



Councils are responsible for driving their improvement and are generally best placed to do so. Where councils are dysfunctional or failing to meet their legal obligations, the Minister for Local Government and the Office of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, powers to issue performance improvement and suspension orders may be used.

### **WHY HAVE THESE POWERS BEEN INTRODUCED?**

It is clear from persistent high-profile dysfunction in a small number of councils that the current approach to tackling poor performance does not always work.

Where voluntary action failed, a public inquiry was the next available option. While a public inquiry is an important and necessary process when facing the serious prospect of dismissing a council, it usually follows years of dysfunction which could have been avoided, costs over \$200,000 on average, and has tended to result in the public being deprived of democratic representation at this vital level of government.

These powers fill the large gap between voluntary action and public inquiry, are designed to improve the performance of councils in NSW by balancing measures to encourage councils to drive their own improvement with sanctions for failing to take action.

### **WHAT ARE THE POWERS?**

The powers in the *Local Government Act 1993* include:

- a power to gather information from councils to identify dysfunction (section 429)
- a power to issue a performance improvement order (section 438A)
- a power to set the quorum for a council meeting (section 438A(6))
- a power to suspend a council for up to three months, with possible extension of a further three months if required (sections 438I and 438O)
- a power to suspend a council for the duration of a public inquiry (section 438W)
- a power to enforce a performance improvement order against a councillor (section 438HA)
- a power to appoint temporary advisers, financial controllers and interim administrators (sections 438G, 438HB and 438M).

### **UNDER WHAT CIRCUMSTANCES MAY THE POWERS BE USED?**

The criteria that must be considered when determining whether to issue an order are regulated under the Local Government (General) Regulation 2005. The powers will be used, but not limited to, the following circumstances, where:

- a council is not complying 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
- a pattern of poor or inappropriate behaviour, either by one or more councillors or council staff
- previous intervention attempts have failed.



Some examples of where the new powers may be used are:

- the council has consistently failed to implement required legislation, such as Integrated Planning and Reporting, or guidelines, such as section 252 policy guidelines, has ignored letters from the Office of Local Government and refused offers of help;
- where a council is continually unable to function because of inability to maintain a quorum, resulting in delays to important decisions, such as development applications;
- a council decision, where proper process has not been followed (e.g. capital expenditure), is at risk of placing a significant and unacceptable financial cost on the community;
- the appointment of an interim administrator is necessary because the relationship between members of the elected body has broken down and the council is showing signs of dysfunction;
- the council is not following the required processes to manage the general manager's performance. For example, not entering into a performance agreement with its general manager or not undertaking a performance review process as required by the Office of Local Government's guidelines.

### **HOW DOES THE PROCESS WORK?**

The process for requesting and issuing orders is outlined in the Framework for Implementing Early Intervention Orders. This document, available at [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au), details who can request an order, the criteria for issuing orders, actions the Minister must take to ensure procedural fairness (e.g. notice requirements) and procedures for implementation, including actions required by councils.

### **WHAT SAFEGUARDS ARE IN PLACE TO PROTECT COUNCILS' AUTONOMY?**

The legislation includes a number of safeguards that ensure transparency and accountability in using these powers. These include:

- Protections against self-incrimination in the gathering of evidence
- Notice requirements (7 days for performance improvement orders and 14 days for suspensions, 7 days in urgent cases), giving councils the chance to respond to the proposed use of the powers
- Requirements on both the council and the Office of Local Government to publish the evidence supporting a decision and the reasons for taking action.

### **HOW CAN I FIND OUT MORE?**

A dedicated page 'Improvement and Early Intervention' can be found at: [www.olg.nsw.gov.au](http://www.olg.nsw.gov.au). Here you can find information on:

- The approach to working with and intervening in councils in difficulty
- The procedures for using the early intervention powers
- The role of advisers and administrators
- Councils subject to early intervention.