New South Wales Auditor-General’s Report
Performance Audit
Monitoring local government
Department of Premier and Cabinet, Division of Local Government
The role of the Auditor-General

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the Public Finance and Audit Act 1983.

Our major responsibility is to conduct financial or ‘attest’ audits of State public sector agencies’ financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies’ accounts.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to agencies to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to agencies and reports periodically to parliament. In combination these reports give opinions on the truth and fairness of financial statements, and comment on agency compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an agency is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an agency’s operations, or consider particular issues across a number of agencies.

Performance audits are reported separately, with all other audits included in one of the regular volumes of the Auditor-General’s Reports to Parliament – Financial Audits.

In accordance with section 38E of the Public Finance and Audit Act 1983, I present a report titled Monitoring local government: Department of Premier and Cabinet, Division of Local Government.

Peter Achterstraat
Auditor-General
26 September 2012

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Our vision
To make the people of New South Wales proud of the work we do.

Our mission
To perform high quality independent audits of government in New South Wales.

Our values
Purpose – we have an impact, are accountable, and work as a team.
People – we trust and respect others and have a balanced approach to work.
Professionalism – we are recognised for our independence and integrity and the value we deliver.
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Executive summary

Background

The 152 local councils in New South Wales spend more than $9.3 billion annually, manage over $117 billion in public assets and employ over 50,000 people. They provide a wide range of services and infrastructure, and encourage development and community wellbeing. Councils also regulate planning, environmental protection, traffic, public health and other activities under more than 120 NSW Acts.

In Australia, state and territory law governs the operation of councils. This means that the roles and responsibilities of councils and how they are monitored varies from state to state.

In New South Wales, the Local Government Act 1993 (the Act) provides councils with their major powers and defines their functions and responsibilities. The Act requires councils to provide information about their finances and activities to the Division of Local Government (DLG), which is part of the Department of Premier and Cabinet. The Act does not require DLG to review or act on most of the information it receives from councils.

The Act gives the Minister for Local Government a supervisory role in relation to councils. However, the Act provides the government with few options to intervene in a council, other than dismissing all the elected councillors. These arrangements may not provide effective oversight of council operations and timely warning of performance issues.

Some communities have expressed concerns about their local councils. Between July 2008 and June 2012, 30 per cent of investigations by the Independent Commission Against Corruption concerned councils, as did nine per cent of the complaints received by the NSW Ombudsman in 2008-09 and 2009-10. Fifteen per cent of councils received qualified audit opinions in 2010-11. In comparison, only five per cent of NSW Government agency opinions were qualified.

The Government has several initiatives underway to improve the support and oversight of councils. In 2011, DLG and all councils agreed on an Action Plan for the sector called Destination 2036. The goal is to improve the ability of councils to represent, build and serve their local communities. The NSW Independent Local Government Review Panel is to identify how councils can best govern and be structured by July 2013. The Government has also announced a review of the Local Government Act 1993 to be completed in late 2013.

This report is intended to contribute to those initiatives.

The audit focused on DLG and assessed how well it monitors the performance of councils, and intervenes to address the performance issues it identifies.

We answered the following questions:
- Does DLG have adequate information to monitor councils and identify performance issues?
- Does DLG respond appropriately to identified potential performance issues?

Conclusion

Although DLG meets its legislative obligations, it does not have adequate information to monitor important aspects of council performance, including service delivery. The Act does not require councils to provide such information, nor DLG to review it.

DLG has adequate information in relation to financial management and councillor conduct. It has addressed sector-wide issues in this area by helping all councils improve their long-term financial planning and asset management practice. In addition, over 75 councils now have some internal audit function, compared to less than 35, a decade ago. DLG also provides training and workshops for councillors about their roles and responsibilities.
DLG responds to instances of financial stress or misconduct by helping councils address the issue themselves. DLG lacks clear thresholds for deciding when to escalate its interventions, which can be drawn-out and have minimal effect. It has no power to direct councils or councillors, and can impose few sanctions. DLG’s counterparts in some other Australian jurisdictions have greater power to intervene, impose a range of penalties and demand compliance.

Of greater concern, is that the Act does not require DLG to monitor councils' service delivery or their compliance with the Act or other NSW legislation. DLG has decided to monitor some areas of compliance, such as the level of rates charged. However, it does not monitor whether councils deliver services efficiently and effectively.

DLG publishes some comparative information about councils, but it does not provide the NSW public with analysis about the performance of individual councils or the sector as a whole. In this respect, NSW councils are subject to less public scrutiny than councils in some other jurisdictions.

Supporting findings

Does DLG have adequate information to monitor councils and identify performance issues?

The Act requires councils to provide DLG with information on their financial, and to a lesser extent, their non-financial performance. The timeliness, completeness and accuracy of the information provided is variable. The financial information meets requirements. However, the non-financial information is not standardised to allow comparisons across councils or monitoring of the effectiveness and efficiency of their services.

We found DLG uses information from councils and complainants to identify emerging issues around financial sustainability and management, misbehaviour and pecuniary interests. This informs DLG’s policy development, legislative reform and interventions with specific councils.

However, DLG does not have a transparent and clear basis to determine which councils are at greatest financial risk. Each year, DLG reviews its approach to identify financially-stressed councils. It does this to reflect emerging issues, but has not adequately documented the reasons for change.

DLG does not use other potential sources of information, such as councils’ internal audit reports, to identify issues that warrant attention.

Does DLG respond appropriately to identified potential performance issues?

DLG’s stated purpose is to strengthen the local government sector and it has done this by helping councils better manage finances, assets and councillor behaviour.

We found that DLG responded adequately to address sector-wide issues around councillor conduct by providing ongoing training and guidance to councillors. However, DLG finds it difficult to address complaints against individual councillors. The legislation is complex. Since 2008-09, DLG has applied its maximum penalty for misbehaviour, which is one month’s suspension, only once. In that case, DLG took one year from being notified of the misbehaviour to issuing the penalty. DLG has also referred five matters to the Pecuniary Interest and Disciplinary Tribunal in the last four years.

Unresolved problems with individual councillors can deteriorate and disrupt council operations as meetings break down and decisions are not made. DLG does not have well defined processes for when or how to escalate issues about individual councillors or councils to prevent this from happening.
DLG has established timeframes to respond to complaints about councils and councillors. It has met these timeframes in around 50 per cent of cases.

At a sector-wide level, DLG responds appropriately to help councils build their financial capacity. For example, its 2009 reforms improved the ability of councils to manage assets and develop long-term plans.

However, DLG has not always been effective or timely in addressing problems in individual councils. This is because it has few options beyond persuasion to do so. It has no power to direct councils to change their practices or to comply with the Act. As a last resort, DLG can recommend a public inquiry that can lead to the dismissal of all the elected councillors. This last occurred in 2008 to Shellharbour City Council.

The law in some other jurisdictions gives state agencies clearer responsibilities and a greater range of powers over councils to:

- ensure compliance with the law
- assess and report publicly on the financial viability of councils, their governance, the effectiveness and efficiency of their service delivery, and the challenges they face.

When compared to some other jurisdictions, New South Wales lacks the same level of assurance that councils comply with the Act, are financially viable and provide efficient and effective services to residents and ratepayers.

