Office of Local Government

Improvement and Intervention Framework in relation to NSW Councils

May 2017

CONTENTS

1 Purpose

The purpose of the *Improvement and Intervention Framework* is to assist NSW councils to meet good practice and ensure they comply with relevant legislation and standards.

The purpose of this *Framework* document is to provide a diagnostic tool to guide the Office of Local Government in identifying appropriate Improvement and intervention strategies in relation to NSW councils.

2 Background

The Office strives to be a professional, responsive, efficient and effective organisation which works with local councils to ensure a strong and sustainable local government sector in NSW. The Office strives to work collaboratively with the Local Government sector and is the key adviser to the NSW Government on Local Government matters.

This *Improvement and Intervention Framework* supports the Office's goals of being a leader on Local Government matters for New South Wales; continuous improvement in council governance practices; all councils manage their finances responsibly; and Office resources are optimised.

The Office is active in providing a range of improvement information and advice to guide local councils. However, there are circumstances where the Office may need to intervene where councils are experiencing difficulties in meeting their legislated obligations or otherwise experiencing a breakdown in performing their functions efficiently and effectively that requires outside assistance to remedy.

The Office aims to intervene early when councils are experiencing problems and, in the first instance, will encourage councils to meet their obligations. Any intervention or improvement response will be proportionate to the circumstances. For example, an improvement strategy may be appropriate where the target is all councils in NSW; an intervention strategy may be appropriate where an individual council is experiencing severe difficulties such as a breakdown in relationships.

"Improvement and intervention" is defined in broad terms to include:

- strategies that assist councils to meet good practice,
- strategies to ensure councils comply with relevant legislation and standards, and
- strategies that use available sanctions that force councils to comply with relevant legislation and standards.

"Improvement and intervention" is also defined in broad terms to include strategies with an impact on the local government sector, to strategies with an impact on individuals within the sector.

The aim of any intervention is to encourage councils and individuals to voluntarily act appropriately. The Office's approach to Improvement and intervention is described in the Compliance Management Pyramid (see Diagram 1 Part 11). It is recognised that councils and individuals may not always act appropriately and may move between the segments in the Pyramid, which then requires a proportionate response from the Office. The Office will have regard to this *Improvement and Intervention Framework* when responding to issues.

3   Coverage

The *Improvement and Intervention Framework* is for use by all teams in the Office.

The available strategies provided in Appendix 1 cover the range of activities undertaken by the Office to improve the local government sector.

Some Teams may not have a role with some levels of the *Improvement and Intervention Framework*.

4   Policy statement

The Office works with local councils to ensure a strong and sustainable sector.

Our aim is to proactively and collaboratively support councils to improve through information and advice.

Where councils are not performing as expected we will:

- Respect the democratic mandate of councils and importance of self improvement by encouraging councils and individuals to voluntarily act appropriately and meet their obligations under the Act.

- Intervene early when councils are experiencing problems to strengthen a council's capacity to meet its obligations.

- Escalate action appropriately and promptly in proportion to the situation, using the strongest options where the council has clearly indicating its unwillingness to comply with any relevant early intervention or warning.

- Consider the broader implications of any intervention on the local government sector when planning an intervention.

- Commit to maintaining strong and constructive relationships with councils even if intervention is required to deliver appropriate local solutions.

5   Risk management

The use of the *Improvement and Intervention Framework* to guide intervention activities will ensure that the following risks are managed:

a.   risk to the Office's reputation:

- enforcement and compliance interventions will only occur following an analysis of the circumstances

- interventions will be scaled, ensuring councils have adequate opportunity to positively respond

- promote the Office's aim of working with councils rather than telling councils what to do, in most cases.

b.   risk of acting prematurely:

- by analysing the circumstances

- by planning Improvement and intervention activities.

6   Responsibilities

Chief Executive: is responsible for approving the *Improvement and Intervention Framework*. The Chief Executive will also be responsible for approving interventions in the enforcement (penalty/direction) segment of the Compliance Management Pyramid (Diagram 1 in Part 11 and described in Appendix 1).

Directors: are responsible for ensuring the *Framework* is implemented across the Office and that Managers give consideration to the Framework in their work.

Managers: are responsible for implementing the *Improvement and Intervention Framework*.

