

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Please complete this schedule with information about how your agency plans to implement each of the ICAC's corruption prevention recommendations arising from the above investigation. The implementation plan should include details of the actions, timeframes and how your agency proposes to evaluate the effectiveness of the implementation of each recommendation. Please provide the name of a contact person in your agency from whom we can seek more detail if needed. ICAC requested an update on 29 March 2013.

Recommendation 7.

That the NSW Division of Local Government be given the authority through legislative amendment to require councils in NSW to adopt policy and practice considered to be of state-wide significance by the Division's Chief Executive. This amendment should include an appeal mechanism to the Chief Executive for councils seeking specific dispensation.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

The ability of the Division to require councils in NSW to adopt certain policies and practices will be enhanced by the Local Government Amendment (Early Intervention) Bill 2013 (currently before Parliament). If passed, that Bill will allow the Minister for Local Government to require councils to comply with certain policies and practices by issuing a performance improvement order directing that a council take any actions that the Minister considers necessary to improve or restore the proper or effective functioning of the council to improve their performance. If a council fails to comply with a performance improvement order, the Minister would have the power to suspend councils for 3 months, extendable for another 3 months, and appoint an administrator to improve or restore the proper or effective functioning of a council.

In addition to this, further consideration of the appropriate regulatory vehicle for mandating minimum standards will be undertaken as part of the review of the *Local Government Act 1993*.

Supporting material

Local Government Amendment (Early Intervention) Bill 2013

Local Government Acts Review Taskforce website and Preliminary Ideas Paper, available via the Division's website www.dlg.nsw.gov.au.

Proposed evaluation methods

To be evaluated as part of the Act review process, and by way of review following the passing of the Early Interventions Bill 2013 (if passed).

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 8.

That non-compliance with the requirement for adoption of policy (as described in recommendation 7) be dealt with as a discipline issue for relevant council administrative officers under the Model Code of Conduct for Local Councils in NSW.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

It is noted that councils (as the governing body) are responsible for adopting policies, not council administrative officers. It is not considered appropriate that administrative officers be disciplined for matters that are the responsibility of the governing body of councils.

However, the intent of the recommendation is proposed to be achieved through the Local Government Amendment (Early Intervention) Bill 2013 (currently before Parliament).

Supporting material

Local Government Amendment (Early Intervention) Bill 2013

Proposed evaluation methods

Evaluation of the circumstances in which the Minister for Local Government acts on any powers given under the early interventions legislation.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 9.

That the NSW Division of Local Government reviews all circulars and pronouncements by the Department of Premier and Cabinet for issues of relevance to NSW local councils and issues guidelines to councils accordingly.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

It is the current practice of the Division to review information from many sources, including circulars and pronouncements issued by the Department of Premier and Cabinet, for issues relevant to local government. Where these sources raise issues relevant to local councils, it is the Division's practice to inform councils of these by either an email to general managers, a circular or guidelines, as appropriate to the nature of the matter.

The Division has recently engaged Eltons Consulting to assist it to develop a communications strategy to improve communications with the sector.

Supporting material

Refer to the circulars and guidelines available on the Division's website, www.dlg.nsw.gov.au

Proposed evaluation methods

Whether circulars and guidelines are issued by the Division as a result of circulars and pronouncements issued by the Department of Premier and Cabinet.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 10.

That the NSW Minister for Local Government seeks legislative amendment to the *Local Government Act 1993* to establish internal audit for local authorities as a statutory function.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

This recommendation is supported in principle.

The Minister for Local Government has appointed the Independent Local Government Review Panel to look at ways of strengthening the effectiveness of local government in NSW. The Panel has addressed the role of internal audit as part of an assurance framework in its publication, *Better, Stronger, Local Government – The Case for Sustainable Change Paper* issued in November 2012.

The Division expects that this issue will be further considered and addressed as part of the development of a new Local Government Act.

Supporting material

Better, Stronger, Local Government – The Case for Sustainable Change Paper issued in November 2012 issued by the ILGRP, available via the Division's website www.dlg.nsw.gov.au.

Terms of Reference of the Local Government Acts Review Taskforce, also available via the Division's website www.dlg.nsw.gov.au.

Proposed evaluation methods

To be evaluated as part of the Act review process.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 13.

That the NSW Minister for Local Government seeks legislative amendments to the *Local Government Act 1993* to require general managers to report to the elected council a decision to dismiss an internal auditor and the reasons for the decision.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

This recommendation is supported in principle. The Division expects that this issue will be considered and addressed as part of the development of a new Local Government Act.

Supporting material

As the Act review is currently in process there is no material available at this time.

Proposed evaluation methods

To be evaluated as part of the Act review process.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 14.