Recommendations

By September 2013 the Division of Local Government should propose amendments to the Local Government Act 1993, or consider other initiatives, that:

1. clarify who monitors councils to ensure compliance with the Act (page 18)
2. strengthen public reporting on the financial viability of councils and the efficiency and effectiveness of council performance (page 19)
3. empower DLG to make directions such as requiring councils to have an Audit and Risk Committee, an internal audit function and fraud control procedures (pages 11 and 18)
4. include a suite of penalties and sanctions for non-compliance with legislative requirements and DLG directives (pages 11 and 18).

The Division of Local Government complete its work to establish:

5. a risk-based framework for assessing council performance and determining how to respond to performance issues by February 2013 (page 15)
6. improved measures to identify councils at financial risk by July 2013 (page 12)
7. non-financial performance indicators for councils so it can monitor how well they are delivering services by July 2013 (page 10)
8. systems to better use the data it has to identify sector wide trends and risks by July 2013 (page 12).
Response from the Department of Premier and Cabinet
Division of Local Government

Dear Mr Achterstraat

Thank you for your letter of 29 August 2012 regarding the Performance Audit Report on Monitoring Local Government.

The Division of Local Government, Department of Premier and Cabinet (the Division) has appreciated the opportunity to participate in the performance audit process. Already there are a number of initiatives underway to address the recommendations, these include:

- By the end of September 2012 the Division will have reviewed and finalised its intervention and improvement framework which is a diagnostic tool to guide the Division on the appropriate intervention and improvement strategies it employs in relation to NSW councils.

- The Division has reviewed and made significant changes to the code of conduct for council officials. These changes will see a simpler more streamlined code, and subject to legislative amendment, greater penalties for non-compliance.

- A council by council financial sustainability assessment being conducted by the NSW Treasury Corporation that will develop financial benchmarks and apply these to each council.

- A council by council audit of infrastructure that is being conducted by the Division to determine the significance of the infrastructure backlog at each council.

In addition the Division is continuing to work on its performance indicator project to more effectively monitor council performance and better inform its intervention efforts. As identified during the audit process the Division has recently been through a restructure which amongst other things was designed to bring greater clarity to the Division’s compliance and monitoring role.
The Division appreciates the time and effort made by the Audit Office reviewers to understand and reflect the complexity of local government in a relatively short period. The Division accepts the recommendations and appreciates the opportunity to comment on the report.

Yours sincerely

Chris Eddon 12/19
Director General
Department of Premier and Cabinet

Ross Woodward 10/9/12
Chief Executive, Local Government
A Division of the Department of Premier and Cabinet
1. Background

1.1 What do councils do?

Local councils in New South Wales vary enormously in size, geography, demographics and resources. As a result what they do varies greatly. Nevertheless, councils are governed by the same State laws and have similar structures whether they:

- are metropolitan or rural
- have 300,000 residents or 1,200
- have revenues of $504 million or $7 million.

Councils get their income from rates, charges, fees for service and government grants. Grants from State and Commonwealth sources can represent a minor contribution (3.4 per cent) up to more than half of a council’s income. Generally, rural councils with small populations and large areas depend more upon grants. New South Wales is the only State that caps the amount of rates that councils can charge.

Exhibit 1 shows the breadth of activities undertaken by Sutherland, a metropolitan council on the coast. Some council activities, such as food shop inspection and town planning, enforce compliance with State law.

**Exhibit 1: The range of activities that councils do**

Source: Sutherland Shire Council Delivery Program 2012-16 p.5, with permission.

Rural councils tend to maintain more kilometres of road per resident and may provide different facilities including water, stockyards, airstrips and doctors’ accommodation.
Authority for council functions come from the *Local Government Act 1993* (the Act). The Act classifies council functions as service, regulatory, ancillary, revenue, administrative and enforcement (see Appendix 1). Councils have a broad discretion in the services they provide and the way that they provide them. The Act makes councils directly accountable to their residents and ratepayers.

### 1.2 What is DLG’s role?

The Act requires councils to provide DLG with audited financial returns, annual reports and a suite of planning and performance documents. The Act does not specify what DLG should do with those reports. DLG is helping all councils develop long-term financial and resource plans, which are required under the Integrated Planning and Reporting amendments to the Act introduced in 2009.

The Act authorises DLG to investigate:

- complaints of pecuniary interest about councillors and council staff
- alleged breaches of the Code of Conduct by councillors (also known as misbehaviour) where the:
  - breach involves political donations
  - council wants DLG to suspend the councillor for the alleged breach
- any council activity. This includes council’s failure to implement the Code of Conduct appropriately to address misbehaviour
- public interest disclosures.

The only penalty that DLG can impose as a consequence of these investigations is to suspend a councillor for up to a month. DLG can also refer matters to the Pecuniary Interest and Disciplinary Tribunal (PIDT), which can impose somewhat harsher penalties – up to five years disqualification from civic office for a pecuniary interest breach or up to six months suspension for misbehaviour.

The Act authorises the Minister for Local Government to hold a public inquiry into the activities of a council. After such an inquiry the Minister can advise the Governor to dismiss all of the elected officials and replace them with an administrator.

The Act requires DLG to approve a diverse range of councils’ policies for things such as filming approvals and alcohol-free zones. The Act also authorises DLG to issue guidelines to councils, but not directions.

DLG’s objective is to strengthen the local government sector focussing on seven strategic goals: leadership, community engagement, council collaboration, governance, financial management, and the efficient and effective use of its own resources.

DLG has 64 staff to oversee 152 councils. DLG recently restructured its resources into five main streams: monitoring rates and financial returns; handling complaints and investigations; promoting better practice; improving governance and councillor behaviour; and setting policy.

For almost a decade, DLG has conducted Promoting Better Practice Reviews (PBPR) in approximately 12 councils each year. These involve a self-assessment by the council, followed by DLG visits and interviews to review council policies and procedures to identify what is working well and what needs to be improved. DLG has completed PBPRs for 100 councils and is committed to completing them for all councils by 2015.

DLG is also assisting councillors and prospective candidates for civic office by running workshops across the State that outline their roles and responsibilities.
1.3 Do other NSW agencies monitor what councils do?

A number of State agencies look at councils. These include the:

- Independent Commission Against Corruption which investigates allegations of corruption
- NSW Ombudsman who investigates complaints about maladministration
- Department of Planning and Infrastructure which monitors and reports annually on the performance of councils in the NSW planning system.

In addition, the following State agencies publicly report on different aspects by council area:

- State Library of NSW reports on public library services and performance
- NSW Office of Water reports on the performance of all local water and sewerage utilities
- NSW Ministry of Health reports on population, hospitalisation, public health, illness and morbidity.

In April 2012, the Minister for Local Government established an Independent Review Panel to identify options for governance models, structural arrangements and boundary changes in local councils. The Panel is to report in July 2013.
2. Does DLG have adequate information to monitor councils and identify performance issues?

DLG does not have adequate information to monitor important aspects of council performance, including service delivery. This reflects the fact that the Act does not require such a monitoring role of DLG.

Nevertheless, DLG has adequate information to monitor council performance in relation to planning; financial management; charging of rates and fees; and councillor behaviour. It uses such information to inform policy, legislative reform and specific interventions with councils. However, DLG does not have a transparent and clear basis to identify and prioritise the most critical performance issues and the councils at greatest financial risk.

While DLG gets some service delivery data, it is not in a form that facilitates monitoring of councils’ non-financial performance.