Investigations Team: is responsible:

- for the oversight of the *Improvement and Intervention Framework* and is responsible for its regular review.

- to lead, as defined by the relevant approval, interventions in the enforcement segment of the Compliance Management Pyramid (Diagram 1 in Part 11 and described in Appendix 1).

Performance and Compliance Team: is responsible to lead the financial reviews identified in the compliance assessment segment of Appendix 1. The Team has developed "*Financial Review Program Guidelines*" which should be used when implementing a financial review.

All Teams: should:

- use the *Improvement and Intervention Framework* when considering such activities.

- consult the Investigations Team if there are proposed interventions in the compliance assessment (formal warning) and enforcement (penalty/direction) segments of the Compliance Management Pyramid (Diagram 1 in Part 11 and described in Appendix 1).

7   How to use this document

a.   This document outlines the improvement and intervention strategies that are available to the Office (Appendix 1).

b.   This document provides a guide to help decide which improvement or intervention strategy may be applicable to the relevant circumstances.

c.   The interventions described in this document consider the desired impact of any intervention. That is; consideration should be given as to whether the focus of the intervention is to prompt individuals to change, individual council action or promote change across the sector.

d.   The framework provided in this document is based on a Compliance Management Pyramid that encourages councils to voluntarily act appropriately (Diagram 1 - see Part 11 below).

e.   A detailed "*Improvement and Intervention Strategies – Risks/Resources Analysis Table*" is provided at Appendix 1. This table is organised by segment of the Compliance Management Pyramid. It outlines relevant improvement and/or intervention strategies according to the segment to which they apply, their purpose, the circumstances where they may apply, the risks and resources required for their implementation. While the strategies have been organised in

accordance with the purpose that generally aligns best to the principles of the relevant segment of the Compliance Management Pyramid, some strategies may be also used in other segments of the Pyramid. **There is no hierarchy to the interventions within each segment. The Strategy Table is a guide, assisting to determine the appropriate improvement or intervention strategy.**

f.   If strategies are to be used in the compliance assessment (formal warning) and enforcement (penalty/direction) segments of the Compliance Management Pyramid, then a "*Problem Identification, Risk Analysis and Intervention Strategy*" may need to be developed using the template provided at Appendix 2 (also see Part 9 below).

8   Business rules/process

a.   The order of intervention wherever possible should be:

   1.   Encourage voluntary compliance/good practice

   2.   Persuade to comply/improve practice

   3.   Enforce to comply/impose penalty.

b.   Each intervention step should be based on an analysis and review of presenting issues to ensure appropriate action.

c.   A clear purpose and desired outcome should be established at the outset.

d.   The "*Problem identification, risk analysis and intervention strategy decision making and action framework template*" may be required when considering interventions (as described in Part 9 below) in the penalty and formal warning segments of the Compliance Management Pyramid.

e.   Investigation plans should be developed for investigation interventions, including section 430 investigations, pecuniary interest and misconduct investigations, using the template attached at Appendix 3.

f.   Approval should be sought from the appropriate person for the intervention prior to commencing.

g.   A review should occur after each intervention to assess results and whether the intervention could be improved.

9 Problem identification, risk analysis and intervention strategy decision making and action framework overview

(this may only be applicable for the penalty and formal warning segments of the Compliance Management Pyramid)

Steps to be considered when using the "*Problem identification, risk analysis and intervention strategy decision making and action framework template*":

a. Analyse compliance behaviour:

- Identify the apparent problem/behaviour that needs to change

- Identify the underlying cause of the problem/behaviour

- Identify desired outcome of intervention

b. Determine desired impact; eg prompt individuals to change, require specific council action, change across the sector

c. Determine attitude to compliance (see Diagram 1) and purpose of intervention (see Appendix 1)

d. Identify risks and pros and cons associated with intervening/not intervening

e. Identify pros and cons of relevant options including risks and resource implications (see Appendix 1)