That the NSW Minister for Local Government seeks legislative amendments to the *Local Government Act 1993* to provide internal auditors unfettered access to all documents and any council staff they deem necessary for the conduct of their role.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

This recommendation is supported in principle, except to the extent that the internal auditor is able to deem necessary what documents they may have access to. The Division considers that this would remove any accountability and creates the risk of an auditor being able to access documents for private or other improper purposes.

The Division expects that this issue will be considered and addressed as part of the development of a new Local Government Act.

Supporting material

As the Act review is currently in process there is no material available at this time.

Proposed evaluation methods

To be evaluated as part of the Act review process.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 15.

That the NSW Minister for Local Government amends Part 9.2(d) of the Model Code of Conduct for Local Councils in NSW to allow councillors to provide information to an internal auditor on any matter related to council business.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

Following extensive consultation with the sector, including council internal auditors, the recommendation in the above form was broadly rejected. This is because it was not considered appropriate for councillors to have access to non-senior staff under any circumstances.

As an alternate way of implementing the Commission's recommendation, clause 6.2(d) of the revised Model Code of Conduct now allows councillors access to the chair of a council's audit committee. The committee chair may be provided with any information by individual councillors reasonably necessary for the external auditor or audit committee to effectively perform their functions. In effect, this will allow the chair of the council's audit committee to bring such information to the attention of the committee when it determines the council's internal audit program.

Supporting material

Refer to clause 6.2(d) of the prescribed Model Code of Conduct prescribed under the Local Government (General) Regulation 2005, available on the Division's website www.dlg.nsw.gov.au.

Proposed evaluation methods

To be evaluated as part of implementation of the new model code.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 16.

That the NSW Minister for Local Government seeks legislative amendment of section 376(2) of the *Local Government Act 1993* to remove the automatic entitlement of a general manager to attend an audit committee meeting.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

The principle behind this recommendation is supported, although consultation with internal auditors indicated that there are mixed views on this. As a general rule, it was believed that general managers should be permitted to attend but not participate in audit committee meetings so that they can implement the outcomes of internal audit activities. However, it was acknowledged that there may be circumstances where it is appropriate for the internal audit committee to ask the general manager to leave. The consultation indicated that in cases where general managers have been asked to leave committee meetings, they have generally complied.

The Division expects that this issue will be considered and addressed as part of the development of a new Local Government Act.

Supporting material

As the Act review is currently in process there is no other material available at this time.

Proposed evaluation methods

To be evaluated as part of the Act review process.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 26.

That the Chief Executive of the NSW Division of Local Government amends the *Standard contract for the employment of general managers* to include specific provision for a council to suspend the general manager from duty on a reasonable apprehension that he/she has engaged in corrupt conduct or serious misconduct.

Summary of response

The recommendation will be:

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

The principle behind this recommendation is supported in part. However, given the recent history of arbitrary terminations of general managers' contracts, it is considered that implementation of this recommendation in its proposed form may result in the potential for misuse.

The Division considers that adequate provision for the suspension of general managers is made under the *Local Government Act 1993* and the current standard contract for general managers. In particular:

- Section 440D of the *Local Government Act 1993* provides that the Minister for Local Government may suspend the general manager of a council from duty if:
 - The Independent Commission Against Corruption recommends that consideration be given to their suspension with the institution of disciplinary or other proceedings for serious corrupt conduct; or
 - If criminal proceedings for serious corrupt conduct are instituted against the them; or
 - If the general manager makes an admission of serious corrupt conduct.
- The standard contract for general managers currently allows councils to grant special leave to general managers. It is contemplated this would be used in a case where a general manager was required to step aside while matters were under investigation.

Supporting material

Sections 351 and 440D of the *Local Government Act 1993*

Standard Contract for General Managers, available on the Division's website, www.dlg.nsw.gov.au.

Proposed evaluation methods

No change required.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 27.

That Part 3 of the Model Code of Conduct for Local Councils in NSW be amended to improve the guidance provided to mayors in managing complaints against a general manager. In particular, guidance should be provided about the consideration of the suspension of the general manager in appropriate cases. A duty should also be placed on the mayor to monitor decisions and actions of the general manager and other council officers for possible detrimental action against staff or contractors who have provided information about alleged misconduct.

Summary of response

The recommendation will be:

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

This recommendation was completed through the review of the Model Code of Conduct. In particular, separate Procedures for the Administration of the Model Code of Conduct have been prescribed which give clearer guidance on the management of complaints made to mayors about the general manager (refer clauses 5.21-5.25 of the Procedures).

The mayor's role in managing complaints about the general manager is now limited. Unless complaints are resolved or referred to an external agency at the outset, the complaint must be referred to an independent conduct reviewer for preliminary assessment and, where serious, for investigation. The Division has also issued a guide to code of conduct processes for mayors to assist them to manage complaints about the general manager.

