



**Office of  
Local Government**

**Office of Local Government**

**Performance and Suspension Orders  
Procedural Framework**



January 2024

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## **Introduction**

Councils are responsible for their own performance. Where councils are not performing satisfactorily, the Minister for Local Government (the Minister) and the Office of Local Government (OLG) encourage and support councils to voluntarily take actions to improve. Where this fails, performance improvement, compliance, and suspension orders may be used to ensure councils and individual councillors take the actions required to address the performance issues identified. Interim administrators, temporary advisers and financial controllers can be appointed to assist a council.

The decision regarding what action should be taken will be based on the nature and seriousness of the performance issue and the response of the council.

This document provides information on the processes for issuing orders, monitoring compliance, and for taking further action in the case of non-compliance. It should be read in conjunction with the relevant sections of the *Local Government Act 1993* (the Act) and the *Local Government (General) Regulation 2021* (the Regulation). The provisions of these instruments will prevail in the case of any inconsistency with this document.

There are two sections in this document:

- Section 1: Performance improvement orders (including the appointment of temporary advisers and financial controllers)
- Section 2: Suspension orders (including the appointment of interim administrators)

There are two appendices. Appendix 1 provides additional information on interim administrators, including criteria for appointment and how they are to exercise their functions. Appendix 2 provides information on the recovery of costs of public inquiries, where a council has failed to address concerns about its performance.

## **Section 1 - Performance improvement orders**

This section provides information on the use of performance improvement orders, compliance with those orders and the associated processes for appointment of temporary advisors and financial controllers.

### **Purpose**

Section 438A of the *Local Government Act 1993* (the Act) enables the Minister (or their delegate) to issue a performance improvement order.

A performance improvement order can be used to require a council, or individual councillors, or both, to improve the council's performance, within a specified time.

A performance improvement order can also be used to change the quorum for a council's meeting where this is considered necessary to facilitate decision making.

### **Initiation of the process**

The OLG monitors the performance of councils and that may identify the potential need for a performance improvement order.

A council or any person can ask the Minister to issue a performance improvement order. Such requests, which may be referred to the OLG, should be accompanied by information and evidence demonstrating why an order is necessary to improve the performance of a council.

The OLG may recommend to the Minister that an order is necessary to improve the performance of a council or the Minister can act on their own to initiate the process.

The Minister is not obliged to act on a request or recommendation to issue a performance improvement order.

### **Criteria to be considered**

Section 438A of the Act provides that a performance improvement order may be issued if the Minister or their delegate "*reasonably considers*" action must be taken to improve the performance of the council. The issues or conduct in question should be sufficiently serious to warrant the order.

Section 413D of *Local Government (General) Regulation 2021* (Regulation) stipulates the criteria that must be considered before issuing a performance improvement order.

Examples of where a performance improvement order may be issued include:

- a council has consistently failed to implement required legislation or consider mandatory guidelines such as those related to Integrated Planning and Reporting
- a council has failed to heed advice from OLG and/or declined offers of assistance
- 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
- a council has failed to follow proper process in making a decision that will impose significant costs on the community
- a council has immediate and ongoing financial sustainability issues
- a council has failed to address an auditor's concerns
- A council is not following the required processes to appoint or manage its general manager.

### **Process for issuing a performance improvement order**

See section 438C of the Act.

#### Assessment of the circumstances of the council

OLG may conduct preliminary enquiries and review available information to assist the Minister (or their delegate) determine whether a performance improvement order may be necessary.

#### Notice of intention and draft performance improvement order

If the Minister considers a performance improvement order may be necessary, or may need to be varied, a notice of intention will be prepared and served on the council.<sup>1</sup>

The notice of intention will be a letter addressed to the general manager and mayor of the council. A copy of the draft performance improvement order will be attached to the notice of intention.

The letter will set out the Minister's concerns and indicate what is expected of the council or other persons in responding to the notice of intention.

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<sup>1</sup> The requirement to give notice of intention to issue (or vary) a performance improvement order may be dispensed with where the council is suspended, or the order is issued in response to the results of a public inquiry. (Section 438C(6))

The notice of intention/draft performance improvement order will contain the following information:

1. the reasons the Minister is proposing to issue or vary the performance improvement order;
2. details of the evidence supporting the need for improvement;
3. the proposed period for compliance with the order;
4. the specific actions required of the council and/or individual councillors, and the timeframes for taking those specific actions<sup>2</sup>;
5. the evidence required to demonstrate compliance/improved performance to the Minister;
6. compliance reporting requirements;
7. details of any proposal to appoint a temporary adviser and/or financial controller;
8. whether the Minister or the council will nominate the person to be appointed as temporary adviser;
9. if a temporary adviser is to be appointed on the recommendation of the council, a request for council to identify its preferred candidate;
10. the actions that may be taken by the Minister if the council does not meet the requirements of the performance improvement order.

