



New South Wales

Local Government Amendment (Open Meetings) Bill 1997

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to specify the limited circumstances in which a local council (and those of its committees of which all members are councillors) may close part of a council or committee meeting to the public, and
 - (b) to require a council to allow public inspection and copying of its documents (subject to certain exceptions), and
 - (c) to ensure that non-councillor members of council committees are afforded exemption from personal liability in respect of matters or things done in good faith for the purpose of executing the *Local Government Act 1993* or any other Act.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Local Government Act 1993* set out in Schedule 1.

Public attendance at council meetings

Schedule 1 [1] repeals section 9 (2) of the *Local Government Act 1993* (*the Act*) and inserts proposed section 9 (2) and (2A) to expand the obligations of local councils in giving notice of proposed meetings. **Schedule 1 [2], [11]** and **[12]** make consequential amendments.

Schedule 1 [3] repeals section 10 (Who is entitled to attend meetings?) and replaces it with proposed sections 10–10E.

Proposed section 10 largely restates the current section 10 (1) and (4), which makes it clear that, except as otherwise provided in Part 1 of Chapter 4 of the Act, everyone is entitled to attend a meeting of a local council (and meetings of council committees of which all the members are councillors) unless the person has been expelled from the meeting. (The proposed section inserts a new provision to the effect that a person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.)

Proposed section 10A empowers a local council to close a meeting to the public during its receipt or discussion of the matters specified in the proposed section. The proposed section is largely a restatement of the current section 10 (2), but it omits certain grounds for closure set out in that subsection (such as the discussion of proposals for the sale or purchase of land), narrows the scope of certain other grounds (such as the discussion of commercial information) and introduces a new ground (the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting, or proposes to conduct, business).

Proposed section 10B limits the extent to which part of a meeting may be closed in accordance with proposed section 10A.

Proposed section 10C allows, in urgent cases, the closure of part of a meeting without the notice required by section 9.

Proposed section 10D expands the requirements of the current section 10 (3) in relation to the taking of a decision to close part of a meeting and the recording of that decision in the minutes of the meeting.

Proposed section 10E is a new provision. It requires a council (or a council committee) that closes part of a meeting to the public to determine a date (or dates) on which the public is to be given reasonable access to the minutes of the closed part of the meeting and the associated business papers. However, that access is not required to be given to the parts of the minutes or the business papers that deal with matters specified in the proposed section (such as the personal hardship of any resident or ratepayer).

Schedule 1 [4] and [13] are consequential on the proposed repeal of section 10 (2) and the proposed enactment of section 10A.

Schedule 1 [5] is consequential on the proposed enactment of section 10E.

Public access to council documents

Schedule 1 [6] amends section 12 (What information is publicly available?) of the Act so as to include development applications (made under the *Environmental Planning and Assessment Act 1979*) and building applications, and documents associated with such applications, among the council documents that everyone is entitled to inspect free of charge. However, proposed section 12 (1A) (inserted by **Schedule 1 [7]**) provides that the right to inspect development applications and building applications does not extend to the inspection of certain parts of the plans and specifications, and certain commercial information, associated with those applications.

Schedule 1 [9] repeals section 12 (6), which currently provides that the council's obligations under section 12 in relation to public inspection of the documents specified in that section do not prevent it from allowing inspection (free of charge) of any other of its documents. Schedule 1 [9] replaces section 12 (6) with proposed subsections (6)–(8). Rather than merely empowering a council to *allow* inspection of its other documents free of charge, proposed section 12 (6) *requires* a council to do so, unless the council is satisfied that allowing inspection of the document would, on balance, be contrary to the public interest. Proposed section 12 (7) exempts some documents from this requirement (the same documents as are exempted from the requirements of the proposed section 10E), and proposed section 12 (8) precludes a council from determining that inspection is not in the public interest on the grounds that the inspection may cause embarrassment to the council or on similar grounds.

Schedule 1 [10] inserts proposed sections 12A and 12B.

Proposed section 12A requires any member of the staff of a council who restricts access to a council document or other council information to provide the council with written reasons for the restriction. The proposed section also makes provision for council review and removal of such a restriction.

Proposed section 12B is to the effect that a right under the Act to inspect a document includes the right to take away a copy of the document. The proposed section is largely a restatement and expansion of the current section 12 (4) (which is concerned only with the documents specified in section 12 (1) and is consequentially repealed by **Schedule 1 [8]**). Certain documents (such as building certificates) are exempted from the operation of the section.