f. Determine intervention option/strategy and plan

g. Apply the intervention option/strategy

h. Monitor performance against desired outcome

i. Evaluate change/compliance/outcome and intervention process

j. Consider further intervention/escalation following the evaluation

k. Review intervention process for improvement

10 Supporting documents

The Performance and Compliance Team has developed guidelines for the implementation of financial reviews and should be referred to when implementing those reviews:
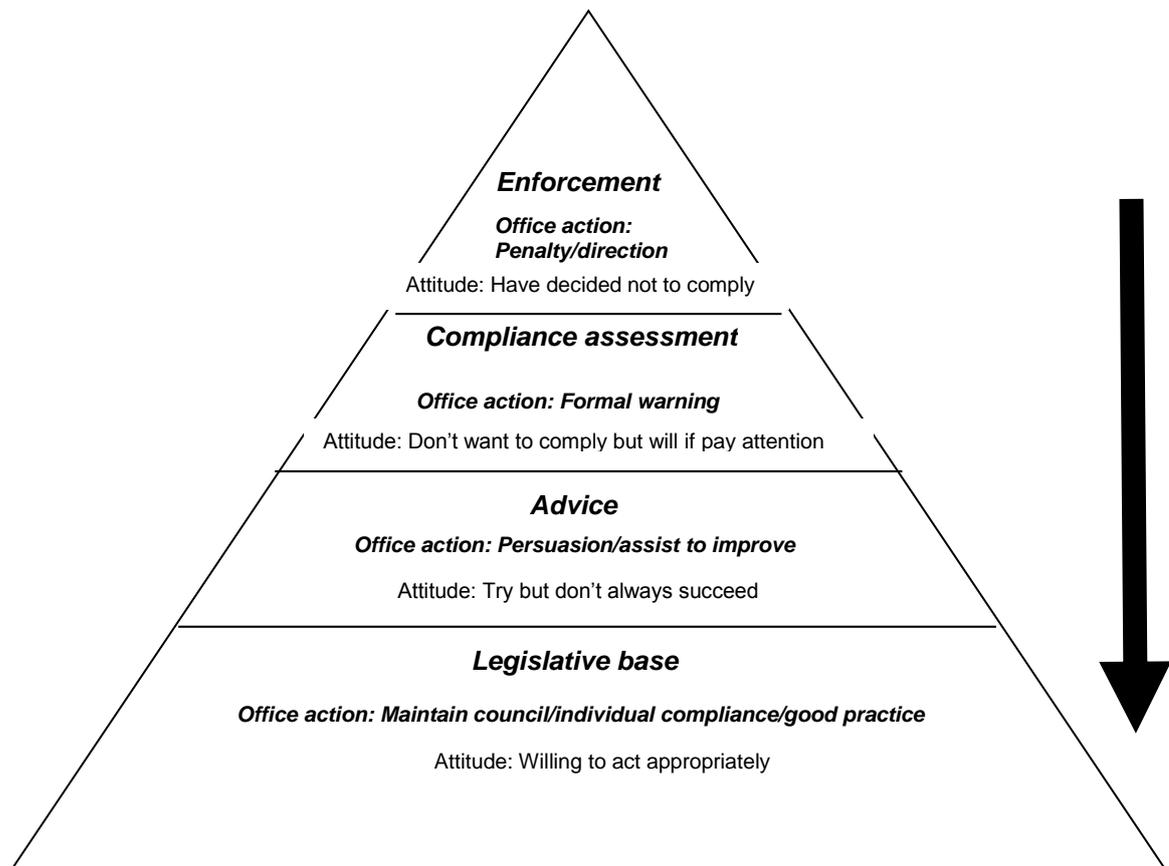
"Financial Review Program (FRP) Guidelines"

The Investigations Team has developed an Investigation Plan template for planning investigation interventions (attached at Appendix 3):

"Investigations Plan"

11   Compliance Management Pyramid

a. The purpose of any intervention is to encourage councils and individuals to operate in the bottom segment of the Pyramid (see Diagram 1 below), that is, to voluntarily act appropriately.

b. The Compliance Management Pyramid describes council attitude to compliance and good practice. The strategies outlined in Appendix 1 are aimed at moving council attitude to the bottom segment of the Pyramid and to keep councils operating in that segment. The strategies in Appendix 1 are organised by segment of the Compliance Management Pyramid. (See Part 7 – How to use this document for more information.)

c. It is acknowledged that most councils/individuals are willing to act appropriately and a large proportion of councils/individuals try but don't always succeed. Generally the programs and action provided by the Office to support councils/individuals will assist them to remain in the bottom two segments of the Pyramid.

d. Where there are councils or individuals who do not want to comply or follow good practice, then more intense interventions may be required. If this is the case, then a problem identification, risk analysis and intervention strategy may need to be developed.