The order can require a council to submit an improvement plan within a specified period addressing the actions to be taken. In such cases, the notice of intention could invite the council to make a submission on the timetable for compliance.

The council must be given at least 7 days to make submissions in response to the notice of intention to issue or vary a performance improvement order.

#### Actions to be taken by a council upon receipt of a notice of intention

The council should provide councillors with the opportunity to consider the notice of intention to issue or vary a performance improvement order at an open council meeting, where the notice should be tabled.<sup>3</sup>

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<sup>2</sup> In some circumstances, it may be appropriate to allow a council to identify the timeframe for the implementation of proposed actions set out in the draft performance improvement order; the requirement to identify such timeframes can be specified as a required action in the performance improvement order.

<sup>3</sup> This is procedural advice and not a statutory requirement.

### Consideration of submissions made in response to a notice of intention

The Minister is to consider any submissions from the council when deciding whether to issue or change the terms of the proposed performance improvement order. (Section 438C(5))

The Minister may seek advice from OLG in relation to any submissions made by the council.

Once the Minister has considered any submissions received from council, they (or their delegate) can:

- issue a performance improvement order as set out in the draft order
- issue an amended performance improvement order
- decide not to issue a performance improvement order

If it is decided not to issue the performance improvement order or variation, the council will be advised of the reasons in writing and requested to table this advice at the next available council meeting.

### Service and publication

If the Minister determines a performance improvement order will be issued, OLG will serve the order on behalf of the Minister.

The performance improvement order is to be made public, with the OLG and the council required to publish the performance improvement order on their websites. The council will be asked to table the performance improvement order at its next available council meeting.

### Issuing of a performance improvement order when the council is suspended

A performance improvement order may be issued to a council even if it is suspended and in such a case action can still be required of individual councillors, even though they are suspended in accordance with section 438P of the Act. For example, councillors could be required to complete training so they can better undertake their functions following the period of suspension.

## **Appointment of a temporary adviser**

See section 438G of the Act

### **Deciding to appoint a temporary adviser**

If the Minister issues a performance improvement order to a council, they may appoint one or more persons as a temporary adviser to the council.

The temporary adviser/s provides advice and assistance to the council to ensure it complies with the performance improvement order and monitors the council's compliance with the performance improvement order.

Clause 413DA of the Regulation stipulates that:

*In deciding whether to appoint a temporary adviser to a council, the Minister is to consider whether the appointment will, in the opinion of the Minister, assist the council to comply with, or implement actions under, the performance improvement order issued in respect of the council.*

In some cases, it will not be necessary to appoint a temporary adviser when issuing a performance improvement order.

### **Appointment process**

A temporary adviser can be appointed by inclusion in the performance improvement order.

The term of the appointment must be specified in the instrument used to appoint the temporary adviser. The term must not exceed the period for compliance with the performance improvement order.

The Minister decides who is to be appointed as a temporary adviser. The OLG may nominate a suitable person/s and/or the council may be invited to make recommendations.

Temporary advisers should be suitably qualified and experienced people with relevant expertise in local government and/or the matters outlined in the performance improvement order.

The Minister can terminate the appointment of a temporary adviser at any time.

### **Payment**

Where a temporary adviser is appointed on the recommendation of the council their salary is determined by the council; in any other case it is determined by the



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Minister. The salary to be paid should be agreed upon prior to the appointment of the temporary adviser.

Temporary advisers are appointed at the council's cost. Where the OLG pays the adviser, it will invoice the council for the costs involved.

### Responsibilities of the council following appointment

Council's general manager should meet with the temporary advisor as soon as practicable to brief them on the circumstances of the council. The general manager should also arrange for the temporary advisor to meet with the elected council to discuss their respective roles and the implementation of the performance improvement order.

Councillors and council staff are required to co-operate with the temporary adviser and provide any information or assistance necessary for the temporary adviser to exercise their functions.

The council must give the temporary adviser an opportunity to review any proposed compliance report at least 14 days before it is provided to the Minister.