Personal liability of members of council committees

Schedule 1 [14] repeals and re-enacts section 731 (Liability of councillors, employees and other persons) to make it clear that the current exemption from personal liability conferred on the persons specified in that section extends to non-councillor members of council committees and persons acting under the direction of such committees.

First print



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New South Wales

Local Government Amendment (Open Meetings) Bill 1997

No , 1997

A Bill for

An Act to amend the *Local Government Act 1993* to specify the limited circumstances in which a local council or certain council committees may close part of a meeting to the public; to make further provision concerning the public's right to inspect and obtain copies of documents held by a council; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Local Government Amendment (Open Meetings) Act 1997*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Local Government Act 1993 No 30

The *Local Government Act 1993* is amended as set out in Schedule 1.

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Schedule 1 Amendments

(Section 3)

[1] Section 9 Public notice of meetings

Omit section 9 (2). Insert instead:

- (2) A council and each such committee must have available for the public at its offices and at each meeting copies (for inspection or taking away by any person) of the agenda and the associated business papers (such as correspondence and reports) for the meeting. 5
- (2A) In the case of a meeting whose agenda includes the receipt of information or discussion of other matters that, in the opinion of the general manager, is likely to take place when the meeting is closed to the public: 10
 - (a) the agenda for the meeting must indicate that the relevant item of business is of such a nature (but must not give details of that item), and 15
 - (b) the requirements of subsection (2) with respect to the availability of business papers do not apply to the business papers for that item of business.

[2] Section 9 (5) 20

Omit "a business paper".

Insert instead "an agenda or of a business paper".

[3] Sections 10–10E

Omit section 10. Insert instead:

10 Who is entitled to attend meetings? 25

- (1) Except as provided by this Part:
 - (a) everyone is entitled to attend a meeting of the council and those of its committees of which all the members are councillors, and
 - (b) a council must ensure that all meetings of the council and of such committees are open to the public. 30

- (2) However, a person (whether a councillor or another person) is not entitled to be present at a meeting of the council or of such a committee if expelled from the meeting:
 - (a) by a resolution of the meeting, or 5
 - (b) by the person presiding at the meeting if the council has, by resolution, authorised the person presiding to exercise the power of expulsion.
- (3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations. 10

10A Which parts of a meeting can be closed to the public?

- (1) A council, or a committee of the council of which all the members are councillors, may close to the public so much of its meeting as comprises: 15
 - (a) the discussion of any of the matters listed in subclause (2), or
 - (b) the receipt or discussion of any of the information so listed.
- (2) The matters and information are the following: 20
 - (a) personnel matters concerning particular individuals,
 - (b) the personal hardship of any resident or ratepayer,
 - (c) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business, 25
 - (d) commercial information of a confidential nature that would, if disclosed:
 - (i) prejudice the commercial position of the person who supplied it, or 30
 - (ii) confer a commercial advantage on a competitor of the council, or
 - (iii) reveal a trade secret,

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| (e) | information that would, if disclosed, prejudice the maintenance of law, | |
| (f) | matters affecting the security of the council, councillors, council staff or council property, | |
| (g) | advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege. | 5 |
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| (3) | A council, or a committee of the council of which all the members are councillors, may also close to the public so much of its meeting as comprises a motion to close another part of the meeting to the public. | 10 |
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| (4) | Members of the public must be allowed to make representations to or at a meeting, before any part of the meeting is closed to the public, as to whether that part of the meeting should be closed. | 15 |

10B Further limitations relating to closure of parts of meetings to public

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| (1) | A meeting is not to be closed during the discussion of anything referred to in section 10A (2): | 20 |
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| (a) | except for so much of the discussion as is necessary to preserve the relevant confidentiality, privilege or security, and | |
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| (b) | if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret—unless the council or committee concerned is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest. | 25

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| (2) | A meeting is not to be closed during the receipt and consideration of information or advice referred to in section 10A (2) (g) unless the advice concerns legal matters that: | |

- (a) are substantial issues relating to a matter in which the council or committee is involved, and
 - (b) are clearly identified in the advice, and
 - (c) are fully discussed in that advice.
- (3) If a meeting is closed during the discussion of a motion to close another part of the meeting to the public (as referred to in section 10A (3)), the consideration of the motion must not include any consideration of the matter or information to be discussed in that other part of the meeting (other than consideration of whether the matter concerned is a matter referred to in section 10A (2)).
- (4) For the purpose of determining whether the discussion of a matter in an open meeting would be contrary to the public interest, it is irrelevant that:
 - (a) a person may misinterpret or misunderstand the discussion, or
 - (b) the discussion of the matter may:
 - (i) cause embarrassment to the council or committee concerned, or to councillors or to employees of the council, or
 - (ii) cause a loss of confidence in the council or committee.
- (5) In deciding whether part of a meeting is to be closed to the public, the council or committee concerned must have regard to any relevant guidelines issued by the Director-General.