There is also now an explicit provision in the Model Code prohibiting detrimental action in reprisal for complaints made under the Code of Conduct (refer clauses 8.4-8.6 Model Code). Breaches of these provisions by councillors or the general manager are to be referred by councils to the Division for action.

The Guidelines for the Appointment and Oversight of General Managers issued by the Division in July 2011 also provide guidance in relation to the consideration of the suspension of the general manager.

ICAC's letter of 1 June 2012 (your ref Z10/0071) indicated the Commission has accepted the amendments to the Code as an alternative to the implementation to recommendation 27, given that the changes largely achieve the intended outcome behind the recommendation.

Supporting material

Model Code of Conduct (clauses 8.4-8.6), the Procedures for the Administration of the Model Code of Conduct (clauses 5.21-5.25), both prescribed under the Local Government (General) Regulation 2005, and the Guide to Code of Conduct Processes for Mayors are all available on the Division's website www.dlg.nsw.gov.au.

Guidelines for the Appointment and Oversight of General Managers issued by the Division in July 2011, at page 18, paragraph 2 of Section F, also available at www.dlg.nsw.gov.au.

Proposed evaluation methods

To be evaluated as part of implementation of the new model code.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 28.

That the NSW Division of Local Government endorses a core package of information for trainers to deliver to councillors. The package should be tailored to the needs of new and existing councillors.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

The Division has issued information to assist councils in the induction of new and existing councillors under its councillor development strategy. This includes:

- o Councillor Induction and Professional Development - A Guide for Councils issued by the Division in 2012, which identifies the core induction information that should be provided to new councillors; and
- o Councillor Handbook, originally issued in 2008 and updated in September 2012.

In addition, Councillor Workshops were held in 2012, which contained a core package of information for attending councillors – refer to the 2012 flyer for Councillor Workshops.

Additional information is also available on the Division's website for councillors and mayors in relation to their obligations and processes under the Model Code of Conduct.

Supporting material

The Councillor Development Strategy, available on the Division's website www.dlg.nsw.gov.au, under Browse by Topic, Councillor Development Strategy, includes the following publications:

- o Councillor Induction and Professional Development - A Guide for Councils;
- o Councillor Handbook; and
- o Flyer for Councillor Workshops.

Publications relating to the Model Code of Conduct 2013 published by the Division in March 2013 and available on the Division's website www.dlg.nsw.gov.au, choosing Model Code of Conduct 2013, then Councillor or Mayor, including:

- o Your Obligations as a Councillor;
- o Key Messages for Councillors and Mayors; and
- o Guide to Processes for Mayors.

Proposed evaluation methods

The evaluation of the Councillor Development Strategy will include analysis of attendance at workshops, stated improvements in councillor knowledge and use of online resources.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 29.

That all NSW councillors undertake a foundation education and training program endorsed by the NSW Division of Local Government, at a minimum of once per term.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

The Division conducted a foundation education and training program for councillors across NSW following the 2008 and 2012 Local Government elections.

Although the Division has no power to compel councillors to attend, of the 30 workshops conducted by the Division in 2012, councillors from 134 of the 152 NSW councils attended a workshop. The total number of councillors attending workshops was 717 of 1451 councillors, with 52% of attendees being first time councillors.

Supporting material

The Councillor Development Strategy, available on the Division's website www.dlg.nsw.gov.au, which includes the Flyer for Councillor Workshops.

Proposed evaluation methods

The Division has conducted councillor development sessions across NSW on two occasions now and is in the process of evaluating their effectiveness.

Plan for Implementation of Recommendations

Investigation into alleged corrupt conduct involving Burwood Council's General Manager and others

Recommendation 31.

That the NSW Division of Local Government promotes its capacity to provide information and assistance to councillors in the discharge of their role.

Summary of response

The recommendation will be:

<check one>

- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action proposed

This recommendation has been implemented through the Councillor Development Strategy, as outlined in the response to recommendation 28.

Information on resources available to councillors was provided to all councillors who participated in the councillor sessions in 2008 and 2012 (both at the councillors workshops and the candidate information seminars). This information is also available on the Division's website via links in the Councillor Handbook.

Following a restructure of the Division in 2012, there is also now a dedicated Council Governance Team that provides support and advice to councillors and council staff. The Council Governance Team actively engages with the sector and regularly attends and presents at local government events and conferences.

The Division has recently engaged Eltons Consulting to assist it to develop a communications strategy to improve communications with the sector.

Supporting material

Available on the Division's website, with particular reference to the supporting material referred to in the response to recommendation 28.

Proposed evaluation methods

The effectiveness of this being evaluated as part of the evaluation of the councillor development strategy.