Enforcement

Office action:
Penalty/direction

Attitude: Have decided not to comply

Compliance assessment

Office action: Formal warning

Attitude: Don't want to comply but will if pay attention

Advice

Office action: Persuasion/assist to improve

Attitude: Try but don't always succeed

Legislative base

Office action: Maintain council/individual compliance/good practice

Attitude: Willing to act appropriately

Source: Modification of Ayres and Braithwaite (1992) Enforcement Pyramid
     Modification of Widdowson (2003) Risk-based Compliance Management Pyramid
     Modification of OECD (2004) Spectrum of taxpayer attitudes to compliance

Diagram 1: Compliance Management Pyramid

Appendix 1: Improvement and Intervention Strategies – Risk/Resource Analysis

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
Legislative base **Principles/activities: To strengthen the local government sector/Recognises respective responsibilities of councils and DLG/Establishes sanctions for non-compliance/Reflects community expectations/standards** **Level of impact: Focus of this section is on change across the sector**				
➤ Analysis of council intelligence	• To gather background information • To identify emerging trends and issues		Nil	Routine analysis of media, complaints, council websites etc – within current resources
➤ Projects on issues	• To provide guidance • To encourage improvement • To inform legislative change	• When there is concern about widespread poor practice • When there is a need to provide general guidance and specific detail on particular matters	Each project to identify	Each project to identify
➤ 23A Guidelines	• To provide guidance • To provide expected standard	• When there is concern about widespread poor practice • When there is a need for consistency in council operations • When there is a need to provide general guidance and specific detail on particular matters	Only considered by councils, compliance not mandatory No sanctions for non-compliance Need to ensure an issue that does not out date quickly	Resources required for development and ongoing review

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
➢ Mandatory codes	• To provide expected standard • To enable application of sanctions for non-compliance	• Area of council operations when compliance with a standard is important	Need to ensure it is an issue that does not out date quickly	Resources required for development, ongoing review and follow up on non-compliance
➢ Change to legislation (Act/Reg)	• To legislate expected standard • To provide for sanctions for non-compliance	• Areas of council operations where compliance is important	Onerous approach to compliance, depends on importance of issue Should not out date quickly	Legal resources required

Advice

Principles/activities: Work with councils to build a strong local government sector/ Continuous improvement in council governance practices/Enables flexibility/Consultation and cooperation/Clear guidelines/Education and awareness/Technical assistance and advice/Encourage good practice/Assessment and self-assessment tools
Level of impact: Focus of this section is on change across the sector and/or action at an individual council

➢ Relationship management model	• To provide an effective mechanism for creating and utilising relationships with councils for the delivery of sector development activities. • To prevent duplication of effort of OLG staff. • To provide a consistent approach to communicating	• Applies to individual communications with all councils. • Approach enables strong connections to be built between OLG staff and council staff. • OLG staff identified as relationship managers for particular councils or groups of	If knowledge/informat ion is not shared then it sits with one team in the OLG. May prevent necessary communication with councils from other teams in the	Within existing resources

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
	with councils. • To share information about local councils within the OLG.	councils.	OLG.	
➢ Guidelines (not made under section 23A) (formerly practice notes)	• To provide clear guidance • To encourage good practice • To provide technical assistance	• When it is evident a large number of councils require guidance • When more detail is required to assist councils in a specific area of operation • When an educative/awareness raising approach is required	Can out date quickly Councils may operate according to old advice Not mandatory	Resources required for development and ongoing review
➢ Resource manuals/kits	• To provide technical assistance/advice • To encourage good practice • To educate/raise awareness	• When councils may need guidance or assistance in implementing a government policy direction		Within existing resources, role of Office staff Resources required for development and ongoing review
➢ Circulars	• To provide clear guidance • To encourage good practice • To provide technical assistance	• When there is a need to respond to an issue quickly to provide guidance to councils • One-off advice about a contemporary issue	Can out date quickly Councils may operate according to old advice Not mandatory	Within existing resources, role of Office staff