10C Notice of likelihood of closure not required in urgent cases

Part of a meeting of a council, or of a committee of the council of which all the members are councillors, may be closed to the public while the council or committee

considers a matter that has not been identified in the agenda for the meeting as a matter that is likely to be considered when the meeting is closed, but only if:

- (a) it becomes apparent during the discussion of a particular matter that the matter is a matter referred to in section 10A (2), and 5
- (b) the council or committee, after considering any representations made under section 10A (4), resolves that further discussion of the matter:
 - (i) should not be deferred (because of the urgency of the matter), and 10
 - (ii) should take place in a part of the meeting that is closed to the public.

10D Grounds for closing part of meeting to be specified

- (1) The grounds on which part of a meeting is closed must be stated in the decision to close that part of the meeting and must be recorded in the minutes of the meeting. 15
- (2) The grounds must specify the following:
 - (a) the relevant provision of section 10A (2),
 - (b) the matter that is to be discussed during the closed part of the meeting, 20
 - (c) the reasons why the part of the meeting is being closed, including (if the matter concerned is a matter other than a personnel matter concerning particular individuals, the personal hardship of a resident or ratepayer or a trade secret) an explanation of the way in which discussion of the matter in an open meeting would be, on balance, contrary to the public interest. 25

10E Minutes and business papers relating to closed parts of meetings 30

- (1) If a council or a committee of the council of which all the members are councillors closes any part of a meeting, it must, in accordance with this section, give any person reasonable access to the business papers for, and the minutes of, that part of the meeting. 35

Schedule 1 Amendments

- (2) The council or committee concerned must, at the meeting, determine by resolution the dates on and from which access to the business papers and the minutes is to be given.
- (3) The date determined in relation to the business papers may differ from the date determined in relation to the minutes. 5
- (4) The date determined in each case must be such as to allow reasonable access to both the business papers and the minutes before the council is entitled to destroy the business papers in accordance with the regulations. 10
- (5) The council or committee may, if it considers it appropriate to do so, by subsequent resolution alter a date determined under subsection (2) to a date that is earlier (but not later) than the date so determined. 15
- (6) The council must keep a register of business papers and minutes referred to in this section specifying, in relation to each business paper and minute, the date on and from which access to it is to be given.
- (7) However, this section does not require access to be given to such parts of the business papers or the minutes as deal with any of the following: 20
 - (a) personnel matters concerning particular individuals,
 - (b) the personal hardship of any resident or ratepayer, 25
 - (c) trade secrets,
 - (d) a matter the disclosure of which would:
 - (i) constitute an offence against an Act, or
 - (ii) found an action for breach of confidence.

[4] Section 11 Public access to correspondence and reports 30

Omit "section 10 (2)" from section 11 (3).
Insert instead "section 10A (2)".

[5] Section 12 What information is publicly available?

Omit the thirteenth and fourteenth dot points and the matter following those dot points from section 12 (1).

Insert instead:

- agendas and business papers for council and committee meetings (but not including, until the relevant date determined under section 10E, business papers for matters considered when part of a meeting is closed to the public) 5
- minutes of council and committee meetings, but restricted, until the relevant date determined under section 10E (in the case of any part of a meeting that is closed to the public), to the recommendations of the meeting 10
- the register of business papers and minutes referred to in section 10E (6)

[6] Section 12 (1) 15

Insert after the seventeenth dot point:

- applications under Part 1 of Chapter 7 for approval to erect a building, and associated documents
- development applications (within the meaning of the *Environmental Planning and Assessment Act 1979*) and associated documents 20

[7] Section 12 (1A)

Insert after section 12 (1):

- (1A) Despite subsection (1) and the other provisions of this Act, a person does not have the right to inspect so much of a development application, or an application under Part 1 of Chapter 7 for approval to erect a building, as consists of: 25
 - (a) plans and specifications, other than such plans of a proposed building as merely show its height and its external configuration in relation to the site on which it is proposed to be erected, or 30

(b) commercial information, if the information would be likely:

- (i) to prejudice the commercial position of the person who supplied it, or
- (ii) to reveal a trade secret.

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[8] Section 12 (4)

Omit the subsection.