## **Appointment of a financial controller**

See section 438HB of the Act.

### **Deciding to appoint a financial controller**

If the Minister issues a performance improvement order to a council they may appoint a financial controller to implement financial controls, and undertake other functions relating to the council's finances.

A financial controller may be appointed on the recommendation of the council or on the Minister's own initiative, but only after the Minister has considered any criteria prescribed by the regulations.

Section 413DB of the Regulation stipulates the criteria to be considered in deciding to appoint a financial controller.

A person can be appointed as both a financial controller and a temporary adviser.

### **Appointment process**

A financial controller can be appointed by inclusion of the appointment in the performance improvement order.

If a financial controller is proposed to be appointed in a subsequent order and notice of the appointment has not been given previously, the Act requires that notice of the proposed appointment be given before making the appointment.

The term of the appointment must be specified in the instrument by which the financial controller is appointed. The term must not exceed the council's compliance period with the performance improvement order.

The Minister decides who will be appointed as the financial controller. The OLG may nominate a suitable person and/or the council may be invited to make a recommendation.

The financial controller should be a suitably qualified person with relevant financial expertise in the area specified in the performance improvement order.

The Minister can terminate the appointment of a financial controller at any time.

### **Payment**

The financial controller's salary is determined by the Minister. It should be agreed upon by the proposed candidate prior to their appointment.

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Financial controllers are appointed at the council's cost.

Where the OLG pays the adviser, it will invoice the council for the costs involved.

### Responsibilities of the council following appointment

Councillors and council staff are required to co-operate with the financial controller and provide any information or assistance they reasonably require to exercise their functions.

In particular, the council is to give the financial controller an opportunity to review any proposed compliance report at least 14 days before it is provided to the Minister and is to give the Minister a copy of the financial controller's comments (if any) on the compliance report.

### Functions and powers of a financial controller

See section 438HC of the Act.

The Act specifies the functions and powers of financial controllers, including that no payment may be made from any funds of the council unless it is authorised by the financial controller.

The primary function of a financial controller is to implement financial controls and undertake other finance-related functions as specified in the order by which they were appointed.

A financial controller is to report to the Minister on a council's compliance with a performance improvement order, by commenting on any compliance report submitted by a council, or directly, if the council does not provide the opportunity to comment on a report it makes.

### **Compliance with performance improvement order**

The governing body of a council is responsible for ensuring the council's compliance with a performance improvement order.

A council complies with a performance improvement order only if the actions required under the order (including any actions required to be taken by individual councillors) are completed to the satisfaction of the Minister.

### **Monitoring and assessing compliance**

#### **Compliance reports**

A council must provide the Minister with written reports on its compliance with the requirements of a performance improvement order.

Council may be required to provide more than one compliance report.

Compliance reports must address the requirements specified in the performance improvement order and specify any actions taken that demonstrate compliance with the order.

Where a temporary adviser and/or financial controller has been appointed, the council must provide those appointees the opportunity to review any proposed compliance report at least 14 days before it is given to the Minister and must give the Minister a copy of any comments from the appointee/s on the compliance report.

#### **Assessing compliance**

The compliance report will be used by the Minister to assess compliance with the performance improvement order, along with any other information the Minister considers relevant.

The Minister may ask OLG to provide an assessment of the council's progress and/or compliance, and advice on any further intervention that may be warranted.

The finalisation of the implementation of the performance improvement order will be determined by the Minister.

When the council has implemented a performance improvement order to the satisfaction of the Minister, it will be advised in writing that no further action is contemplated. A copy of that advice will be published on OLG's website.

### **Non-compliance with a performance improvement order**

The Minister and/or OLG may undertake or recommend other appropriate intervention strategies if a council fails to comply with a performance improvement order. These options may include, but are not limited to:

- issuing a variation to the order;
- preparation of a departmental report in relation to alleged non-compliance by an individual councillor;
- ordering a temporary suspension period and appointment of an interim administrator;
- instigating a section 430 investigation;
- recommending a section 438U public inquiry be convened.

### **Variation of performance improvement order**

If the Minister decides to issue a variation to an existing performance improvement order, they should consider the criteria for issuing such orders as outlined in section 413D of the *Local Government (General) Regulation 2021* (Regulation).

### **Enforcement of performance improvement order against a councillor**

See section 438HA of the Act.

The Act provides that action can be taken against a councillor (or councillors) who has not complied with a requirement of a performance improvement order. The actions include issuing a compliance order and/or referring the matter to the NSW Civil and Administrative Tribunal (NCAT).

