

# Appendix two – Statutory powers relevant to council accountability under the Local Government Act

This table provides an overview of the main discretionary powers relevant to council accountability that are available to the Minister for Local Government and Departmental Chief Executive under the *Local Government Act 1993* (NSW) (LG Act). It also includes the 'Key purpose' of the relevant power as stated in the OLG's 2017 Improvement and Intervention Framework in relation to NSW Councils.

**Note on delegations:** During the audit period, the Departmental Chief Executive position has been held by the Secretary of the Department of Planning and Environment. The Secretary had delegated their powers under the LG Act to the deputy secretary and executive director level. The Minister for Local Government had not delegated their powers.

Power	Responsible officer	Key purpose(s) stated in the OLG's 2017 framework
<b>Issue guidance to councils relating to council functions</b>		
Issue guidance that councils must take into consideration before exercising functions (s. 23A)	Departmental Chief Executive	To provide guidance To provide expected standard
<b>Order provision of documents or information</b>		
Order provision of documents or information concerning the council, its operations or activities (s. 429)	Minister for Local Government or Departmental Chief Executive	To require council to provide information and documents to determine whether or not to exercise any other investigative function  To warn council that its performance is being monitored
<b>Investigating councils</b>		
Preliminary enquiries to determine whether to investigate (s 734A)	Departmental Chief Executive	To make enquiries to determine whether or not to exercise the power of investigation  To warn council that its performance is being monitored
Investigate any aspect of a council or its work and activities (s 430)	Departmental Chief Executive	To investigate serious issues relating to the operations of a council
Order compliance with investigation recommendations (s 434)	Minister for Local Government	To enforce s 430 recommendations if required  To enforce compliance using an established sanction
Recovery of expenses of investigation from council (s 434B)	Departmental Chief Executive	n/a

Power	Responsible officer	Key purpose(s) stated in the OLG's 2017 framework
<b>Performance improvement orders, temporary advisers and financial controllers</b>		
Criteria to be considered are in Part 13, Division 14 of the 'Local Government (General) Regulation 2021'		
Issue an order in respect of a council if the Minister reasonably considers that action must be taken to improve the council's performance (a 'performance improvement order') (s 438A)	Minister for Local Government	To provide a mechanism to act early in order to provide guidance as to how a council can remedy an emerging issue
Appoint a temporary advisor (s 438G)	Minister for Local Government	To provide advice and assistance to a council for the purpose of ensuring that it complies with a performance improvement order To monitor a council's compliance with a performance improvement order
Enforcement of performance improvement order against councillor (s 438HA)	Minister for Local Government	To enforce action required of individual councillors when a performance improvement order is issued to a council
Appoint a financial controller (s 438HB)	Minister for Local Government	To improve financial controls and other functions relating to council finances as specified in any order To authorise payments from council funds
<b>Suspension orders and interim administrators</b>		
Criteria to be considered are in Part 13, Division 14 of the 'Local Government (General) Regulation 2021'		
Issue an order to temporarily suspend a council if the Minister reasonably believes that the appointment of an interim administrator is necessary to restore the proper and effective functioning of the council (ss 438I and 438M) or during a public inquiry (s 438W)	Minister for Local Government	To enable prompt action to be taken to correct a problem, provide time out to build or restore relationships, allow effective business to resume and/or remedy a failure by a council to do something that is required of it
<b>Public inquiry</b>		
Appoint a commissioner to conduct a public inquiry (s 438U)	Minister for Local Government	To examine council dysfunction in a public and independent process To enforce compliance
Recover the reasonable expenses of a public inquiry from council (s 438V)	Departmental Chief Executive	n/a
<b>Dismissal of council and appoint an administrator</b>		
Declare all civic offices in a council to be vacant on the recommendation of the Minister following a public inquiry (s 255)	Governor of New South Wales	n/a