

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Inquiry into Fraud and Corruption Control in Local Government: a Follow-Up of Two Auditor-General Reports

Melbourne – Monday 28 July 2025

MEMBERS

Sarah Connolly – Chair

Nicholas McGowan – Deputy Chair

Jade Benham

Michael Galea

Mathew Hilakari

Lauren Kathage

Aiv Puglielli

Meng Heang Tak

Richard Welch

WITNESS (*via videoconference*)

Brett Whitworth, Deputy Secretary, Local Government, Office of Local Government NSW.

The CHAIR: I declare open this hearing of the Public Accounts and Estimates Committee and ask that mobile telephones please be turned silent.

On behalf of the Parliament, the committee is conducting this inquiry into fraud and corruption controls in local government.

I advise that all evidence taken by the committee is protected by parliamentary privilege. However, comments repeated outside of this hearing may not be protected by this privilege.

Witnesses will be provided with a proof version of the transcript to check. Verified transcripts, presentations and handouts will be placed on the committee's website.

I welcome Brett Whitworth, the Deputy Secretary, Local Government, from the Office of Local Government New South Wales. Mr Whitworth has been kind enough to provide us with a written statement in lieu of an opening statement today. Therefore we are going to proceed directly to questions from members. We are going to start with Mr Welch.

Richard WELCH: Thank you, Chair, and thank you, Mr Whitworth, for giving us your time today. I think it should be highly instructive for us. Look, there are many areas we could start with in comparing the OLG to LIC and other areas, but I want to focus on disclosure as a powerful antidote to corruption and the New South Wales FOI laws, which are described to us as a push system rather than a Victorian pull system. Do you have any reflections on how freedom of information works to better local governments' conduct and integrity processes?

Brett WHITWORTH: Look, we are going through quite a significant conversation in New South Wales at the moment regarding the importance of transparency and openness in council decision-making, particularly around the fact that council decision-making – and I am talking about the governing body of councils – should be done openly and transparently and in full light of the public. I say that in reference to your question, which is therefore the freedom of information principle is being upheld by the fact that decisions are being taken in an open way. I think in New South Wales our freedom of information was the *Government Information (Public Access) Act*, and under that Act there is a principle that decisions and information should be made in the public interest and that information should be released in the public interest. In fact in order to not release information you need to demonstrate that it is overwhelmingly not in the public interest to release that information.

We do have an intent to try and make sure that, whether it is a decision made by a governing body as a council following a resolution and material put in front of them through a meeting or whether it is information that a council staff member has made based on written documentation and reports, overwhelmingly that information should be made publicly available if asked, and preferably should be made publicly available irrespective. Registers of development approvals and the development application process should be as public and transparent as possible. Using our planning portal as an example, decisions around leases should only be made once there is a report that has been made to a council and that is publicly available, as an example.

Richard WELCH: Has that proven in any way problematic in the vexatious requests or the resources of a small local council to meet the demands of FOI and other due process?

Brett WHITWORTH: Look, there are ways in which that can be managed. I am not a specialist in the government and the GIPA Act, but where there is a request for information and it requires considerable amount of potential staff time in terms of searching for that information, it is possible to flag that up-front, to go back and narrow the scope of the search terms so that the applicant is paying for a far more reasonable amount of information to be requested. In terms of reasonable conduct by applicants in trying to ask for too much information, I think there is recourse to the New South Wales Information and Privacy Commissioner and/or the Ombudsman, who can intervene or oversight, I suppose, decisions that councils have taken about the release of information or the decision not to release information.

Richard WELCH: And just moving on, the OLG has some sanction powers, whereas the LIC in Victoria does not. Is that right?

Brett WHITWORTH: When you say sanction powers, we have, through the departmental chief executive, and I exercise those functions, the ability to suspend a councillor. We actually have sanction powers that range from counselling, issuing a warning, requiring the undertaking of training through to the ability to suspend a councillor. My ability to suspend a councillor must follow a process that involves the preparation of a departmental report, the provision of natural justice and following due process. But the most that I can suspend a councillor for is three months. I can make a decision to refer a councillor to our New South Wales Civil and Administrative Tribunal to seek a penalty that could be up to two years if I believe that the situation is serious enough. Beyond those sanctions, the Minister for Local Government has the ability to impose performance improvement orders on councils to identify a course of action that councils need to take or in fact individual councillors might need to take, and there is also the last resort recourse to putting a council into administration. But that requires consideration of quite considerable concerns and a public inquiry if it is a long-term administration.