If there is a concern a councillor has not complied with an action required of them in a performance improvement order, the Departmental Chief Executive may arrange for a departmental report to be prepared as to whether a councillor/s has failed to act as required. The Departmental Chief Executive must arrange for a departmental report at the request of the Minister.

Following receipt of a departmental report, the Minister may determine the councillor/s failed to take action required by a performance improvement order and issue a compliance order to those councillor/s. The Minister must follow the process set out in the Act when doing so and ensure the order satisfies the requirements in the Act.

While a compliance order is in force against a councillor, the councillor is:

- not entitled to exercise any of the functions of the councillor other than those specified in the compliance order, and

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- not entitled to any fee or other remuneration, or to the payment of expenses or to the use of council facilities they would otherwise be entitled as a councillor, except as specified in the compliance order.

The Minister may request the Departmental Chief Executive to refer the matter to the NCAT for consideration, which could result in a finding of misconduct and disciplinary action. This can be done in addition to the issuing of a compliance order, after issuing such an order, or as an alternative to issuing an order.

The councillor/s is to be notified of any request to refer the matter to the NCAT and given the opportunity to make a submission on this course of action before the referral is made.<sup>4</sup>

The compliance order will identify the councillor's obligations in reporting on action/s required by the order.

The Minister is required to withdraw a compliance order if they are satisfied the councillor has taken the action specified in the compliance order.

If a councillor does not take the action specified in the order, it remains open for the non-compliance to be referred to the NCAT. As noted earlier, the councillor should be given the opportunity to make a submission on this course of action before the referral is made.

### Other actions

As mentioned above there are other actions available to the Minister and OLG if a council fails to comply with a performance improvement order. Suspension of the elected council and/or a public inquiry will generally be considered as next steps. The process for the suspension is dealt with in Section 2.

### Recovery of the costs of a public inquiry

The Departmental Chief Executive, on behalf of the state, can recover the reasonable expenses incurred by the state in holding a public inquiry (pursuant to section 438V of the Act) if it relates to a recurring problem with the administration of the council that has been the subject of a performance improvement order. Appendix 2 provides additional information about the cost recovery process.

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<sup>4</sup> This provision of an opportunity to make a submission is not specified in the Act, but considered good administrative practice.

## Section Two – Suspension orders

Section 438I of the Act provides the Minister with a power to suspend all councillors as the governing body of council for three months. This period may be extended once for up to a further three months. The purpose of a suspension is to allow an interim administrator to be appointed to restore the proper or effective functioning of a council.

The appointment of an interim administrator may be necessary to enable prompt action to be taken to correct a problem, provide time to build or restore relationships, allow effective business to resume, and/or to remedy a failure by a council to do something required of it.

The issuing of a performance improvement order is not a pre-requisite for the suspension of a council, but a failure to comply with such an order will generally lead to consideration of suspension.

Additionally, section 438W provides the Minister with a power to suspend all councillors during a public inquiry relating to that council.

Requests to the Minister for Local Government to issue a suspension order may be made by any person including the Departmental Chief Executive, or others, such as council officials, members of the public, other Ministers and other Members of Parliament.

The Minister is not obliged to act on every request to issue a suspension order.

### **Criteria to be considered**

See sections 438I and 438J of the Act and section 413E of the Regulation.

Section 438I of the Act provides that a suspension order may be issued if the Minister “*reasonably believes*” the appointment of an interim administrator is necessary to restore the ***proper or effective functioning*** of the council. Therefore, the issues or conduct in question should be sufficiently serious to warrant the order.

Section 438J of the Act makes provision for criteria to be considered when deciding whether a council should be suspended. The criteria to be considered are prescribed by section 413E of the Regulation.

Examples where it may be appropriate to issue an order include:

- a council is continually unable to function because of the inability to achieve or maintain a quorum

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- a council is unwilling, or lacks the capacity to improve performance in a timely manner
- the appointment of an interim administrator is necessary because the relationships between members of the elected body have broken down
- a council's poor performance is having a significant negative impact on its reputation and/or local government generally

### **Process for issuing an initial suspension order**

OLG may conduct preliminary enquiries and review available information to assist the Minister in considering the suspension criteria and deciding whether a suspension order may be warranted.

The Minister must issue a notice of intention to the council if they form a preliminary view that suspension may be warranted. The requirements for this notice are specified in section 438K of the Act.

