part of their local government area will no longer be permitted to participate in consideration of those matters unless:

- the only interests affected by the changes relate to the interest a person (e.g. a close friend or affiliate of a Councillor) has in their principal place of residence; and
- the Councillor has disclosed the affected interests.

Complaints coordinators must note the following:

- Councils must amend their adopted codes of conduct as soon as possible to reflect the amendment to clause 4.29 referred to above. The amended Model Code of Conduct is available on the Office of Local Government's website at www.olg.nsw.gov.au.
- Notice is no longer required of a motion to censure a Councillor for misconduct under section 440G. Under the *Procedures for the Administration of the Model Code of Conduct for Local Councils in NSW*, Councils can only formally censure a Councillor for misconduct where this is recommended in a report by an independent investigator. This will be reported to the Council under cover of a staff report by a Council's complaints coordinator.

Other key changes

- The amendments are also designed to:
 - ensure a faster but fair investigation process for Councillor misconduct;
 - remove impediments to effective action in response to serious corrupt conduct;
 - maximise the effectiveness of Performance Improvement Orders issued by the Minister for Local Government to a Council; and
 - more effectively address Council maladministration.

Where to go for further information

- For more information on the amendments to the Act, see the attachment to this Circular.
- An updated version of the *Model Code of Conduct for Local Councils in NSW* has been published on the Office of Local Government's website at www.olg.nsw.gov.au.
- Contact the Office's Council Governance Team on 4428 4100.



Tim Hurst
Acting Chief Executive
Office of Local Government

3
ATTACHMENT

The amendments to the *Local Government Act 1993* referred to in this Circular are designed to:

More effectively deter and address Councillor misconduct by:

- providing for the automatic disqualification of a Councillor from holding civic office for a period of 5 years where they have been suspended for misconduct on a third occasion;
- expanding the definition of “misconduct” in the Act to include conduct that is intended to prevent the proper or effective functioning of a Council (i.e. through the disruption of Council and Committee meetings).

Streamline the process for dealing with Councillor misconduct to ensure faster but fair outcomes by:

- removing the requirement for notice to be given of a motion at a Council meeting to formally censure a Councillor in recognition that Councils may now only do so on the recommendation of an independent investigator following a formal investigation process;
- removing the mandatory requirement for the Chief Executive of the Office of Local Government to undertake an investigation as a prerequisite to taking disciplinary action for misconduct where the conduct has previously been investigated under a Council’s code of conduct and for minor misconduct that requires only a reprimand or counselling, and removing rights of appeal in relation to reprimand and counselling;
- providing that prior to taking disciplinary action against a Councillor, the Chief Executive is to give the Councillor at least 14 days’ notice of his or her intention to take disciplinary action, including the disciplinary action that is proposed to be taken and the grounds upon which the proposed disciplinary action is to be taken and to consider any submissions made by the Councillor in relation to the notice;
- expanding the class of persons the Chief Executive may direct to provide written information or a document for the purposes of investigating Councillor misconduct to “any person” but excluding privileged information or documents without the person’s consent.

Promote community confidence in Council planning decisions by:

- amending the provision in the Act that allows Councillors to participate in the consideration of changes to a planning instrument applying to the whole or a significant part of a Council’s area they have pecuniary interests in by limiting its application to the interests Councillors have in their and related persons’ principal places of residence, thereby preventing participation in consideration of such matters by Councillors with other property interests.

Remove impediments to effective action in response to serious corrupt conduct by:

- providing that a former Councillor may be disqualified from holding civic office for serious corrupt conduct;
- providing that where the Minister, on a recommendation by the ICAC, suspends a Councillor from civic office for serious corrupt conduct and the Councillor brings legal proceedings to challenge the ICAC’s recommendation, the suspension will continue until the proceedings are concluded and for six months

afterwards to allow time to arrange for their dismissal and disqualification should this be warranted;

Maximise the effectiveness of Performance Improvement Orders issued by the Minister to a Council by:

- reducing the minimum consultation period for a notice of intention to issue a Performance Improvement Order from 21 to 7 days;
- providing that a Council may be required to provide more than one compliance report on its compliance with a Performance Improvement Order, allowing the Minister to vary the terms of an Order on giving 7 days' notice, and allowing other intervention action while the Order is in force;
- deterring non-compliance by individual Councillors with a requirement under a Performance Improvement Order by:
 - empowering the Minister, where he or she is satisfied that a Councillor has failed to comply with such a requirement, to effectively suspend the Councillor until they have complied with the requirement or for a period of up to 3 months (with a possible extension of a further 3 months) (whichever is the lesser); and
 - allow the Minister to request the Chief Executive to refer non-compliance to the NSW Civil and Administrative Tribunal for disciplinary action.

More effectively address Council maladministration by:

- reducing the time in which a Council is required to respond to recommendations made by the Chief Executive arising from the investigation of a council from 40 to 28 days.