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
➢ Oral/telephone advice	• To provide clarification • To provide technical assistance/advice	• Respond to individual issues • Where there is a need to discuss technical details where an informal approach is preferable • When an educative and consultative/cooperative approach is required • Where there are isolated operational issues	Advice misunderstood by council or misinterpreted Advice not passed on between council officials	Within existing resources, role of Office staff
➢ Written advice/letter	• To clarify the Office's position • To provide technical assistance/advice • To encourage good practice	• To rectify an identified problem where a formal approach is preferable • Where a consultative/cooperative approach is preferable to a warning letter • Where follow up is required after another intervention eg finance desk top review • To respond to a request for formal advice • Where there are isolated operational issues	Advice ignored	Within existing resources, role of Office staff

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
➤ Training/workshops/education sessions (not a visit to a single council as part of another intervention)	• To educate/raise awareness • To provide technical assistance/advice	• Usually conducted with councillors in relation to their role/responsibilities • Conducted in relation to code of conduct • Part of councillor induction following elections • Part of the implementation of an Office program	Information misinterpreted Information perceived as legal advice and relied upon Skills of presenters not at required standard	Resources for Office staff to prepare and deliver training/workshop materials Cost of materials Cost of venues/administration associated with organising workshops
➤ Good practice examples	• To encourage good practice • To inform councils about good practice	• When councils require credible examples they can apply • When the Office is sure that the information provided is good practice	May out date May be better examples Council may experience reputational difficulties which could undermine good practice example	Resources required to assess good practice Resources required to maintain and keep good practice resource up to date Continual monitoring for good practice examples
➤ Preliminary enquiries (informal, information gathering, not	• To gather information about an issue or situation • To assist in assessing complaints raised with the	• When dealing with complex complaints, where further information is required in order to resolve the matter	Relies on Section 734A without formally quoting If council unwilling	Within existing resources, role of Office staff

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
under section 734A)	Office • To gather information on the status of implementing a Office program	• When responding to requests from the Minister's office in relation to matters • When determining whether further action may be required by the Office • When an informal approach to obtaining the information is appropriate (eg generally by phone, not in writing) • When following up on the implementation of the Office's programs	to co-operate escalation to a more formal process could damage or further damage the relationship	
Compliance assessment **Principles/activities: Continuous improvement in council governance practices/Strengthen a council's capacity to meet its obligations/Focus on identifying compliance and non-compliance/Balance between control and facilitation/Assessment tools/Real time intervention in high risk cases/Audits or investigation where non-compliance suspected** **Level of impact: Focus of this section is on action against an individual or at an individual council**				
➢ Performance and compliance review (may use relevant parts of the previously approved PBP assessment tools)	• To review particular aspects of a council's governance and operations • To audit practices in specific areas	• When there is a need to focus on identifying compliance/non-compliance • When only certain aspects of a council's operation need to be reviewed • When there is a need to review quickly • When there is a need to be	Recommendations are not enforceable Focus on particular aspect may risk context being lost	Requires resources for reviewers, reviewers need time allocated to focus on review task Administrative costs eg travel, accommodation

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		focussed on only isolated operational issues		etc Requires admin support for processes involved
➤ Financial review (Financial Review Program Guidelines should be applied)	• To assess financial accounts/reports • To audit practices	• When there is a need to focus on identifying compliance/non-compliance • As part of the Office's regular program of reviewing financial accounts/reports • When there are concerns about a council's financial sustainability	Lack of engagement with council may result in a lack of acceptance with findings/misinterpretations	Within existing resources, role of Office staff May involve an on-site visit
➤ Specific desk top review/audit eg PI returns	• To review particular aspects of a council's governance and operations • To audit practices in specific areas	• When there are concerns about non-compliance across the sector in relation to an operational issue • As part of Office's projects to gather information on council activities • As part of a routine audit/review program	Not able to test veracity/accuracy of documents	Resources required for development and conduct of audit process
➤ Warning letter (incl tabling at council)	• To clarify the Office's position • To warn council that its performance needs to improve	• When previous approaches to improve the situation have failed	Low engagement/adversarial process	Within existing resources, role of Office staff