The notice of intention to issue a suspension order will contain the following information:

- the reasons why it is proposed to issue a suspension order
- the duration of the proposed suspension

### **Council's response to notice of intention**

The council will be invited to make submissions to the Minister not less than 14 days from the date the notice was served, or if the Minister considers that it is a matter of urgency, not less than 7 days.

The notice of intention should be provided to all the councillors.

Where possible the council should consider the notice of intention at an open council meeting. Any council submission should be approved by a resolution of the council.

### **Consideration of submissions**

The Minister is to consider any submissions made by the council, and/or councillors when deciding whether to issue or change the terms of the proposed suspension order. (Section 438K)

If the Minister determines not to proceed with the suspension, the council will be advised in writing and requested to table this advice at its next available council meeting.



### **Issuing of order to suspend**

If the Minister decides to suspend the council, a suspension order will be published in the Government Gazette to give effect to the decision. (Section 438I of the Act)

OLG will inform the council and councillors of the suspension as soon as practicable following the gazettal.

The order will be published on OLG's website.

### **Period of suspension**

While the initial period of suspension is limited to three months, it can be extended in certain circumstances, for a total maximum period of six months as provided for in Sec 438O of the Act.

### **Extension of a period of suspension**

The Minister may amend the suspension order to extend or further extend the council's suspension. This must be by order published in the Gazette on or before the end of the existing period of suspension.

A suspension may be extended only if the Minister reasonably believes an extension is necessary to restore the proper or effective functioning of the council. The maximum total period for which a council can be suspended by a suspension order is 6 months unless the Act allows for a longer period for another reason.<sup>5</sup>

The Minister is required to give council notice of at least 7 days before the order extending the suspension is made. It should be noted that there is no requirement in the Act that invites submissions regarding the proposed extension.

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<sup>5</sup> The Act enables a maximum of two suspension periods (of 3 months) on the same factual matters in a council term. (Section 438Q) This does not prevent the consideration of an additional suspension period in relation to different factual matters. Section 438W provides that a council can be suspended during public inquiry if the Minister considers it in the public interest to suspend the council.

### **Appointment of an interim administrator**

See section 438M of the Act.

The Minister must appoint one or more interim administrators to fulfil the functions of the governing body (including the functions of mayor) during the period of suspension. This can be done in the suspension order or by subsequent order published in the Gazette.

Additional information on the selection and appointment of interim administrators can be found in an appendix to this document.

More than one interim administrator may be appointed for a council (with the same or different functions).

If more than one interim administrator is appointed for a council, one of the appointees will be specified as the person who will exercise the functions of the mayor.

If more than one interim administrator is appointed, the Minister may give directions for the purpose of resolving any issues arising from there being more than one interim administrator.

### **Payment of the interim administrator/s**

An interim administrator must be paid a salary from the council's funds, determined by the Minister.

The level of remuneration will be generally based on the aggregate cost of councillor and mayoral fees for the relevant council, as set by the Local Government Remuneration Tribunal. The remuneration may be varied from this by the Minister.

### **Expenses**

An interim administrator is entitled to any reasonable travel and out-of-pocket expenses incurred in connection with their office, also to be paid from Council's consolidated fund. Such travel and out-of-pocket expenses are to be determined in accordance with Council's policy adopted under section 252 of the Act.

### **Termination of an interim administrator**

The Minister may terminate an interim administrator's appointment at any time.

### **Actions of the council/administrator following suspension**

The interim administrator will be requested to table the suspension order at the next available council meeting and publish the order on the council's website.

A performance improvement order may be issued to the council identifying what action may be required from the interim administrator during the suspension period. The council should take action to comply with any such order.

During the period of suspension, the interim administrator may be asked by the Minister and/or OLG to provide reports and information on their activities and the council's performance.<sup>6</sup>

During the period of suspension councillors are suspended from civic office and are not entitled to exercise any functions of civic office, or to receive any fee or other remuneration, including the payment of expenses or use of council facilities.

Council's general manager should arrange for the immediate return of any equipment/assets issued to councillors and restrict access to any council facilities including email accounts.

However, because suspended councillors can be required to take action specified in a performance improvement order while suspended under section 438P of the Act, the interim administrator may decide to allow councillors to retain some council property and/or use council facilities for the purposes of meeting a requirement under a performance improvement order.

### **Report on period of administration**

See section 438N of the Act.