2.1 Is the information DLG requires councils to provide sufficient to monitor performance?

Finding: The Local Government Act 1993 requires councils to provide DLG with information about their performance.

Councils provide financial information that is useful and comparable.

Councils also provide information about non-financial performance, but this is not standardised. As a result, the information does not enable comparisons across councils, or monitoring of the effectiveness or efficiency of their services.

Over time, DLG has collected a large quantity of council data, which is mainly financial.

The Act requires councils to provide DLG with copies of their:

- annual reports, audited financial statements and details of council rates and fees
- Integrated Planning and Reporting (IPR) documents which include
  - ten year community strategic plan and long-term financial plans
  - four year delivery programs and workforce management and asset management plans
  - annual operational plans.

Around 12 councils each year also provide DLG with information about a broad range of council policies and practices through the Promoting Better Practice Review (PBPR) program.

Under Destination 2036, DLG will develop consistent performance measures for councils by 2013. These will encourage councils to provide standardised information about non-financial performance to allow DLG to monitor how well they deliver services. This is similar to what some other jurisdictions are currently implementing.

We recommend that DLG complete its work to establish non-financial performance indicators for councils so it can monitor how well they are delivering services by July 2013.
2.2 Does DLG ensure the information provided by councils is timely, complete and accurate?

**Finding:** The timeliness, completeness and accuracy of information provided by councils to DLG is variable. DLG relies on persuasion to get councils to provide information, as it has no power under the Act to penalise councils who fail to comply.

Nevertheless, DLG advises that councils are generally compliant in meeting information requests.

DLG checks the accuracy and completeness of financial statements and council rates data. DLG’s check of each council’s initial IPR planning documents focuses on completeness and the council’s process, not the accuracy of the contents. DLG does not extensively check the completeness and accuracy of PBPR as the program encourages self-assessment.

Financial data is more timely, complete and accurate than other types of information provided by councils. DLG sets deadlines for councils to submit their audited financial data and encourages on-line submission to facilitate routine data collection. Councils have an incentive to submit timely and complete financial and IPR reports if they are seeking approval to levy additional rates.

DLG advises that councils are generally compliant in meeting information requests. DLG names councils who submit late financial returns in one of its annual publications. DLG considers late financial returns an indicator that the council may be at financial risk.

DLG has identified that some external auditors have been inconsistent in their opinions of financial statements. Some communities may not be getting an adequate level of assurance of their council’s financial position. For example, when judging the same issue around assets of uncertain value, some auditors qualified the accounts, others did not. DLG has not addressed how to help councils improve their choice of appropriate external auditors.

We recommend that by September 2013 DLG should propose amendments to the Act, or consider other initiatives, that empower it to make directions and include a suite of penalties and sanctions for non-compliance.

2.3 Does DLG use the information it gets from councils and other sources to identify emerging performance issues?

**Finding:** DLG uses council data and complaints to identify emerging issues around financial sustainability and performance, misbehaviour and pecuniary interests. However, it does not have a consistent approach to prioritise the most critical of these issues.

DLG does not have a transparent and clear basis to determine which councils are at greatest financial risk. Each year, DLG reviews its approach to identify financially stressed councils. It does this to reflect emerging issues, but has not adequately documented the reasons for change.

It also lacks a consistent approach to analysing data from other sources such as councils’ internal audit reports.

DLG does not identify issues about the effectiveness and efficiency of council service delivery, nor is it required to do so by the Act.
KEY FINDINGS

Financial issues

The Act is silent about what DLG should do with the information provided by councils. For example, the Act does not require DLG to check or endorse financial accounts or asset management plans. To a large extent, DLG determines the extent and nature of the monitoring it undertakes.

One of DLG’s key priorities is to check that the total rates levied by each council do not exceed the cap set by the government. If a council exceeds the cap, the Minister for Local Government requires it to reduce its rates in the next year.

Another DLG priority is to monitor the financial performance and sustainability of councils, but it does not have a clear and transparent way of doing so.

Each November, DLG examines every council’s financial statements for the year ending 30 June. It produces financial ratios on each council using this information. Each year DLG reviews which ratios to use and how they are weighted. This has resulted in the ratios being changed in three of the last four years. DLG advises that these changes reflect emerging issues, but it has not adequately documented the reasons for its decisions.

DLG uses these ratios to rank all 152 councils according to their financial performance. However, it has no benchmark to indicate when concerns about a council’s financial viability are significant enough to prompt further assessment. In addition, DLGs financial review focuses mainly on a single year’s data. This makes it more susceptible to anomalies and more difficult to identify trends.

Other jurisdictions, notably Victoria, have a more robust approach for assessing the financial performance of councils. These are discussed on p.18 and p.19.

We recommend that DLG complete its work to establish improved measures to identify councils at financial risk by July 2013.

Non-financial issues

DLG identifies non-financial issues at individual councils when reviewing their IPR and PBPR documents. DLG also identified common issues found across many councils in one-off reviews of IPR in 2010 and PBPR in 2012. However, it does not maintain an ongoing register of issues and recommendations arising from these programs that could inform improvements throughout the sector. DLG reports that by June 2013 staff will have the support systems needed to do this.

DLG does not routinely use other information provided by councils, such as annual reports, to identify issues around the effectiveness and efficiency of council service delivery. It does not use councils’ internal audit reports to identify matters which warrant attention.

Complaints

In addition to information from councils, DLG uses complaints to identify potential issues around councillor behaviour, for which it has clear responsibilities under the Act. Between 2008-09 and 2011-12, DLG received over 4,500 complaints. Six per cent (278 complaints) involved allegations of pecuniary interest or councillor misbehaviour. DLG used another 558 (12 per cent) to identify potential issues concerning systemic and serious deficiencies in council functions and operations or serious non-compliance with the Act.

The other approximately 3,700 complaints (82 per cent) were mainly about infrastructure (e.g. potholes), services (e.g. garbage collection) or regulatory decisions (e.g. building development and zoning). DLG advises these complainants to approach their council directly or to go to another agency such as the NSW Ombudsman.

We recommend that DLG complete its work to establish systems to better use the data it has to identify sector wide trends and risks by July 2013.
3. Does DLG respond appropriately to identified potential performance issues?

DLG responds adequately to address sector-wide performance issues around financial capacity and councillor conduct. This aligns with DLG’s stated objective to strengthen the local government sector.

DLG responds to council financial stress or councillor misconduct by helping councils address the issue themselves. However, DLG’s response to individual cases of financial stress or councillor misbehaviour can be drawn-out and have minimal effect. DLG has no power to direct councils. Its only sanction in regards to a council is to recommend a public inquiry that could lead to the dismissal of all its elected councillors. The highest sanction it can impose on a misbehaving councillor is to suspend him or her for a month. DLG’s counterparts in some other jurisdictions have greater power to intervene.

Although DLG meets its legislative obligations, NSW councils are subject to less public scrutiny than councils in some other jurisdictions. These jurisdictions monitor broader aspects of council performance and make this information and analysis available to the public. While DLG publishes some comparative information about councils, it does not provide the NSW public with analysis about the performance of individual councils or the sector as a whole.

3.1 Does DLG follow up potential performance issues identified and escalate them appropriately?

**Finding:** DLG follows up potential issues by providing encouragement, advice and guidance to help councils address them. However, it lacks thresholds and decision points for assessing when to intervene, and has few options for escalating matters when encouragement fails to resolve the issue.