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
(a warning letter can be sent to an individual)	• To provide technical advice to remedy the situation	• When there are concerns about a council's compliance with legislation • When there is a need to act quickly so that the situation does not continue • When council's practices are out of alignment with the required standards which may have a serious impact on council's operations • When there is conflict in the elected body • When there is a breakdown in the relationship between the elected body and council staff • When there is isolated councillor misconduct or minor non-compliance with a relevant standard eg technical pecuniary interest breach	May reduce level of co-operation May be issues if a council is recalcitrant and the Office is reluctant to escalate	
➤ Visit to council (by way of interviews, discussions, workshop etc) (this is a visit to a	• To clarify the Office's position • To warn council that its performance needs to improve • To provide technical advice/assistance to remedy	• When previous approaches to improve the situation have failed • When there are concerns about council's compliance with legislation	No obligation on councillors to attend Success depends on skills and credibility of	Resource hungry intervention Takes precedence over existing work Resources for Office staff to

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
single council where a workshop may be part of that visit)	the situation • To educate/raise awareness	• When there is a need to act quickly so that the situation does not continue • When council's practices are out of alignment with the required standards which may have a serious impact on council's operations • When there is conflict in the elected body • When there is a breakdown in the relationship between the elected body and council staff	facilitator Doesn't change anything	prepare and deliver training/workshop materials
➢ Visit to council to observe relevant activity – not advising council	• To gather information to determine whether further intervention is warranted	• When previous approaches to improve the situation have failed • When council is openly non-compliant with the Office's advice • When there are concerns about council's compliance with legislation • When there is widespread councillor conflict • When there is a breakdown in the relationship between the	Office is seen as "spying" on the council	Resource hungry intervention Takes precedence over existing work Within existing resources, role of Office staff

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		elected body and council staff • When there is a need to gather information to determine whether a "higher level" intervention is warranted eg 430 investigation • When council's practices are out of alignment with the required standards which may have a serious impact on council's operations		
➢ Visit to council to observe relevant activity – advising council	• To gather information to determine whether further intervention is warranted • To warn council that its performance is being monitored	• When previous approaches to improve the situation have failed • When council is openly non-compliant with the Office's advice • When there are concerns about council's compliance with legislation • When there is a need to gather information to determine whether a "higher level" intervention is warranted eg 430 investigation • When there is a breakdown in the relationship between the	Office is seen as "heavy handed" May make council more determined to follow its current course in defiance of state government	Resource hungry intervention Takes precedence over existing work Within existing resources, role of Office staff

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		elected body and council staff • When there is widespread councillor conflict • When council's practices are out of alignment with the required standards which may have a serious impact on council's operations		
➢ Section 429 order for provision of documents or information	• To require council to provide information and documents to determine whether or not to exercise any other investigative function • To warn council that its performance is being monitored	• This may be used where council is not cooperative • When there are concerns about council's compliance with legislation • When there is a need to gather information to determine whether a "higher level" intervention is warranted eg 430 investigation • When council's practices are out of alignment with the required standards which may have a serious impact on council's operations	Order needs to be carefully worded to ensure it covers the ambit of documents or information required	Cost effective option within existing resources
➢ Section 734A preliminary enquiries	• To make enquiries to determine whether or not to exercise the power of investigation	• This may be used where council is not cooperative • Where a more formal approach	Questionable whether councils can be compelled to co-operate with	Resources required where officers to attend

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
	• To warn council that its performance is being monitored	to making the enquiries is appropriate eg need to rely on the information or evidence for decision about other action • When there are concerns about council's compliance with legislation • When there is a need to gather information to determine whether a "higher level" intervention is warranted eg 430 investigation • When council's practices are out of alignment with the required standards which may have a serious impact on council's operations	a section 734A enquiry s429 may be more appropriate approach if gathering information	council
➢ Section 430	• To investigate serious issues relating to the operations of a council	• Where there is prima facie evidence of non-compliance • Where the issue is a serious isolated operational failure or a systemic operational failure • More applicable to operational issues (rather than conduct/relationship) • Where there may be a need to rely on the enforcement of	Timeframes mean the intervention lacks immediacy eg procedural fairness	Requires 2 officers generally Nature of intervention requires a complete focus on the investigation Other work needs to be redirected within team

