Dear Dr Wald see

Thank you for your letter of 3 April 2014 about the implementation of the corruption prevention recommendations arising from Operation Magnus.

As requested, please find attached our final progress report in relation to the implementation of the corruption prevention recommendations relevant to the Office of Local Government.

I would like to thank you for granting an extension of time to allow the Office of Local Government to submit its final progress report after the Government had issued its response to the recommendations of the Local Government Acts Taskforce and the Independent Local Government Review Panel in September 2014.

As you may be aware, the Local Government Acts Taskforce recommended the development of a new Local Government Act that, among other things, empowers the Chief Executive of the Office of Local Government to issue mandatory codes on operational and governance matters relevant to local government. The Government has broadly supported the Taskforce’s recommendations.

Work has commenced on the development of a new Local Government Act, with the aim of phasing it in from 2016/17.

The Independent Local Government Review Panel has separately recommended that the requirements for internal and performance auditing for councils be strengthened. In particular, the Panel made the following recommendations:

- Revise the current guidelines under the Act and make them mandatory
- Extend the concept of internal audit towards adding value and continuous improvement
- Require all councils with expenditures of more than a set amount (perhaps $20m per annum) to have an ‘audit, risk and improvement’ committee and associated internal audit function with broad terms of reference covering...
financial management, good governance, performance in implementing the Community Strategic Plan and Delivery Program, service reviews, collection of required indicator data, continuous improvement and long term sustainability

- Enable councils with smaller budgets to have joint arrangements for internal audit and to share audit committees, under the aegis of regional Joint Organisations
- Require audit committees to have a majority of independent members and an independent chair, and preclude General Managers from membership of audit committees (but not attendance at meetings)
- Ensure that the chair of the audit committee reports at least biannually to a council meeting on the organisation's performance in financial management, good governance and continuous improvement
- Empower the Auditor General to conduct issue-based performance audits in key areas of local government activity.

In its response to this recommendation, the Government has indicated that it supports the Panel's recommendations on internal audit and plans to incorporate these provisions into the proposed new Local Government Act.

Should you wish to discuss anything contained in the Office's final progress report, please do not hesitate to contact the Office's Manager, Council Governance, Mr John Davies on 4428 4139.

Yours sincerely

Steve Orr
Acting Chief Executive
Office of Local Government
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Please update this schedule with information about the status of each item as at 30 November 2014. Include details of the latest action/update in respect of each initiative, dates where relevant and attach copies of any documents referred to, where possible, in support of implementation of particular initiatives. Please provide the name of a contact person in your agency from whom we can seek more detail if needed. Please return this document to the ICAC in writing and electronically to ckeeney@icac.nsw.gov.au by no later than 27 June 2014.

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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

In 2012, the previous Minister for Local Government appointed a Local Government Acts Taskforce to review the Local Government Act 1993 and the City of Sydney Act 1988. The Taskforce looked at options to develop a new, modern Local Government Act that would meet the future needs of the local government sector and the community. It conducted several rounds of consultation to discuss options for streamlining the legislation and cutting red tape. The Taskforce issued its final report in October 2013.

Among other things, the Taskforce recommended that the new Local Government Act empower the Chief Executive of the Office of Local Government to issue mandatory codes on operational and governance matters relevant to local government.

The Government broadly supports this and other recommendations of the Taskforce. Work has commenced on the development of a new Local Government Act, with the aim of phasing it in from 2016/17.
The capacity of the Minister for Local Government and the Office of Local Government to enforce compliance by councils with appropriate governance and performance standards has been greatly enhanced by the 2013 amendments to the Local Government Act 1993 which empower the Minister for Local Government to issue performance improvement orders to councils and where appropriate, to temporarily suspend them and appoint an interim administrator. These powers are contained in sections 438A – 438T of the Act. It is proposed to retain these powers in the new Local Government Act.

To date, the Minister has exercised these powers on 3 separate occasions with respect to Central Darling Shire Council, Strathfield Municipal Council and North Sydney Council. Information on current and previous uses of these powers is available on the Office's website at www.olg.nsw.gov.au.

Supporting material

- Local Government Amendment (Early Intervention) Act 2013, commenced on 25 June 2013

Evaluation of implementation

To be evaluated as part of the development of the new Act.
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 progress

The recommendation has been: <check one>
- Implemented as described in the report
- Implemented in an alternative way
- Partially implemented
- Not implemented

Action taken to implement recommendation

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

However, the intent of the recommendation has been achieved through the 2013 amendments to the Local Government Act 1993 that have empowered the Minister for Local Government to issue performance improvement orders to councils and where appropriate, to temporarily suspend them and appoint an interim administrator. These powers are contained in sections 438A – 438T of the Act. It is proposed to retain these powers in the new Local Government Act.