**Financial**

After ranking councils according to their financial risk as described on p. 12, DLG conducts further financial assessments to determine which councils require follow up. DLG has not been consistent in how it does this. There are no criteria to decide when follow up is necessary.

Since 2008-09, DLG has followed up between nine and 20 councils a year. In most years, DLG has not followed up some of the councils with the worst financial ratios. DLG advises it does not follow up a council further if it is satisfied that the problems are being addressed.

The extent of the follow up has also been inconsistent. In some years, the follow-up consisted of a desktop review and a letter to the council asking for information on how it intends to address its financial problems. In other years, DLG followed the desktop review with a visit to the council to discuss how its financial situation might be improved. DLG has asked some councils to provide an action plan and monthly reports on expenditure against budget.

The success of these interventions has varied. Some helped improve the financial position of the council. Other councils have remained at high financial risk for over five years. DLG advises that councils in financial difficulty respond by reducing services and maintenance of infrastructure.

DLG has few escalation options to resolve the problems of councils at high and persistent financial risk. DLG provides advice to help struggling councils. For example, it encourages them to avoid unbudgeted capital works. It does not provide funding to support council operations. The Independent Review Panel is considering the financial sustainability of councils as part of its investigation into the sector.
IPR and PBPR

DLG follows up issues identified by the IPR and PBPR programs by advising councils on how to improve their practices and asking them to address deficiencies, such as inadequate asset management or poor procurement practices. DLG has also run regional workshops to help councils improve their long term financial, resourcing and asset management plans.

DLG currently has no established way of escalating these issues if they persist.

Complaints

Between 2008-09 and 2011-12, DLG followed up 869 complaints to determine whether further action was needed and what that action should be. As part of this, it encouraged councils to address the issues themselves. DLG asked councils to provide information about how it handled the complaint. DLG also visited some councils and observed council meetings.

DLG has set itself timeframes to assess complaints and determine whether further action is needed. It meets these around half of the time. In each of the years between 2008-09 and 2011-12, the average time taken to finalise general complaints was over 45 days (target of 42 days) and pecuniary interest complaints over 104 days (90 days). The average time taken to finalise misbehaviour complaints fluctuated between 80 and 168 days (target of 90 days).

Part of the difficulty DLG faces is that complaints may be attributable to a mix of procedural misunderstandings, personality clashes and inappropriate behaviour. For example, a common complaint is about ineffective council meetings. This can take many forms - councillors walking out and preventing a quorum, spending hours debating minutes from previous meetings rather than current business, and accusing each other of breaching the Code of Conduct. Where possible, DLG prefers to address these as systemic issues and provides training and advice to councillors about meeting procedures and their responsibilities.

Exhibit 2: Informal responses can be timely but may fail to resolve the problem

Where councillors are equally divided on a matter, the Mayor has the deciding vote.

In December 2011, a General Manager advised DLG that some councillors were disrupting council business by walking out of meetings thus preventing a quorum to vote on a major development. DLG wrote to each councillor in February 2012 raising concerns about the behaviour and its impact on council decision-making.

Council meetings ran more smoothly for some months, but the walkouts resumed in May 2012 when a further vote was needed to progress the disputed development. As at September 2012, DLG is continuing to monitor the situation.

Source: Audit Office research 2012.

DLG advises that most councils respond positively to its requests for information about complaints. DLG needs to act when councils do not, but it has no coordinated and consistent approach for escalating potential performance issues. It has no hierarchy for intervention. DLG sometimes has to make repeated requests to councils for information to address complaints, as it cannot direct a council to provide a response.

Team leaders across DLG meet fortnightly to identify councils with issues and to determine appropriate interventions to provide a coordinated and consistent response. This is an appropriate way to deal with high risk councils and the process should be both continued and documented.
DLG is developing a Monitoring and Intervention Framework to provide a hierarchy of responses based on the seriousness of the matter and the willingness of the council or councillors to address the problem. This framework will guide staff on when and how to escalate matters arising from financial, IPR and PBP reviews as well as complaints.

We recommend that by February 2013, DLG complete its work to establish a risk based framework for assessing council performance and determining how to respond to performance issues.

3.2 Is DLG’s response to issues identified timely and supported by appropriate interventions?

Finding: We found DLG responds adequately to address sector-wide issues around financial capacity and councillor conduct. In 2009, DLG introduced reforms which have improved the ability of councils to manage assets and develop long-term plans. DLG also provides training and guidance to councillors.

DLG lacks powers to ensure the compliance of individual councils. Unlike its counterparts in some States, DLG cannot give councils binding directions. As a last resort, DLG can advise the Minister to hold a public inquiry that may lead to the dismissal of all the council’s elected councillors. This response is taken rarely and only after protracted investigations.

The law around councillor misbehaviour is complex and the Act contains few penalties. This makes it difficult for DLG to address complaints against individual councillors. Unresolved problems with individual councillors can deteriorate and disrupt council operations as meetings break down and decisions are not made.

Strategic performance issues

DLG responds to sector-wide issues through legislative and policy reform and education. These are collaborative processes that take time.

DLG recognises that the financial viability of councils is a critical issue. In 2009, it facilitated the IPR amendment to the Act, which requires councils to work with communities to determine what their preferred direction is and what is affordable. DLG phased in the introduction of IPR over three years, during which time it ran workshops across the State and helped councils develop the plans required by the Act. All 152 councils have commenced IPR, which is a marked improvement from 2006 when less than one in five NSW councils had asset management plans.

Similarly, DLG has sought to improve council governance by issuing guidelines encouraging better internal controls, and providing workshops to prepare councillors and candidates across the state for their civic role.

Exhibit 3: DLG guidance has improved councils’ internal controls

Unlike most Australian jurisdictions, NSW law does not require councils to have an internal audit function. Instead, DLG released an Internal Audit Guideline in 2008, and encouraged its adoption through Promoting Better Practice Reviews.

In 2009, 77 (50 per cent) councils reported having an internal audit function, an improvement from 2001 when less than two in ten councils had such a function.

There is still room for improvement. Only 34 councils had all three internal audit components: Charter, Committee and Plan. Some councils, including several large metropolitan ones, are still to adopt the guidelines.

Source: Audit Office research 2012.
The Internal Audit Guideline is one of eight that DLG has issued under the Act. The others relate to elections, investments, capital expenditure, appointment of general managers, councillor benefits, tendering and stormwater charges. Councils must consider these guidelines, but do not have to follow them.

In contrast, some other jurisdictions have set minimum requirements for councils through legislation or by empowering the DLG-counterpart to make directions. For instance, all other Australian jurisdictions apart from Tasmania require councils to establish some internal audit function.

**DLG’s enforcement powers against individuals**

DLG’s responsibility and power under the Act to investigate and penalise individual councillors and council staff are protracted and complicated. Investigations typically follow preliminary enquiries that may have already taken several months.

DLG received 223 pecuniary interest complaints between 2008-09 and 2011-12. These are complaints that allege a councillor or council staff member made a decision while influenced by significant personal financial interest. The Act requires councils to refer all complaints of pecuniary interest to DLG. If DLG finds a pecuniary interest breach, it must refer the individual to the Pecuniary Interest and Disciplinary Tribunal (PIDT).

DLG reported five pecuniary interests to PIDT between July 2008 and June 2012, and recommended the councillors be suspended or disqualified from civic office for serious breaches of the Act. More than eleven months elapsed between the breaches being reported to DLG and DLG’s report to PIDT. One matter took over two years.