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		recommendations under s434 to get council to improve		
➤ Section 440H investigation	• To investigate where misconduct of a councillor is suspected	• Where there is prima facie evidence of misconduct on the part of a councillor, and further evidence is required to prove the breach	Need to be cautious about following due process Risk of Office's process and/or findings being subject to legal challenge Timeframes for resolution, particularly where a recalcitrant councillor	Requires 2 officers generally where interviews are being conducted May take precedence over other work
Enforcement **Principles: Council has clearly indicating its unwillingness to comply with any relevant early intervention or warning/Enforce compliance using established sanctions** **Level of impact: Focus of this section is on intervention and action against an individual or at an individual council**				
➤ Section 434 order	• To enforce s430 recommendations if required • To enforce compliance using an established sanction	• Where a council indicates it is unwilling to implement a recommendation from a section 430 investigation		Within existing resources, role of Minister

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
➤ Section 435/436 surcharge	• To compensate a council for any deficiency or loss incurred by the negligence or misconduct of a council official • To compensate a council for money that ought to have been brought into account by a council official	• This will usually occur from an investigation authorised under section 430 of the Act • Where there is irrefutable evidence that a council official has acted inappropriately	A high standard of proof is required Need to be cautious about following due process Risk of decision and process being subject to legal challenge	Usually part of a section 430 investigation process
➤ Section 438A Performance Improvement Order	• To provide a mechanism to act early in order to provide guidance as to how a council can remedy an emerging issue	• Where a council is not complying with its legislative responsibilities, relevant standards or guidelines eg failure to implement IP&R • Where there are significant risks facing the council that are not being addressed • Where previous intervention attempts have failed • Where council business is being disrupted and council is failing to exercise its functions eg loss of quorum • Where appointment of a temporary adviser may be necessary because council	Order may be subject to challenge Timeframes for the process of issuing orders outlined in the implementation Framework are not met	Timeframes for implementing orders are short and will require orders to be prioritised. Will take precedence over other work. Within existing resources, role of Office staff.

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		lacks the capacity to deal with an issue • Where there is a pattern of poor or inappropriate behaviour that has not been rectified and where this cannot be appropriately dealt with under council's code of conduct		
➢ Section 438G – appointment of temporary adviser	• To provide advice and assistance to a council for the purpose of ensuring that it complies with a performance improvement order • To monitor a council's compliance with a performance improvement order	• Where a council has been issued with a performance improvement order and it is necessary to appoint an adviser because council lacks the capacity to deal with an issue	Order may be subject to challenge Difficulty finding suitably qualified person to appoint as a temporary adviser	Timeframes for implementing orders are short and will require orders to be prioritised. Will take precedence over other work. Cost of temporary adviser to be borne by the relevant council.
➢ Section 438HA – compliance order to a councillor	• To enforce action required of individual councillors when a performance improvement order is issued to a council	• Where an individual councillor fails to take action required by a performance improvement order • Failure to take such action is misconduct	Order may be subject of challenge Matter may fail at the NCAT	Requires resources to prepare a departmental report.

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		• Minister can request the DCE refer the matter to the NCAT		
➤ Section 438HB – appointment of financial controller	• To improve financial controls and other functions relating to council finances as specified in any order • To authorise payments from council funds	• Where a council has been issued with a performance improvement order and it is necessary to appoint a financial controller to oversee the council's financial management	Order may be the subject of challenge	Timeframes for implementing orders are short and will require orders to be prioritised. Will take precedence over other work. Cost of financial controller to be borne by the relevant council.
➤ Section 438I and section 438W Suspension Order	• To enable prompt action to be taken to correct a problem, provide time out to build or restore relationships, allow effective business to resume and/or remedy a failure by a council to do something that is required of it	• Where a performance improvement order has not been complied with • Where previous intervention attempts have failed • Where a council is not complying with its legislative responsibilities, relevant standards or guidelines • Where there are significant risks facing the council that are	Order may be subject to challenge Timeframes for the process of issuing orders outlined in the implementation Framework are not met	Timeframes for implementing orders are short and will require orders to be prioritised. Will take precedence over other work. Within existing resources, role of Office staff.