To date, the Minister has exercised these powers on 3 separate occasions with respect to Central Darling Shire Council, Strathfield Municipal Council and North Sydney Council. Information on current and previous uses of these powers is available on the Office’s website at www.olg.nsw.gov.au.

The intent of the recommendation will be further enhanced by the provisions of the new Local Government Act recommended by the Taskforce that will allow mandatory codes and guidelines to be issued.
Supporting material

- Local Government Amendment (Early Intervention) Act 2013, commenced on 25 June 2013
- Improvement and early intervention page of the OLG website at www.olg.nsw.gov.au

Evaluation of implementation

Evaluation of the outcomes of early interventions utilising new powers
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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

It is the current practice of the Office 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 Office’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.

Supporting material


Evaluation of implementation

Circulars, guidelines or newsletters issued by the Office in response to circulars and pronouncements issued by the Department of Premier and Cabinet.
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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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

In 2012, the Minister for Local Government appointed an Independent Local Government Review Panel to develop options to improve the strength and effectiveness of local government in NSW. The Independent Local Government Review Panel, led by Professor Graham Sansom, conducted three rounds of public consultation and commissioned independent research to help develop its thinking. The Panel issued its final report in October 2013.

The Panel considered options for governance models, structures and boundary change, as well as the wider questions of sustainability of the sector. Among other things, it recommended that the requirements for internal and performance auditing be strengthened. In particular, the Panel made the following recommendations:

- Revise the current guidelines under the Act and make them mandatory
- Extend the concept of internal audit towards adding value and continuous improvement
- Require all councils with expenditures of more than a set amount (perhaps $20m per annum) to have an ‘audit, risk and improvement’ committee and associated internal audit function with broad terms of reference covering financial management, good governance, performance in implementing the Community Strategic Plan and Delivery Program, service reviews, collection of required indicator data, continuous improvement and long term sustainability
• Enable councils with smaller budgets to have joint arrangements for internal audit and to share audit committees, under the aegis of regional Joint Organisations

• Require audit committees to have a majority of independent members and an independent chair, and preclude General Managers from membership of audit committees (but not attendance at meetings)

• Ensure that the chair of the audit committee reports at least biannually to a council meeting on the organisation’s performance in financial management, good governance and continuous improvement

• Empower the Auditor General to conduct issue-based performance audits in key areas of local government activity.

In its response to this recommendation, the Government has indicated that it supports the Panel’s recommendations on internal audit and plans to incorporate these provisions into the proposed new Local Government Act. Work has commenced on the development of a new Local Government Act, with the aim of phasing it in from 2016/17.

Despite the potential efficiency gains internal audit can generate, the Government recognises that establishing an independent audit committee will impose a cost on councils. To minimise this burden and provide councils with maximum flexibility, it is proposed to allow all councils the ability to share an audit committee, rather than mandating a stand-alone committee.

Supporting material


Evaluation of implementation

To be implemented as part of the development of the new Local Government Act and associated regulatory instruments.
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 progress

The recommendation has been: *(check one)*
- □ Implemented as described in the report
- □ Implemented in an alternative way
- □ Partially implemented
- ✔ Not implemented

Action taken to implement recommendation

*Ultimately, it is appropriately the general manager’s role (not the council’s) to engage and terminate staff. A requirement for a general manager to report to a council a decision made with respect to a non-senior staff member of the council would potentially constitute an inappropriate intrusion by the governing body of the council into an operational matter.*

*Given its functional independence of the council and role in overseeing implementation of a council’s internal audit program, the Office considers that it would be more appropriate to require a general manager to report decisions made in relation to a council’s internal auditor to the council’s audit committee. In the event that the audit committee considered that any such action represented an attack on the integrity of the council’s internal audit function or undermined its efficacy, it would be open to the audit committee to report this to the council.*

*Although not directly addressed by the final report of the Panel or the Government response to it, the Office expects that this issue will be considered further as part of the development of the mandatory guidelines that will be issued to support the prescription of internal audit under the new Local Government Act.*
Supporting material
To be considered further as part of the updated mandatory internal audit guidelines to be reissued in support of new Act.

Evaluation of implementation
To be evaluated as part of the development of the new Local Government Act and associated regulatory instruments.
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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

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 Office 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.

Although not directly addressed by the final report of the Panel or the Government response to it, the Office expects that this issue that will be considered further as part of the development of the mandatory guidelines that will be issued to support the prescription of internal audit under the new Local Government Act.