The Act also requires councils to adopt a Code of Conduct and manage the behaviour of staff and councillors. Under the Act, a council is only required to refer councillor misbehaviour to DLG where the breach involves political donations or when the council seeks to suspend one of its councillors. The Act does not give DLG a role in regards to staff conduct.

DLG can also instigate its own investigation into councillor misbehaviour. It is likely to do so when it has received multiple complaints and suspects that the council may be failing to properly implement the Code of Conduct. However, it can take some time for these investigations to commence.

**Exhibit 4: DLG can be slow to address breaches of the Code of Conduct**

In February 2009, a councillor cast the deciding vote to approve an industrial plant. He did not disclose that he was employed by a company that owned half of the proposed development. Other councillors complained that the councillor had breached the Code of Conduct by voting and not disclosing his interest.

In the same month, the council engaged an external reviewer to assess the complaint. Within a month, the reviewer completed the review but did not address whether the councillor had a conflict of interest.

DLG repeatedly asked the council to investigate the conflict of interest. It did not do this to DLG’s satisfaction.

In June 2011, DLG commenced its formal investigation into the matter, as the council had failed to implement the Code of Conduct.

At the time this report was printed in September 2012, DLG was considering whether to suspend the councillor for one month.

Source: Audit Office research, 2012.
Between July 2008 and June 2012, DLG received 55 misbehaviour complaints and started ten misbehaviour investigations. Six investigations are continuing, more than one year after they started. In one case DLG took no action. In another, DLG imposed the highest penalty available to it. It suspended the councillor for one month, a year after being notified of the misbehaviour.

DLG referred the other councillor to PIDT twice. Four years after the initial breach of the Code of Conduct, PIDT suspended him for a second time, making a total of three months. PIDT has the power to counsel, reprimand or suspend a misbehaving councillor for up to six months.

DLG can also require council staff or councillors to repay any unlawful expenditure for which they are responsible. This power has never been used.

The sanctions available to DLG may not deter councillor misbehaviour and may contribute to problems continuing in councils.

In contrast, Local Government Acts in Victoria and Queensland include additional penalties for breaches. Since 2008-09, Victoria has successfully prosecuted eight councillors for failing to disclose pecuniary and conflicts of interests and political donations. The penalties imposed have included good behaviour bonds, disqualification from acting as a councillor for seven years and a fine of $18,000. Appendix 3 contains information about the penalties that Australian jurisdictions can impose on councillors who have breached their duty.

DLG does not have formal review points in its investigation process to determine whether an ongoing investigation is worthwhile or should be closed because issues have been resolved or evidence suggests that there is no case to answer. As a result, some investigations may run for longer than necessary.

**DLG’s enforcement powers against councils**

DLG lacks powers to deal with individual councils that are unwilling to address problems. It cannot give a council a binding direction. For example, it cannot direct a council to review a decision or to adopt a DLG guideline issued under the Act.

**Exhibit 5: DLG has no power to demand compliance with the Act**

In 2010, a council failed to provide most of the IPR documents required by the Act. DLG wrote to the council asking it to ‘develop an action plan, as a matter of priority, that clearly sets out how it will address the deficiencies to ensure that it is compliant by July 2011’. The council responded that it would address the issue in 2013. DLG has no power to direct the council to do it sooner.

Source: Audit Office research 2012.

DLG’s only course of action, once informal approaches have failed, is to undertake a formal investigation under the Act. DLG has not established criteria for when a formal investigation should commence.

Since 2008-09, DLG has undertaken one formal investigation of a council’s procurement for, and its use of temporary contractors on, a multi-million dollar infrastructure project. DLG took 19 months to finalise the investigation and publish the report on its website. The council accepted the report’s recommendations.

As a last resort, DLG can recommend the Minister for Local Government hold a public inquiry that may lead to the dismissal of all elected councillors and the appointment of an administrator. This last occurred in 2008 at Shellharbour where council meetings had broken down due to conflict between councillors.
We recommend that by September 2013 DLG should propose amendments to the Act, or consider other initiatives, that:

- clarify who monitors councils to ensure compliance with the Act
- empower DLG to make directions such as requiring councils to have an Audit and Risk Committee, an internal audit function and fraud control procedures
- include a suite of penalties and sanctions for non-compliance with legislative requirements and DLG directives.

3.3 Does DLG inform the public of council performance and sector-wide performance issues?

Finding: Although DLG does report some information about council performance on its website, the legislation does not require it.

Some other jurisdictions monitor and report on broader aspects of council performance including compliance with laws and guidelines, financial sustainability, service delivery and community satisfaction.

When compared to these jurisdictions, New South Wales lacks the same level of assurance that councils comply with the Act, are financially viable, and provide efficient and effective services to residents and ratepayers.

The Act does not require DLG to report publicly on council performance. Nevertheless, DLG publishes the following information on its website:

- Promoting Better Practice Reviews of individual councils
- reports of DLG’s formal investigations into councils
- PIDT decisions regarding allegations of pecuniary interest and misbehaviour
- numbers of complaints received and what DLG does with them.

In addition, DLG publishes an Annual Snapshot that provides data for all NSW councils on:

- the average rates paid, the proportion of rates in arrears and the percentage increase in rates and charges from the previous year
- a breakdown of income sources and expense types
- the following ratios - operating expenditure per resident; value of current assets divided by current liabilities; ability to pay debt from operational income; and expenditure on asset maintenance and replacement
- staff numbers
- whether financial and annual reports were submitted on time
- the amount spent per resident on environmental management and health; recreation and leisure services; and community services.

The Snapshot provides extensive comparative data from 1994-95 onwards. However, it contains no benchmarks or analysis to help the reader assess how councils are performing. The Snapshot does not indicate which councils may be financially unsustainable and it provides little information on service delivery.

Some jurisdictions provide more assurance that their councils comply with local government legislation, are financially viable and provide efficient and effective services to ratepayers. For example, Victoria reports publicly on the financial health of councils each year. The Victorian Auditor-General’s Office (VAGO) has developed a standardised tool to assess councils’ financial sustainability. The tool uses data from the last five years and forecasts for the next three, and as a result, is less subject to one-off anomalies. VAGO’s tool includes benchmarks and a ratio for cash flow, and identifies councils with short-term financial sustainability concerns.
Exhibit 6 is an extract of VAGO’s annual financial risk rating of councils. Appendix 2 contains VAGO’s indicators and benchmarks for assessing the financial viability of councils.

