



New South Wales

Local Government (General) Amendment (Audit, Risk and Improvement Committees) Regulation 2023

under the

Local Government Act 1993

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Local Government Act 1993*.

RON HOENIG, MP
Minister for Local Government

Explanatory note

The object of this regulation is to make provision about Audit, Risk and Improvement Committees and the internal auditing functions of councils.

This regulation is made under the *Local Government Act 1993*, including sections 428(4)(b), 428A(2)(i), 428B and 748, the general regulation-making power, and Schedule 6, clauses 8A, 13, 18 and 19B.

Local Government (General) Amendment (Audit, Risk and Improvement Committees) Regulation 2023

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Local Government Act 1993

1 Name of regulation

This regulation is the *Local Government (General) Amendment (Audit, Risk and Improvement Committees) Regulation 2023*.

2 Commencement

This regulation commences on 1 July 2024.

Schedule 1 Amendment of Local Government (General) Regulation 2021

Part 9 Management and accountability

Insert after Division 6—

Division 6A Auditing and Audit, Risk and Improvement Committees

216A Definitions

In this division—

chairperson, for an Audit, Risk and Improvement Committee, means the chairperson of the committee.

independent member, for an Audit, Risk and Improvement Committee, means a person appointed to the committee under section 216C(1)(b).

internal audit co-ordinator—see section 216P(4).

216B Application of division to joint organisations

This division applies to a joint organisation in the same way as it applies to a council.

216C Composition of Audit, Risk and Improvement Committee—the Act, Sch 6, cl 19B

- (1) The Audit, Risk and Improvement Committee for a council must comprise—
 - (a) a chairperson, and
 - (b) at least 2 independent members.
- (2) One councillor, who must not be the mayor, of the council may also be appointed to the Audit, Risk and Improvement Committee for a council.
- (3) The appointment of a member to the Audit, Risk and Improvement Committee must be made by resolution of the council.
- (4) A councillor appointed to the Audit, Risk and Improvement Committee must not vote on a matter being considered by the committee.
- (5) A person may be appointed to more than 1 Audit, Risk and Improvement Committee if otherwise eligible.

216D Eligibility for appointment as chairperson—the Act, Sch 6, cl 19B

A council must not appoint a person as the chairperson of the council's Audit, Risk and Improvement Committee unless the council is reasonably satisfied the person—

- (a) has leadership qualities, and
- (b) is able to promote effective working relationships in complex organisations, and
- (c) is able to communicate complex and sensitive assessments in a tactful way, and
- (d) has a sound understanding of the principles of good organisational governance, and
- (e) is able to understand local government accountability, including financial reporting, and

- (f) has a sound understanding of the business of the council or the environment in which it operates, and
- (g) has a sound understanding of the council's internal audit operations, including the selection and review of the internal audit co-ordinator for the council, and
- (h) has a sound understanding of risk management principles, and
- (i) has extensive senior level experience in governance and management of complex organisations, and
- (j) is eligible to be appointed as an independent member of the Audit, Risk and Improvement Committee, and
- (k) is not an employee of a council or a joint organisation.

216E Eligibility for appointment as independent member—the Act, Sch 6, cl 19B

A council must not appoint a person as an independent member of the council's Audit, Risk and Improvement Committee unless the council is reasonably satisfied the person—

- (a) is able to read and understand financial statements, and
- (b) is able to understand the ethical requirements of government, including conflicts of interest, and
- (c) is able to form independent judgements, and
- (d) is willing to constructively challenge and question management practices and information, and
- (e) is professional and ethical in the exercise of the person's duties, and
- (f) is able to devote the necessary time and effort to the person's functions as a member of the committee, and
- (g) has knowledge in one or more of the following that is relevant to the person's role on the Audit, Risk and Improvement Committee—
 - (i) risk management,
 - (ii) performance management,
 - (iii) human resources management,
 - (iv) internal and external auditing,
 - (v) financial reporting,
 - (vi) accounting,
 - (vii) management control frameworks,
 - (viii) internal financial controls,
 - (ix) governance of organisations,
 - (x) business operations, and
- (h) is independent of the council.