[9] Section 12 (6)

Omit the subsection. Insert instead:

(6) The council must allow inspection of its other documents free of charge unless, in the case of a particular document, it is satisfied that allowing inspection of the document would, on balance, be contrary to the public interest. 10

(7) However, subsection (6) does not apply to the part (if any) of a document that deals with any of the following: 15

(a) personnel matters concerning particular individuals,

(b) the personal hardship of any resident or ratepayer,

(c) trade secrets, 20

(d) a matter the disclosure of which would:

(i) constitute an offence against an Act, or

(ii) found an action for breach of confidence.

(8) For the purpose of determining whether allowing inspection of a document would be contrary to the public interest, it is irrelevant that the inspection of the document may: 25

(a) cause embarrassment to the council or to councillors or to employees of the council, or

(b) cause a loss of confidence in the council, or 30

(c) cause a person to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

Note. Subsection (8) is in similar terms to section 59A (Public interest) of the *Freedom of Information Act 1989*. 35

[10] Sections 12A and 12B

Insert after section 12:

12A Restriction of access to information

- (1) If the general manager or any other member of the staff of a council decides that access to a document or other information held by the council should not be given to the public or a councillor, the person concerned must provide the council with written reasons for the restriction. 5
- (2) The reasons must be publicly available. 10
- (3) The council must review any such restriction no later than 3 months after it is imposed.
- (4) The council must, at the request of any person made after the expiry of a period of 3 months after that review (or of a period of 3 months after the most recent of any subsequent reviews), carry out a further review of the restriction. 15
- (5) The council must remove the restriction if, at any time:
 - (a) it finds that there are no grounds for the restriction, or 20
 - (b) access to the relevant document or other information is obtained under the *Freedom of Information Act 1989*.
- (6) A review is not required under this section if the restriction concerned has been removed. 25

12B Copies of documents

- (1) A right under this Act to inspect a document includes the right to take away a copy of the document.

- (2) Accordingly, a council must have a copy of all relevant documents available for copying by, or on behalf of, any person who asks for one.
 - (3) The copies may be taken away either free of charge or on payment of reasonable copying charges, as the council chooses (except as otherwise specifically provided by or under this Act). 5
 - (4) This section does not apply to the following:
 - (a) the residential roll of electors referred to in section 302 (1), 10
 - (b) the resumes of candidates for election referred to in section 308,
 - (c) building certificates.
- Note.** Section 174 (3) provides that a person may obtain a copy of a building certificate from the council's record with the consent of the owner of the building (and on payment of the approved fee). 15

[11] Section 367 Notice of meetings

Omit "business paper relating to" from section 367 (3).
Insert instead "agenda for, and the business papers relating to,".

[12] Section 367 (3) 20

Omit "and the business paper in".
Insert instead ", agenda and business papers in".

[13] Section 664 Disclosure and misuse of information

Omit "a meeting or part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10 (2)" from section 664 (1A). 25
Insert instead "part of a meeting of a council or a committee of a council is closed to the public in accordance with section 10A (1)".

[14] Section 731

Omit the section. Insert instead:

731 Liability of councillors, employees and other persons

A matter or thing done by the Minister, the
Director-General, a council, a councillor, a member of a 5
committee of the council or an employee of the council
or any person acting under the direction of the Minister,
the Director-General, the council or a committee of the
council does not, if the matter or thing was done in good
faith for the purpose of executing this or any other Act, 10
and for and on behalf of the Minister, the
Director-General, the council or a committee of the
council, subject a councillor, a member, an employee or
a person so acting personally to any action, liability,
claim or demand. 15

LOCAL GOVERNMENT AMENDMENT (OPEN MEETINGS) BILL

Schedule of the amendments referred to in the Legislative Council's Message of 27 November 1997.

No 1 Page 5, Schedule 1 [3], proposed section 10A. Insert after line 16:

- (5) As soon as practicable after 30 June (and, in any case, no later than 31 August) in each year the council is to furnish the Minister with a report specifying the amount of time, expressed as a percentage of the total time spent in meetings of the council and those of its committees of which all the members are councillors, during which parts of those meetings were closed to the public.
- (6) As soon as practicable after 31 August in each year the Minister is to table, or cause to be tabled, in both Houses of Parliament a report:
 - (a) setting out the information furnished to the Minister under this section, and
 - (b) identifying, in relation to each such item of information, the council that furnished the information.

No 2 Page 5, Schedule 1 [3], proposed section 10B, line 19. Omit "be". Insert instead "remain".

No 3 Page 9, Schedule 1 [7], lines 29 and 30. Omit "plans and specifications, other than such plans of a proposed building as".

Insert instead "the plans and specifications for any residential parts of a proposed building, other than plans that".