### Exhibit 6: Rating councils’ financial sustainability in Victoria

<table>
<thead>
<tr>
<th>Small shire council</th>
<th>Underlying result (%)</th>
<th>Liquidity</th>
<th>Indebtedness (%)</th>
<th>Self-financing (%)</th>
<th>Capital replacement (%)</th>
<th>Renewal gap</th>
<th>Sustainability assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ararat Shire Council</td>
<td>7.05</td>
<td>3.33</td>
<td>1.02</td>
<td>27.95</td>
<td>1.20</td>
<td>0.96</td>
<td>High</td>
</tr>
<tr>
<td>Alpine Shire Council</td>
<td>0.66</td>
<td>2.06</td>
<td>20.92</td>
<td>17.34</td>
<td>1.13</td>
<td>0.81</td>
<td>High</td>
</tr>
<tr>
<td>Bass Coast Shire Council</td>
<td>11.90</td>
<td>2.44</td>
<td>19.77</td>
<td>31.35</td>
<td>1.70</td>
<td>1.15</td>
<td>Medium</td>
</tr>
<tr>
<td>Benalla Shire Council</td>
<td>2.58</td>
<td>1.42</td>
<td>38.56</td>
<td>17.01</td>
<td>1.14</td>
<td>1.04</td>
<td>Medium</td>
</tr>
<tr>
<td>Borough of Queenscliff</td>
<td>7.42</td>
<td>2.51</td>
<td>15.72</td>
<td>25.42</td>
<td>1.83</td>
<td>1.43</td>
<td>High</td>
</tr>
<tr>
<td>Buloke Shire Council</td>
<td>-10.43</td>
<td>0.44</td>
<td>17.99</td>
<td>12.54</td>
<td>0.90</td>
<td>0.78</td>
<td>Medium</td>
</tr>
<tr>
<td>Central Goldfields Shire Council</td>
<td>-9.45</td>
<td>1.13</td>
<td>47.79</td>
<td>38.16</td>
<td>1.59</td>
<td>0.79</td>
<td>High</td>
</tr>
<tr>
<td>Gannawarra Shire Council</td>
<td>3.08</td>
<td>1.97</td>
<td>31.23</td>
<td>31.50</td>
<td>1.33</td>
<td>0.99</td>
<td>High</td>
</tr>
<tr>
<td>Golden Plains Shire Council</td>
<td>12.05</td>
<td>1.74</td>
<td>37.99</td>
<td>26.70</td>
<td>2.28</td>
<td>1.07</td>
<td>Medium</td>
</tr>
<tr>
<td>Hepburn Shire Council</td>
<td>5.43</td>
<td>2.63</td>
<td>14.89</td>
<td>36.69</td>
<td>1.40</td>
<td>0.95</td>
<td>Medium</td>
</tr>
<tr>
<td>Hindmarsh Shire Council</td>
<td>10.83</td>
<td>2.60</td>
<td>1.94</td>
<td>27.09</td>
<td>1.50</td>
<td>1.16</td>
<td>High</td>
</tr>
<tr>
<td>Indigo Shire Council</td>
<td>12.09</td>
<td>1.92</td>
<td>14.89</td>
<td>16.06</td>
<td>1.51</td>
<td>1.06</td>
<td>Medium</td>
</tr>
<tr>
<td>Loddon Shire Council</td>
<td>8.76</td>
<td>7.43</td>
<td>28.42</td>
<td>45.20</td>
<td>0.97</td>
<td>0.67</td>
<td>High</td>
</tr>
<tr>
<td>Mansfield Shire Council</td>
<td>14.51</td>
<td>3.68</td>
<td>18.83</td>
<td>43.00</td>
<td>1.39</td>
<td>0.79</td>
<td>Medium</td>
</tr>
<tr>
<td>Mount Alexander Shire Council</td>
<td>-1.24</td>
<td>2.54</td>
<td>24.86</td>
<td>18.66</td>
<td>1.06</td>
<td>0.79</td>
<td>High</td>
</tr>
<tr>
<td>Murrindindi Shire Council</td>
<td>7.58</td>
<td>2.28</td>
<td>27.50</td>
<td>21.59</td>
<td>1.60</td>
<td>0.99</td>
<td>High</td>
</tr>
<tr>
<td>Northern Grampians Shire Council</td>
<td>5.62</td>
<td>2.29</td>
<td>20.95</td>
<td>43.02</td>
<td>1.30</td>
<td>0.91</td>
<td>High</td>
</tr>
<tr>
<td>Pyrenees Shire Council</td>
<td>12.23</td>
<td>5.09</td>
<td>33.50</td>
<td>50.40</td>
<td>1.67</td>
<td>1.15</td>
<td>Medium</td>
</tr>
<tr>
<td>Strathbogie Shire Council</td>
<td>1.61</td>
<td>1.37</td>
<td>19.85</td>
<td>23.78</td>
<td>1.20</td>
<td>0.65</td>
<td>Medium</td>
</tr>
<tr>
<td>Towong Shire Council</td>
<td>7.34</td>
<td>3.16</td>
<td>9.36</td>
<td>30.73</td>
<td>1.24</td>
<td>0.98</td>
<td>Medium</td>
</tr>
<tr>
<td>West Wimmera Shire Council</td>
<td>4.77</td>
<td>2.06</td>
<td>2.35</td>
<td>35.11</td>
<td>1.04</td>
<td>1.04</td>
<td>High</td>
</tr>
<tr>
<td>Yarram Shire Council</td>
<td>1.63</td>
<td>2.60</td>
<td>2.88</td>
<td>28.75</td>
<td>0.99</td>
<td>0.72</td>
<td>High</td>
</tr>
<tr>
<td>Category average</td>
<td>6.01</td>
<td>2.59</td>
<td>20.51</td>
<td>29.46</td>
<td>1.36</td>
<td>0.95</td>
<td>Medium</td>
</tr>
</tbody>
</table>


NSW Audit Office explanatory note: VAGO assesses Buloke to be of high-risk short-term sustainability concern because it generates insufficient revenue to fund operations and asset renewal. It also has insufficient assets to cover liabilities. Either indicator warrants a high risk rating by VAGO. VAGO rates Loddon and Yarriambiack to be of medium-risk longer-term sustainability concern because their spending on capital works has not kept pace with their consumption of assets.

Most other Australian jurisdictions have reported on the financial sustainability of their councils during the last few years, although most do not do so annually. Such reporting last occurred in New South Wales in 2006.

Some jurisdictions also publicly report other aspects of council performance, service delivery and issues affecting the sector. This includes:

- councils’ audited accounts including qualifications (Queensland, Victoria and Tasmania)
- data on the number of councils with internal audit, audit committees and fraud compliance strategies (Queensland, Victoria and Tasmania)
- performance of councils in delivering services to their communities (Victoria and Tasmania)
- information about emerging risks facing the sector, e.g. contaminated land, local roads and bridges, garbage tips (Victoria); damage to infrastructure from floods, cost-shifting, workforce gaps (Queensland).

Appendix 3 provides comparative information on councils across Australia.

As part of the Destination 2036 Action Plan, DLG will identify sector-wide issues in conjunction with other stakeholders, including Local Government Managers Australia (NSW) and the Local Government and Shires Association. This is commendable, and assurance would increase if the results of this analysis were made public.

DLG advises that it intends to include service delivery performance indicators in its Annual Snapshot report. DLG started to develop these indicators in 2009 but has deferred the project to 2013.