216F Persons taken not to be independent of council—the Act, Sch 6, cl 19B

- (1) The following persons are taken not to be independent of a council for the purposes of section 216E(h)—
 - (a) a person who is a councillor of a council in New South Wales,
 - (b) a person who was a candidate for election to the council in the last election of the council,
 - (c) a person who was a councillor during the term of the council ending at the last election of the council,

- (d) for a joint organisation or council that is a member council of a joint organisation—a person who is a non-voting representative of the board of the joint organisation,
- (e) for a council that has entered an arrangement under the Act, section 428B with another council or body—a person who is an employee of the other council or body,
- (f) a person who is employed by the council or was employed by the council in the previous 12 months,
- (g) a person who conducts audits of the council for the Audit Office of NSW,
- (h) a person who has a close personal or business relationship with a councillor or a person who has a senior role in the council that may lead to an actual or perceived conflict of interest,
- (i) a person who provides, or has in the previous three years provided, material goods or services which directly affect matters considered by the Audit, Risk and Improvement Committee,
Example— consultancy, legal, internal audit or advisory services
- (j) a person who is a shareholder, owner, officer or employee of a company if—
 - (i) the company has a business relationship with the council or a related entity, and
 - (ii) the business relationship comprises—
 - (A) a material business relationship, or
 - (B) a contractual relationship, or
 - (C) a direct financial interest, or
 - (D) a material indirect financial interest, and
 - (iii) the business relationship could reasonably be considered to be an actual or perceived conflict of interest,
- (k) a person who is a relative of a person referred to in paragraph (i),
- (l) a person who acts, or has previously acted, as an advocate for the council or a related entity, if the advocacy—
 - (i) relates to a material interest, and
 - (ii) could reasonably be considered to be an actual or perceived conflict of interest.

(2) In this section—

related entity, of a council, means an entity formed by the council or an entity which the council participated in forming.

216G Term of office—the Act, Sch 6, cl 19B

- (1) A council may appoint a member of the council's Audit, Risk and Improvement Committee for a term of no more than 4 years.
- (2) A person who continues to be eligible for appointment may be reappointed.
- (3) A person must not be a member of an Audit, Risk and Improvement Committee for a particular council for more than 8 years in a 10-year period.
- (4) The Departmental Chief Executive may exempt a person from the requirement in subsection (3) if satisfied the council—

- (a) took reasonable steps to find another person to take the place of the person, and
- (b) has been unable to find a suitable person.

216H Removal of members—the Act, Sch 6, cl 19B

- (1) A council may remove a member from the council's Audit, Risk and Improvement Committee at any time.
- (2) The council must give written notice to the Departmental Chief Executive if it removes the chairperson or an independent member from the council's Audit, Risk and Improvement Committee.
- (3) The notice must be given within 28 days after the removal of the person.

216I Remuneration—the Act, Sch 6, cl 19B

A council may pay remuneration to the chairperson and independent members of the council's Audit, Risk and Improvement Committee.

216J Meetings of Audit, Risk and Improvement Committee—the Act, Sch 6, cl 19B

- (1) An Audit, Risk and Improvement Committee must meet at least once in each quarter.
- (2) The chairperson of an Audit, Risk and Improvement Committee may decide on the procedure for—
 - (a) the calling of meetings of the Audit, Risk and Improvement Committee, and
 - (b) the conduct of business at meetings.

216K Terms of reference—the Act, Sch 6, cl 19B

- (1) A council must adopt terms of reference for the council's Audit, Risk and Improvement Committee.
- (2) The adoption must occur by resolution of the council.
- (3) The council must consider model terms of reference approved by the Departmental Chief Executive before adopting terms of reference.
- (4) Terms of reference must be consistent with the Act and this regulation.
- (5) An Audit, Risk and Improvement Committee must exercise its functions in accordance with the adopted terms of reference.

216L Assistance to Audit, Risk and Improvement Committee—the Act, Sch 6, cl 19B

- (1) The general manager of a council must ensure the Audit, Risk and Improvement Committee of the council—
 - (a) has the resources necessary to properly exercise its functions in relation to the council, and
 - (b) is readily able to access the staff, information and records of the council the Audit, Risk and Improvement Committee considers necessary for the exercise of its functions in relation to the council.
- (2) If the council has entered an arrangement under the Act, section 428B with another council or body, this section extends to the general manager of the other council or the chief executive of the other body to the extent the Audit, Risk and Improvement Committee exercises functions in relation to the other council or body.

216M Matters committee must keep under review—the Act, s 428A

For the Act, section 428A(2)(i), the council's internal audit functions are prescribed.