Section 438N of the Act stipulates that an interim administrator is to give the Minister a written report about their administration of the council no less than 14 days before the end of the initial suspension period of the council. The report is to include any recommendations of the interim administrator in relation to improving or restoring the proper and effective functioning of the council. The Minister may refer the report to OLG for assessment and advice.

If the Minister varies the suspension order to extend the suspension period of a council, the interim administrator is to prepare a further report in respect of that

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<sup>6</sup> This is most likely in a circumstance where a performance improvement order has not been issued, which would otherwise require compliance reporting.

extended period and provide that report to the Minister no less than 14 days before the end of the extended suspension period.

**Monitoring during period of suspension**

The OLG will monitor the performance of the council during the period of suspension and provide advice to the Minister on the need for any further intervention, including whether an extension of the suspension period may be warranted.

## **Appendix 1**

### **Appointment of interim administrators**

See section 438M of the Act.

#### Selection

Interim administrator appointments are made by the Minister, generally on the advice of the Departmental Chief Executive.

The OLG may, from time to time, call for expressions of interest from persons who are interested in appointment as an interim administrator and/or maintain a list of suitable persons who have expressed interest.

The Minister may select any person/s they deem suitable to act as interim administrators and are not limited to the panel of suitably qualified persons.

Interim administrator/s are required to be able to demonstrate that they have the capacity to fulfil the functions of the governing body of the council during the period of suspension.

In particular, interim administrators will be required to have:

- Extensive knowledge and experience in public administration
- Understanding of local government
- Ability to conduct council meetings and engage with the local community

Consideration may be given to appointing persons with relevant expertise in dealing with the performance issues that have given rise to the consideration of suspension. A number of administrators may be appointed with different skills.

#### Place of work

The interim administrator is expected to attend the council administration centre when undertaking the administrative functions of the role. The council is to provide office space and other necessary support.

#### Term of appointment

An interim administrator's term of appointment will be specified in the relevant suspension order but will not exceed the period during which the council is suspended. The term of appointment may be extended if the duration of the council suspension is extended.

Time commitment:

The interim administrator is expected to commit the necessary time to effectively:

- conduct council meetings
- undertake the civic and ceremonial functions of the governing body
- undertake the administrative functions of the role, such as oversight of the general manager and implementation of any performance improvement orders.

Provisions of facilities

The council will provide facilities sufficient for the interim administrator to perform their duties. Reasonable out of pocket expenses will be reimbursed in accordance with the council's adopted expenses and facilities policy when applicable, and otherwise by agreement.

Conduct and performance

The interim administrator is subject to the *Model Code of Conduct for Local Councils in NSW*. Complaints about the conduct of an interim administrator are made to the Office of Local Government.

The interim administrator's ongoing appointment is subject to satisfactory performance, as determined by the Minister.

The interim administrator can be replaced at any time during the suspension period if the Minister is dissatisfied with the progress being made.

## **Appendix 2**

### **Recovery of expenses if a public inquiry is held following a Ministerial intervention**

See section 438V of the Act.

The Departmental Chief Executive, on behalf of the State, can recover the reasonable expenses incurred by the State in holding a public inquiry if the inquiry relates to a recurring problem with the administration of the council. (Section 438V(1))

The recurring problem at the council must have been the subject of Ministerial intervention. (Section 438V(2))

Ministerial intervention means the issuing of a performance improvement order or a temporary suspension of the council. (Section 438V(3))

The reasonable expenses that can be recovered include (but are not limited to) the:

- remuneration paid to the commissioner or commissioners who hold the public inquiry, and
- remuneration paid to staff assisting with the inquiry, and
- expenses associated with the attendance of witnesses or other persons at the inquiry. (Section 438V(8))

Careful consideration will need to be given to the inclusion of other expenses that fall outside of those above to ensure that they can be justified as being reasonable. Some examples of such expenses are the costs of transcriptions, venues, advertising and expert opinions.

The OLG will issue a notice of intention to the council if it is proposed to recover the expenses that have incurred by the State in holding a public inquiry. The notice will specify the amount and nature of the expenses to be recovered and invite the council to make a submission.<sup>7</sup>

A notice of intention to recover expenses is issued in writing to the general manager, on behalf of the council.

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<sup>7</sup> While not required under the Act, this process is necessary for the purposes of procedural fairness.

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The consultation period on the notice of intention to recover expenses will be no less than 14 days.

The Departmental Chief Executive will have regard to any submissions made by the council when deciding whether to issue or change the terms of the proposed recovery of expenses.