We recommend that by September 2013 DLG should propose amendments to the Local Government Act 1993, or consider other initiatives, that strengthen public reporting on the financial viability of councils and the efficiency and effectiveness of council performance.
### Appendix 1: Council functions (extract from Local Government Act 1993)

A council exercises functions under

<table>
<thead>
<tr>
<th>Service functions</th>
<th>Regulatory functions</th>
<th>Ancillary functions</th>
<th>Revenue functions</th>
<th>Administrative functions</th>
<th>Enforcement functions</th>
<th>Various functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>For example: • community health, recreation, education and information services • environmental protection • waste removal and disposal • land and property, industry and tourism development and assistance</td>
<td>Approvals Orders Building certificates</td>
<td>Resumption of land Powers of entry and inspection</td>
<td>Rates Charges Fees Borrowings Investments</td>
<td>For example: • employment of staff • management plans • financial reporting • annual reports</td>
<td>For example: • proceedings for breaches of the Act • prosecution of offences • recovery of rates and charges</td>
<td>For example: • issue fire permits • register cats and dogs</td>
</tr>
</tbody>
</table>

Source: Local Government Act 1993 s. 23A.
## Appendix 2: Victorian indicators for the financial sustainability of councils

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Formula</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Underlying result (per cent)</td>
<td>Adjusted net surplus/ total underlying revenue</td>
<td>A positive result indicates a surplus. The larger the percentage, the stronger the result. A negative result indicates a deficit. Operating deficits cannot be sustained in the long-term. Underlying revenue does not take into account non-cash developer contributions and other one-off (non-recurring) adjustments.</td>
</tr>
<tr>
<td>Liquidity</td>
<td>Current assets/ current liabilities</td>
<td>Measured the ability to pay existing liabilities in the next 12 months. A ratio higher than 1:1 means there is more cash and liquid assets than short-term liabilities.</td>
</tr>
<tr>
<td>Self-financing (per cent)</td>
<td>Net operating cash flows/ underlying revenue</td>
<td>Measures the ability to replace assets using cash generated by the entity’s operations. The higher the percentage, the more effectively this can be done.</td>
</tr>
<tr>
<td>Indebtedness (per cent)</td>
<td>Non-current liabilities/ own-sourced revenue</td>
<td>Comparison of non-current liabilities (mainly comprised of borrowings) to own-sourced revenue. The higher the percentage, the less able to cover non-current liabilities from the revenues the entity generates itself. Own-sourced revenue is used (rather than total revenue) because it does not include capital grants, which are usually tied to specific projects.</td>
</tr>
<tr>
<td>Capital replacement</td>
<td>Capital expenditure/ depreciation</td>
<td>Comparison of the rate of spending on infrastructure with its depreciation. Ratios higher than 1:1 indicate that spending is faster than the depreciation rate. This is a long-term indicator, as capital expenditure can be deferred in the short-term if there are insufficient funds available from operations, and borrowing is not an option.</td>
</tr>
<tr>
<td>Renewal gap</td>
<td>Renewal and upgrade expenditure/ depreciation</td>
<td>Comparison of the rate of spending on existing assets through renewing, restoring, and replacing existing assets with depreciation. Ratios higher than 1:1 indicate that spending on existing assets is greater than the depreciation rate. Similar to the investment gap, this is a long-term indicator, as capital expenditure can be deferred in the short term if there are insufficient funds available from operations, and borrowing is not an option.</td>
</tr>
</tbody>
</table>

Source: Victorian Auditor-General’s Office 2011.
### Victorian benchmarks for the financial sustainability of councils

<table>
<thead>
<tr>
<th>Risk</th>
<th>Underlying result</th>
<th>Liquidity</th>
<th>Indebtedness</th>
<th>Self-financing</th>
<th>Capital replacement</th>
<th>Renewal gap</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Negative 10% or less</td>
<td>Equal to or less than 1.0</td>
<td>More than 60%</td>
<td>Less than 10%</td>
<td>Equal to or less than 1.0</td>
<td>Equal to or less than 0.5</td>
</tr>
<tr>
<td></td>
<td>Insufficient revenue is being generated to fund operations and asset renewal.</td>
<td>Insufficient current assets to cover liabilities.</td>
<td>Potentially long-term concern over ability to repay debt levels from own-source revenue.</td>
<td>Insufficient cash from operations to fund new assets and asset renewal.</td>
<td>Spending on capital works has not kept pace with consumption of assets.</td>
<td>Spending on existing assets has not kept pace with consumption of these assets.</td>
</tr>
<tr>
<td>Medium</td>
<td>Negative 10% to zero</td>
<td>1.0–1.5</td>
<td>40–60%</td>
<td>10–20%</td>
<td>1.0–1.5</td>
<td>0.5–1.0</td>
</tr>
<tr>
<td></td>
<td>A risk of long-term run down to cash reserves and inability to fund asset renewals.</td>
<td>Need for caution with cash flow, as issues could arise with meeting obligations as they fall due.</td>
<td>Some concern over the ability to repay debt from own-source revenue.</td>
<td>May not be generating sufficient cash from operations to fund new assets.</td>
<td>May indicate spending on asset renewal is insufficient.</td>
<td>May indicate insufficient spending on renewal of existing assets.</td>
</tr>
<tr>
<td>Low</td>
<td>More than zero</td>
<td>More than 1.5</td>
<td>40% or less</td>
<td>20% or more</td>
<td>More than 1.5</td>
<td>More than 1.0</td>
</tr>
<tr>
<td></td>
<td>Generating surpluses consistently.</td>
<td>No immediate issues with repaying short-term liabilities as they fall due.</td>
<td>No concern over the ability to repay debt from own-source revenue.</td>
<td>Generating enough cash from operations to fund assets.</td>
<td>Low risk of insufficient spending on asset renewal.</td>
<td>Low risk of insufficient spending on asset base.</td>
</tr>
</tbody>
</table>

The overall financial sustainability risk assessment is calculated using the following ratings:

- **High risk of short-term and immediate sustainability concerns indicated by either:**
  - **red** underlying result indicator or
  - **red** liquidity indicator.

- **Medium risk of longer-term sustainability concerns indicated by either:**
  - **red** self-financing indicator or
  - **red** indebtedness indicator or
  - **red** capital replacement indicator or
  - **red** renewal gap indicator.

- **Low risk of financial sustainability concerns – there are no high-risk indicators.**

Source: Victorian Auditor-General’s Office 2011.
### Appendix 3: Comparative information on councils across Australia

<table>
<thead>
<tr>
<th></th>
<th>NSW</th>
<th>Vic</th>
<th>Qld</th>
<th>SA</th>
<th>Tas</th>
<th>WA</th>
<th>NT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Number of councils</strong></td>
<td>152</td>
<td>79</td>
<td>73</td>
<td>68</td>
<td>29</td>
<td>139</td>
<td>16</td>
</tr>
<tr>
<td><strong>Average population of each council 2010</strong></td>
<td>47,575</td>
<td>70,192</td>
<td>60,998</td>
<td>23,438</td>
<td>17,505</td>
<td>16,500</td>
<td>13,787</td>
</tr>
<tr>
<td><strong>Number of councils under 2,000 population</strong></td>
<td>4</td>
<td>0</td>
<td>25</td>
<td>12</td>
<td>2</td>
<td>66</td>
<td>3</td>
</tr>
<tr>
<td><strong>Reduction in councils between 1990 and 2010</strong></td>
<td>14%</td>
<td>62%</td>
<td>45%</td>
<td>45%</td>
<td>37%</td>
<td>-1%</td>
<td>27%</td>
</tr>
</tbody>
</table>

#### State agencies with oversight of councils

- **Division of Local Government (DLG)**
- **Department of Planning and Infrastructure**
- **Local Government Victoria (LGV)**
- **Local Government Investigation Compliance Inspectorate Audit Office (VAGO)**
- **Department of Local Government (DLG)**
- **Department of State Development, Infrastructure and Planning Audit Office (QAO)**
- **Office for State/Local Government Relations (OS/LGR)**
- **Audit Office (TAO)**
- **Department of Housing, Local Government and Regional Services (DHLGRS)**