216N Joint internal audit arrangements—the Act, s 428B

A joint organisation of which a council is a member is prescribed as a body the council may enter into an arrangement with.

216O Internal audit charter—the Act, Sch 6, cl 8A

- (1) A council must adopt an internal audit charter setting out how the council will exercise its internal audit functions.
- (2) The adoption must occur by resolution of the council.
- (3) The council must consider a model internal audit charter approved by the Departmental Chief Executive before adopting an internal audit charter.
- (4) An internal audit charter must be consistent with the Act and this regulation.
- (5) The council must exercise its internal audit functions in accordance with the adopted internal audit charter.

216P Internal audit co-ordinator—the Act, Sch 6, cl 8A

- (1) The general manager of a council must appoint a member of staff of the council to be the internal audit co-ordinator for the council unless—
 - (a) the council has entered an arrangement with another council for the sharing of internal audit activities, and
 - (b) the general manager of the other council has appointed a person under this section, and
 - (c) the person will direct and co-ordinate the internal audit activities in relation to the first council under the arrangement.
- (2) An internal audit co-ordinator who exercises functions under this section for a council—
 - (a) must, in relation to the exercise of the functions—
 - (i) report to the Audit, Risk and Improvement Committee for the council, and
 - (ii) comply with a direction of the Audit, Risk and Improvement Committee, and
 - (b) is not subject to a direction of the council or a member of staff of the council in relation to the exercise of the functions.
- (3) The general manager of a council must consult with the chairperson of the Audit, Risk and Improvement Committee for the council about a proposed decision affecting the employment of the internal audit co-ordinator for the council.
- (4) In this section—

internal audit co-ordinator, for a council, means a person appointed to direct and co-ordinate internal audit activities in relation to the council.

216Q Persons exercising internal audit functions—the Act, Sch 6, cl 8A

The general manager of a council must ensure a person exercising internal audit functions in relation to the council—

- (a) has the resources necessary to properly exercise the functions, and
- (b) is readily able to access—
 - (i) staff, information and records of the council necessary to properly exercise the functions, and
 - (ii) the Audit, Risk and Improvement Committee for the council.

216R Audit, Risk and Improvement Committee to oversee and report on internal audit activities—the Act, s 428A(2)(i)

The Audit, Risk and Improvement Committee for a council must—

- (a) oversee the internal audit activities carried out in relation to the council, and
- (b) review the performance and efficacy of the activities over each period of 4 years, and
- (c) prepare a report on the review that may include recommendations, and
- (d) give a copy of the report to the governing body of the council.

216S Risk management—the Act, Sch 6, cl 18

- (1) A council must adopt and implement a system for managing risk.
Note— The Act, section 23A requires a council to take relevant guidelines by the Departmental Chief Executive into consideration before exercising its functions.
- (2) The Audit, Risk and Improvement Committee for the council must—
 - (a) monitor and review the implementation of the system, and
 - (b) report to the council on the operation and efficacy of the system.

216T Attestation in annual report—the Act, s 428(4)(b)

- (1) The annual report for a council under the Act, section 428 must include an attestation signed by the general manager of the council specifying whether the council has complied with this division during the year to which the report relates.
- (2) In preparing the attestation, the general manager must give the chairperson of the Audit, Risk and Improvement Committee for the council an opportunity to comment on the attestation.
- (3) The chairperson, if not satisfied with the attestation in the annual report, may—
 - (a) prepare an alternative attestation signed by the chairperson, and
 - (b) give the alternative attestation to the Departmental Chief Executive.
- (4) This section does not apply to an annual report prepared before 1 July 2025.

216U Contravention of division permitted in certain circumstances—the Act, Sch 6, cl 8A

A council is not required to comply with a provision of this division if—

- (a) the council is unable to comply because compliance—
 - (i) was unreasonable due to a temporary circumstance, or
 - (ii) would have had a significant impact on the council's budget, and
- (b) the council was unable to enter an agreement with another council or joint organisation to ensure compliance, and

- (c) the council proposes an alternative arrangement to ensure an equivalent outcome to the requirement, and
- (d) the council notifies the Departmental Chief Executive of the failure to comply within 28 days, and
- (e) the annual report of the council contains a statement about the non-compliance with details of the matters set out in paragraphs (a)–(c).