Richard WELCH: Thank you. And in terms of the focus, where you may be giving warnings and suggesting remedies, is your focus entirely on the councillors or do you apply equal scrutiny to officers?

Brett WHITWORTH: In terms of the behavioural elements of councils and the misconduct elements, the Office of Local Government is entirely focused on the behaviour of councillors. We manage behavioural issues within local government through a model code of conduct and accompanying procedures for the administration of the model code that enable any person to make a complaint about a council staff member or about a councillor. But if they are complaints made about a council staff member, they are made to the general manager – unless it is about the general manager themselves, in which case they are made to the mayor. If it is a complaint about a councillor, it is made to the general manager. Those are then investigated. That investigation is through an independent expert conduct examiner, and they are appointed by the council. If, as a result of that, there is a requirement for sanctions – if it is about the staff member, that is dealt with entirely by the general manager; if it is about the general manager or a councillor, it is dealt with by the council as a governing body; and it is only those circumstances where it could be a pecuniary interest issue that it comes to the Office of Local Government. But I have no control over the appointment of council staff, including the general manager or their employment terms, so those are matters for each individual council to manage. I do have sanction powers, as I have mentioned previously, over councillors, but again that either follows an investigation or a departmental report or as an outcome of a code of conduct process that has occurred.

Richard WELCH: We have had scenarios where a CEO may move councils and the new council is not aware of his perhaps past issues. That is not an area you would be able to have remit over?

Brett WHITWORTH: No, it is not. It is almost one of the most important conventions that the Office of Local Government works under – that is, under the New South Wales *Local Government Act* the councillors, as the governing body, make decisions and policy decisions, but the operational delivery of those decisions is through the general manager and the work that the general manager does. So it is important that the councillors have the ability to appoint a general manager that they have confidence in, and it is not for the Office of Local Government to intervene in that. What we have done is prepare a guideline on the appointment of general managers, and general managers are appointed and their terms of employment are under a standard contract that we require councils to use. But that is as far as we go in terms of the influence of whether a council would employ a general manager or not.

Richard WELCH: Thank you. Chair.

The CHAIR: Thank you, Mr Welch. We are going to go to Mr Galea.

Michael GALEA: Thank you, Chair. Thanks very much for joining us today, Mr Whitworth. I would just like to begin with something that has been a recurring theme today, and that is that some of our councils have been pooling their governance functions with neighbouring councils, especially those councils that are not very large and do not have a great deal of resources by themselves. I am curious to know if similar things have happened in New South Wales. I know you have had some recent council amalgamations, which I am sure have had a similar effect, whether it is through the amalgamations, though, or whether it is through councils

independently working with their neighbours to implement some of these functions in a more effective way. Do you have any observations from that in your state?

Brett WHITWORTH: We are actually probably moving to de-amalgamate some of those councils that were amalgamated in 2016. The minister announced the week before that he has given support for Cootamundra–Gundagai to go through the process of de-amalgamation, so that is probably just a sideline comment there for you.

In terms of councils sharing functions, that is something that we encourage. Obviously there are certain attestations that council need to be able to do through their annual report and a number of other pieces of legislation, so they need to have expert advice to be able to do that attestation. But if that expert advice comes about as a result of a sharing of resources or another sort of more organised joint scheme, whether it is planning, whether it is governance functions or whether it is accounting or finance, we certainly do not have a concern with that. We have had examples of schemes – there was a period of time where there was a shared service scheme operating in the New England area where Tamworth and Armidale I think were providing some services under shared arrangements for some of the other smaller councils surrounding them.

We also have joint organisations that are similar to a regional organisation of councils. The joint organisations of councils are able to provide those shared services. There was a period of time when the Hunter region had a raft of shared services that were being provided through a company that it had established called Arrow. Those services have declined over time, but it is in theory possible for that to be done. I think one of the challenges of local government is that the areas in which and the service catchments that a council will need to provide the various services that it is required to provide may differ and vary depending on that type of service. In some cases there might be benefit from having joint schemes around garbage collection. There might be benefit in having joint schemes around management and/or accounting services or planning services, for example, whereas the provision of library services might be something that is intensely about that local government area. So we want to make sure that the *Local Government Act* is flexible enough that those different types of arrangements can be delivered by councils working collaboratively with each other.