#### Councils must have internal audit function

- No
- Yes
- Yes
- Yes
- No
- Yes
- Yes

#### Maximum penalty for councillor breach of duty

- **NSW**: Disqualify for 5 years
- **Vic**: $84,504 fine, 5 years prison
- **Qld**: $11,000 fine, 2 years prison
- **SA**: $10,000 fine, 2 years prison
- **Tas**: $6,500 fine, Dismissal and disqualify for 7 years
- **WA**: $10,000 fine, 2 years prison
- **NT**: $13,300, 6 months prison

#### External auditor

- Engaged by individual council
- VAGO
- QAO
- Engaged by individual council
- TAO
- Engaged by individual council
- Engaged by individual council

#### State agency monitors council service delivery to communities

- No
- LGV
- VAGO
- No
- Limited
- No
- In progress

#### State agency monitors council engagement with local communities

- Limited
- Limited
- DLG
- No
- Limited
- No
- No

#### State agency reports on council and sector wide issues

- DLG reports comparative information about councils which is mainly financial
- LGV reports on service delivery, community satisfaction and sector-wide trends. VAGO reports on councils’ compliance and financial health. VAGO performance audits
- DLG reports on comparative financial health and asset management. QAO reports on councils’ compliance and governance, and sector wide risks. QAO performance audits
- OS/LGR reports on overall financial performance and position
- TAO reports on councils’ compliance, financial health and asset management. TAO performance audits
- No
- In progress

Source: NSW Audit Office Research based on publicly available information.

Note: No assessment has been made of the quality and effectiveness of the monitoring, information and reporting in other jurisdictions.
Appendix 4: About the audit

Objective
This audit assessed how well the Division of Local Government (DLG) monitors the performance of councils, and how well it intervenes to address the performance issues it identifies.

Lines of inquiry
We sought to answer the following questions:

1. Does DLG have adequate information to monitor councils and identify performance issues?
2. Does DLG respond appropriately to identified potential performance issues?

Scope
The scope of the audit was DLG's oversight and monitoring of council performance and intervention when issues were identified. The audit included the assessment of DLG's oversight practices; the adequacy of the information collected by DLG; the use made of the information; the response to performance issues; and the extent to which DLG's monitoring provides assurance to the public.

The audit did not examine the performance of individual councils, county councils, amalgamation, Regional Organisations of Councils or DLG's role in administering statutory determinations under the *Local Government Act 1993*.

Criteria
We used the following audit criteria to assess the performance of the agency's activities. The information and evidence arising from them provided the findings to enable us to conclude on the audit's objective.

For the first line of inquiry, we assessed whether:

1. The information DLG requires councils to provide is sufficient to monitor performance
2. DLG ensures the information provided by councils is timely, complete and accurate
3. DLG uses the information it gets from councils and other sources to identify emerging performance issues.

For the second line of inquiry, we assessed whether:

4. DLG follows up potential performance issues identified and escalates them appropriately
5. DLG’s response to the issues identified is timely and supported by appropriate interventions
6. DLG informs the public of council performance and sector-wide performance issues.

Audit approach
The audit team collected evidence by:

- conducting discussions with DLG and relevant stakeholders including the Local Government and Shires Associations, Local Government Managers Australia (NSW), Independent Commission Against Corruption, NSW Ombudsman and the Network of Local Government Internal Auditors
- reviewing relevant documents including legislation, policy, guidelines, reports, strategies, and reviews
- reviewing DLG files relating to their monitoring, complaints handling, investigations, intervention and internal business reporting
- reviewing publicly available policies and practices from other jurisdictions.
Audit methodology

Our performance audit methodology satisfies Australian Assurance Standard ASAE 3500 on performance auditing, including related quality control procedures. Our processes have also been designed to comply with the auditing requirements specified in the Public Finance and Audit Act 1983.

The audit’s conclusions are based on findings made against audit criteria. The findings consider the information gathered about the extent of any variation in an activity’s performance against criteria. Evidence is frequently corroborated from several sources and tested in discussions with the agency. The evidence must be appropriate and sufficient to provide a reasonable level of assurance. To form an audit’s conclusion the findings are evaluated both individually and in aggregate.

Professional judgement is ultimately applied to decide whether gaps between criteria and actual performance are material. The greater, or more material, the variation the more likely the performance is outside accepted tolerances and will result in modified audit conclusions. Guiding professional judgement is the extent to which the performance gaps (findings) impact on parliament’s decisions or expectations about the economy, efficiency and effectiveness of activities and, the discharge of accountability by public officials for the activity being audited.

Audit selection

We use a strategic approach to select performance audits. This ensures our performance audit program reflects issues of interest to parliament and the public of New South Wales. Details of our approach to selecting topics and our forward program are available on our website.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by the Division of Local Government, Department of Premier and Cabinet. In particular we wish to thank our liaison officers who participated in interviews, provided documentation and appraised the audit’s papers and reports.

Audit team

Michael Johnston and Sandra Tomasi conducted the performance audit. Jane Tebbatt and Rob Mathie provided direction and quality assurance.

Audit costs

Including staff, printing and overheads, the estimated cost of the audit is $229,000.
Performance auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General’s mandate to undertake performance audits is set out in the Public Finance and Audit Act 1983.

Why do we conduct performance audits?

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit’s scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in Parliament includes a response from the CEO on the report’s conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

Do we check to see if recommendations have been implemented?

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report’s recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament’s Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice. We are also subject to independent audits of our quality management system to maintain certification under ISO 9001.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every three years. The review’s report is tabled in parliament and available on its website.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in-progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.
## Performance audit reports

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**Performance audits on our website**

A list of performance audits tabled or published since March 1997, as well as those currently in progress, can be found on our website [www.audit.nsw.gov.au](http://www.audit.nsw.gov.au).
The role of the Auditor-General

The roles and responsibilities of the Auditor-General, and hence the Audit Office, are set out in the Public Finance and Audit Act 1983.

Our major responsibility is to conduct financial or ‘attest’ audits of State public sector agencies’ financial statements. We also audit the Total State Sector Accounts, a consolidation of all agencies’ accounts.

Financial audits are designed to add credibility to financial statements, enhancing their value to end-users. Also, the existence of such audits provides a constant stimulus to agencies to ensure sound financial management.

Following a financial audit the Audit Office issues a variety of reports to agencies and reports periodically to parliament. In combination these reports give opinions on the truth and fairness of financial statements, and comment on agency compliance with certain laws, regulations and government directives. They may comment on financial prudence, probity and waste, and recommend operational improvements.

We also conduct performance audits. These examine whether an agency is carrying out its activities effectively and doing so economically and efficiently and in compliance with relevant laws. Audits may cover all or parts of an agency’s operations, or consider particular issues across a number of agencies.

Performance audits are reported separately, with all other audits included in one of the regular volumes of the Auditor-General’s Reports to Parliament – Financial Audits.

In accordance with section 38E of the Public Finance and Audit Act 1983, I present a report titled Monitoring local government: Department of Premier and Cabinet, Division of Local Government.

Peter Achterstraat
Auditor-General
26 September 2012

The Legislative Assembly
Parliament House
Sydney NSW 2000

The Legislative Council
Parliament House
Sydney NSW 2000
New South Wales Auditor-General’s Report
Performance Audit
Monitoring local government
Department of Premier and Cabinet, Division of Local Government