

Councils are responsible for managing their own operations and identifying areas for improvement. The Minister for Local Government and the Office of Local Government (OLG) encourage and support councils to voluntarily take action if they become aware that they have failed to meet their legal or performance obligations, or are at risk of doing so.

Performance improvement, suspension and compliance orders may be used to provide direction, and compel councils and individual councillors to take action if a council has not acted of its own accord or lacks the capacity to address any identified performance issues.

WHAT ARE THE POWERS?

The OLG's powers in the *Local Government Act 1993* (the Act) include:

- to issue a performance improvement order (section 438A)
- to suspend a council for up to three months, with possible extension of a further three months if required (sections 438I and 438O)
- to suspend a council for the duration of a public inquiry (section 438W)
- to issue a compliance order against a councillor (section 438HA)
- to appoint temporary advisers, financial controllers and interim administrators (sections 438G, 438HB, 438M and 438Y).

UNDER WHAT CIRCUMSTANCES MIGHT THESE POWERS BE USED?

The Act and the *Local Government (General) Regulation 2021* set out criteria that must be considered when determining whether to use the powers.

Examples of when the powers can be used include, but are not limited to:

- if a council has not complied with its legislative responsibilities, relevant standards or guidelines;
- there are significant risks facing the council that are not being addressed;
- council business is being disrupted and the council is failing to exercise its functions;
- the conduct of an individual or a group of councillors is having an adverse impact on the council's performance and/or is disrupting the ability of the council to function;
- the council has failed to follow proper process in making a decision that will impose significant costs on the community;
- the council has failed to address an auditor's concerns;
- the council is not following the required processes to manage its General Manager's performance;
- the council has failed to heed advice from OLG and/or declined offers of assistance;
- previous intervention attempts have failed.

HOW DOES THE PROCESS WORK?

Detailed information about the process is available at olg.nsw.gov.au by searching for 'Early Intervention Orders.'

WHAT SAFEGUARDS ARE IN PLACE TO PROTECT COUNCILS' AUTONOMY?

The legislation includes a number of safeguards that ensure OLG's transparency and accountability in using these powers. In addition to the criteria that must be considered, there is also a requirement to give a council notice of the proposed order and the opportunity to make a submission before a decision is made.

WHAT IF A COUNCIL FAILS TO IMPROVE AFTER AN ORDER IS MADE?

Further intervention will be considered if the early intervention order does not have the desired effect. Options include, but are not limited to, undertaking an investigation or holding a public inquiry to identify the causes or reasons for poor performance/dysfunction and how the situation might be best addressed. The council could be suspended and/or a temporary advisor and/or financial controller could be appointed as part of the order if this has not already occurred.

If an individual councillor does not comply with a performance improvement order, they can be served with a compliance order, which will prevent them from undertaking their functions as a councillor until they complete the required action. They will not be entitled to any payment while subject to the order. They can also be referred to the NSW Civil and Administrative Tribunal for consideration of further disciplinary action.

HOW CAN I FIND OUT MORE?

A dedicated page 'Improvement and Early Intervention' can be found at: olg.nsw.gov.au. The page includes information on:

- The approach to working with and intervening in councils who are experiencing difficulties;
- The procedures for using the order powers;
- The role of advisers and administrators;
- Councils that are, or have been, subject to orders;