

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 Division of Local Government encourage and support councils to act voluntarily to fix the problem. Where this fails, new 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.

The NSW Auditor General has said that government needs greater powers to tackle poor performance of councils.

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 NEW POWERS?**

The changes to the *Local Government Act 1993* include:

- a stronger 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 appoint temporary advisers and interim administrators (sections 438G 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 new 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
- 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 other guidelines, has ignored letters from the Division of Local Government and refused offers of help. For example, continuing non-compliance with the Division's guidelines on section 252 policies; failure to implement the Model Code administrative procedures;
- 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 Division'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.dlg.nsw.gov.au](http://www.dlg.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 (21 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 Division 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 'Early Intervention – Councils in NSW' can be found at: [www.dlg.nsw.gov.au](http://www.dlg.nsw.gov.au). Here you can find information on:

- The Division's 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.