Michael GALEA: Thank you. Just earlier you were discussing with Mr Welch council's role in appointing directors and the like. I am curious to know, when it comes to council officers, for example a planning officer or a grants management officer, does your office have any requirements that you impose on councils or even any guidelines in relation to their roles and particular fraud prevention controls or conflict-of-interest policies to prevent wrongdoing at that much lower level, beneath the level of a whole council or of the elected councillors but by a small decision in a small corner? Are there any particular policies that you have or things that you require New South Wales councils to do to avoid those issues emerging?

Brett WHITWORTH: We do have the *Model Code of Conduct*, which does apply across councillors and council staff. The *Model Code of Conduct* does identify both pecuniary interests and non-pecuniary interests and how to recognise those and how to make declarations. There are requirements for councils to nominate particular staff for their pecuniary interests to be publicly held in a register, and that will be up to the council as to who those appropriate staff will be. In some cases it can be planners. In some cases it can be engineers, grants officers and so on. I think the way in which we address those concerns about probity within the operational activities of council, whether they are councillors or council officers, is that they are all bound by that same code of conduct, they are all bound by the same procedures for the administration of that code of conduct and there is the ability to assess any pecuniary interests and take action through the New South Wales Civil and Administrative Tribunal, albeit it is easier for OLG to investigate councillors than it is to investigate council staff.

The last thing I probably should flag is that under the New South Wales *Independent Commission Against Corruption Act* there is quite a broad definition of the officers that are captured by that Act, which does include local government officers. The actions of council staff, if there is a view that they have undertaken corrupt conduct, do fall within the remit of ICAC and potential investigations by ICAC.

Michael GALEA: Thank you. I guess that goes some way to answering it. You said that you have played more of a larger role with councillors than the council staff. Whose responsibility is it then to intervene with council staff issues? Is it the councillors? Is it council leadership at the executive level? Is it ICAC or another body?

Brett WHITWORTH: Well, it is a combination. The general manager employs council staff, so the general manager has that fundamental duty to ensure that council staff are meeting behavioural and code of conduct standards and to investigate any concerns arising from that. The general manager has responsibilities under workplace health and safety legislation to provide a safe workplace as the employer of councils, for example. ICAC does have the power to go in and investigate any council officer. I through the departmental chief executive powers have a reasonable degree of power to require information from council officers, but I cannot necessarily demand the sort of personal information that councils hold on their council officers in the same way that ICAC can. My remit is more around the appropriate management and functioning of local government rather than being specifically about corruption prevention or managing corruption risk.

Michael GALEA: Sure. Thank you very much.

The CHAIR: Thank you. Mr Hilakari.

Mathew HILAKARI: Thank you so much for joining us this afternoon. We really appreciate the time that you are giving to us. Over the course of the day we have heard from councils where sometimes one in 100 decisions are made in confidential sessions, all the way through to some councils making almost one in three decisions under confidential council discussions. If that was happening in New South Wales – those one in 10, one in three decisions – what would be your role in trying to bring that number down?

Brett WHITWORTH: I think we would be concerned about even one in 10 – we would be concerned about that. The New South Wales *Local Government Act* specifically calls out that council meetings are to be open and specifically requires council meetings to be open to the public. We also require them to be recorded and are about to increase that again by requiring council meetings to be webcast. For a council to be able to close a council meeting, they need to demonstrate under the *Local Government Act* that they meet certain tests. Those tests are set out in – I will not go through all the details of the section – section 10D, and that does set out that it is either about a personal matter, it is about commercial-in-confidence issues or it would be contrary to the public interest for that matter to be held open to the public, which goes to whether there would be risk of court cases, for example.

Mathew HILAKARI: Almost exactly those requirements exist in the Victorian *Local Government Act*, and yet we are still seeing these massive numbers coming through. If that was a New South Wales council, what would that say to you if, for example, one in 10 decisions were being made in confidential discussions?