Supporting material

To be considered further as part of the updated mandatory internal audit guidelines to be reissued in support of new Act.

Evaluation of implementation

To be evaluated as part of the development of the new Local Government Act and associated regulatory instruments.
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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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

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, without the agreement of the General Manager.

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 Office’s website www.olg.nsw.gov.au
Evaluation of implementation

To be evaluated as part of implementation of the new model code.
Recommendation 16.

That the NSW Minister for Local Government seeks legislative amendment of section 376(2) of the Local Government Act 1997 to remove the automatic entitlement of a general manager to attend an audit committee meeting.

Summary of progress

The recommendation has been: <check one>
- □ Implemented as described in the report
- □ Implemented in an alternative way
- □ Partially implemented
- ✔ Not implemented

Action taken to implement recommendation

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 Panel’s final report indicated that General Managers should be precluded from membership of audit committees, but not necessarily from attendance at meetings. The Government supported the Panel’s recommendation.

Supporting material

Recommendations (Available at Fit for the Future website at www.fitforthefuture.nsw.gov.au - link from OLG website)

Evaluation of implementation

Not applicable.
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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 progress

The recommendation has been: <check one>
- [ ] Implemented as described in the report
- [x] Implemented in an alternative way
- [ ] Partially implemented
- [ ] Not implemented

Action taken to implement recommendation

The Office 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:

- The power of a council to appoint a general manager under section 334 of the Local Government Act 1993 automatically carries with it the power to suspend or remove a person appointed to that position through the operation of section 47 of the Interpretation Act 1987.
- 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 them; or
  - If the general manager makes an admission of serious corrupt conduct.
- The Guidelines for the Appointment and Oversight of General Managers issued by the Office in July 2011 provide guidance on the suspension of the general manager.
- The standard contract for general managers currently allows councils to grant special leave to general managers. It is contemplated this could be used in a case where a general manager was required to step aside while matters were under investigation.
Supporting material

- Sections 334, 351 and 440D of the *Local Government Act 1993*
- Section 47 of the *Interpretation Act 1987*

Evaluation of implementation

No change required.
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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 progress

The recommendation has been:<check one>

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

Action taken to implement recommendation

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 Office 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 Office for action.

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


Evaluation of implementation

To be evaluated through the collection of code of conduct data from councils.
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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

The Office has issued resources to assist councils in the induction of new and returning councillors under its councillor development strategy. This includes:

- *Councillor Induction and Professional Development - A Guide for Councils* issued by the Office in 2012, which identifies the core induction information that should be provided to new councillors; and

In addition, the Office of Local Government delivered councillor workshops throughout the State for new and returning councillors following the Local Government elections in September 2008 and again in September 2012. The workshops delivered a core package of information for attending councillors – refer to the 2012 flyer for Councillor Workshops.

Additional information and resources for councillors is available on the Office’s website.

Supporting material

- The Councillor Development Strategy, available on the Office’s website www.olg.nsw.gov.au, includes the following publications:
  - Councillor Induction and Professional Development - A Guide for Councils;
  - Councillor Handbook; and
  - Flyer for Councillor Workshops.
• Publications relating to the Model Code of Conduct 2013 targeted at councillors and Mayors published by the Office in March 2013 and available on the Office’s website www.olg.nsw.gov.au, including:
  o Your Obligations as a Councillor;
  o Key Messages for Councillors and Mayors; and

Evaluation of implementation

The Councillor Development Strategy was evaluated and the results will be used to inform the future delivery of councillor development strategies.
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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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

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

Although the Office has no power to compel councillors to attend, of the 30 workshops conducted by the Office 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.

The Independent Local Government Review Panel has recommended a mandatory induction program for new councillors and encouraging re-elected councillors and mayors to undergo training to ensure they have the necessary information and skills to perform their role effectively.

In response, the Government has said it will give consideration to ensuring new Mayors and first time councillors undergo induction training.

Supporting material

Evaluation of implementation

The Councillor Development Strategy was evaluated and the results will be used to inform the future delivery of councillor development strategies.
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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 progress

The recommendation has been: <check one>

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

Action taken to implement recommendation

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 councillor workshops and the candidate information seminars). This information is also available on the Office’s website via links in the Councillor Handbook.

Following a restructure of the Office 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.

Supporting material

Available on the Office’s website, with particular reference to the supporting material referred to in the response to recommendation 28.
Evaluation of implementation

The Office's evaluation of the 2012 council development strategy indicated that it has been successful in promoting its capacity to provide information and assistance to councillors.