Brett WHITWORTH: It would say to me that the community is not getting the benefit of being able to see what the rationale for those decisions are, and it would then lead me to question whether the community could have confidence in the decision-making of that council. Assuming this is a hypothetical situation, I would probably be exercising my powers to seek information as to the reasons for so many of the matters going into confidential sessions and ask for the governance, policy and procedural documents that set out why and how a council general manager would, in conversation with the mayor, be proposing that so many of their matters be held behind closed doors or in camera and be looking to probably use soft power to encourage that council to open up its decision-making more publicly. If there was a refusal, I would probably start escalating that through a formal investigation and potentially even talk about a performance improvement order. I think the Minister for Local Government in New South Wales has made a very loud and clear position that councillors need to be visibly in control of their councils, and that means making decisions publicly in front of open council meetings where the community can access the information that the council has in front of it in order to make that decision.

Mathew HILAKARI: Thank you. We heard from a council today that tens of millions of dollars had not been disclosed for years now of wasted ratepayer money. It goes to the heart of governance controls, having a public hearing and airing of the decision-making, and I just think it is very concerning that we have such high amounts of in-confidence material, particularly when it sounds like some of it really is in the public interest to understand.

You set out in your documentation to this committee addressing poor performance and operational variances. I am hoping you could give some examples that you can give to this committee of some of that activity that you have undertaken. You listed out five key avenues for our interactions with the local government sector.

Brett WHITWORTH: Again, those clear standards for councils and councillors – I have used an example of that being the ‘general manager of recruitment’ guideline. As an example, we recently released guidelines on the exercise of free speech in council meetings, so there are examples of that. Also, the consistent accounting code that we require councils to use – you have got that diversity of free speech, employment, the model codes of conduct and the procedures for the model codes of conduct. So it is about having that clear framework for councils to operate in. Giving community access to information about councils: we collect a wealth of data about council performance, and we put that up on what we call the Your Council website so communities can compare the operation and performance of their council to other councils. We give councils the ability to address changing issues and circumstances. We have a \$250 million grant program that we are running over six years that will lead to the employment of 1300 new positions for apprentices, trainees and cadets, and we are doing that as part of the response to the concerns about the change in the workforce cohort where we have got lots of skilled but more senior members of the workforce about to retire and we need some way of bringing more people in to replace that skilled workforce and to also ensure that we are getting a focus on the provision of services from within the council rather than necessarily outsourcing.

The monitoring compliance: we apply a risk management framework where we use performance ratios – and I believe there are different performance ratios that are used across the country, but we use particular performance ratios in New South Wales – and we seek to use those as well as other material that we get from councils through their quarterly budget review statements or intelligence that we obtain through our outreach programs and our engagement programs so that we can see a council that might be verging into an area of risk.

There are a couple of councils where we have identified that their long-term financial plan identifies a structural deficit and an inability to meet and service their debt into the longer term, so we have been working with those councils on a financial recovery plan. There are some councils where we have needed to be more overt. Without wanting to call out Kiama council, it is one of the councils where we issued a performance improvement order that required the council to both implement its financial improvement strategy as well as to continually report to us. I think if you have an opportunity to survey Sydney media, you will see that we have a public inquiry going on at the moment into Liverpool council which followed an investigation that we commenced. These are some of the examples of that last bit of addressing poor performance and operational variances.

Mathew HILAKARI: Thank you. Just one last question, and you are welcome to take it on notice: we had a number of councils either in administration or with monitors at the last local government election, by the time we got to that point in time, and it was one in six. What sort of percentage of intervention is there into local government in New South Wales, either through monitors or very close watching administration? I am happy to take it on notice as well, because I know we are just edging over time.

Brett WHITWORTH: Sure. Look, I can probably add: we had our elections in September last year. We have 128 councils. At those elections there were three councils that were returning from administration. There was one council that remains in administration; it is the only council we have in administration. They are going to an election in September this year. We had a temporary adviser in Edward River, and that is it. So we are probably not as interventionist as the Victorian example. I do like to think that trying to apply a risk management framework means that we get to see issues earlier rather than later and that it does not need to be escalated all the way up to an administrator. But as I said, we have got a public inquiry going right now about Liverpool council, and I do not know what the outcome of that will be.

Mathew HILAKARI: Thanks so much.

The CHAIR: Thank you, Mr Hilakari. Mr Whitworth, our time this afternoon has come to an end. Thank you very much for taking the time out of your day to appear before this inquiry.

The committee will follow up on any additional questions or questions taken on notice in writing, and responses are required within five working days of the committee’s request. The committee will take a 5-minute break before recommencing the hearing. I declare this hearing adjourned.

Witness withdrew.