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
		not being addressed		
		• Where council business is being disrupted and council is failing to exercise its functions		
		• Where there is a pattern of poor or inappropriate behaviour that has not been rectified		
		• Where there is a need to avoid ongoing disruption during the conduct of a public inquiry		
		• Where the elected body is not functioning effectively requiring external intervention to remedy		
➤ Section 661 action	• To prosecute non-compliance with a direction given under Chapter 13, Part 3 (Financial Management) and Part 5 (Inquiries, reviews and surcharging) of the Act	• Where there is failure to comply with an authorised direction given under the relevant parts of the Act • Where the failure to comply is serious	Court does not apply a penalty Cost of taking action is not proportionate to the non-compliance	Cost of taking legal action to prosecute the non-compliance
➤ Section 673 order	• To remedy or restrain a breach of the Act • To enforce compliance using established sanction	• Where there is wilful ignorance of the Office's warnings • Where immediate action may be required, due to seriousness of consequences of the relevant party's action/inaction	Court refuses to make order	Cost of applying for the order in the Land and Environment Court

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
➢ Section 746 power of entry	• To enter and inspect premises to determine whether the provisions of the Act and Reg are being complied with in relation to those premises	• Where serious concerns are raised about specific council premises	Only used where there is credible evidence of non-compliance Risk to reputation if the Office gets it wrong Lack of expertise in the Office to support process	May require expertise outside the Office Would require 2 officers May take precedence over other work
➢ Section 438U public inquiries	• To examine council dysfunction in a public and independent process • To enforce compliance	• Where a council exhibits serious signs of dysfunction • Serious concerns about a significant issue • Where there is widespread councillor misconduct • Where there is an irreparable breakdown in the relationship between councillors • Where there is an irreparable breakdown in the relationship between the elected body and council staff	Lack of control of process due to independence of commissioners Unsupportable recommendations Outcome may be inconsistent with Office's goals Lack of expertise in Office to support process	Takes at least one officer off line Other work needs to be redirected in the team Cost of commissioner and process

Strategy	Key Purpose	Circumstances where may apply	Risks	Resources
➢ Section 440I Misconduct sanction by Chief Executive	• To enforce compliance with standards of conduct using established sanction	• Where there is prima facie evidence of misconduct on the part of a councillor, an investigation is undertaken, a departmental report prepared and the matter warrants disciplinary action being taken by the Chief Executive	Delay in process or decision making Need to be cautious about following due process Risk of Chief Executive's decision being subject to legal challenge	Within existing resources, role of Office staff
➢ Referral to NCAT - misconduct	• To enforce compliance with standards of conduct using established sanction	• Where there is prima facie evidence of misconduct on the part of a councillor, an investigation is approved and the matter is so serious as to warrant referral to the NCAT	Delay in process	Within existing resources, role of Office staff
➢ Referral to NCAT - PI	• To prosecute non-compliance with relevant provisions of the Act using established sanctions	• Where there is prima facie evidence of a breach of the pecuniary interest provisions of the Act and an investigation is authorised	Delay in process Obliged to report to NCAT where an investigation has commenced – need to balance breach with resources to pursue	Within existing resources, role of Office staff

Appendix 2: Problem identification, risk analysis and intervention strategy decision making and action framework template

Council: _____

| 1. Analyse compliance behaviour: |
| a. What is the apparent problem/behaviour that needs to change? e.g. Does it relate to an individual councillor? Does it relate to council operations? |

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| b. Identify the underlying cause of the problem/behaviour e.g. Does it relate to relationship between elected body and administration? |

-

| 2. Identify desired outcome and desired impact |

-

| 3. Determine attitude to compliance (Diagram 1) and purpose of intervention (Appendix 1) |

-

| 4. Identify risks and pros and cons associated with intervening/not intervening |

Pros	Cons

| 5. Identify risks associated with relevant intervention options, resource implications and pros and cons of options (Appendix 1) |

Intervention	Risks	Resources	Pros	Cons

6. Determine intervention option/strategy and plan

Steps	Intervention option	When	Resources

7. Apply the intervention option/strategy

8. Monitor performance against desired outcome

9. Evaluate change/compliance/outcome and intervention process

10. Consider further intervention/escalation following the intervention

7. Intervention option	8. Monitoring undertaken	9. Change/compliance/outcome	10. Further action required

11. Could the intervention process be improved? If so, describe how.

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Appendix 3: Investigation plan

Date initiated:	Complainant/s:
Objective Number: **File Number**	**Council/Subject:**
Brief Description of Complaint:	
System Issue (if so, explain):	
History of matter to date:	

ALLEGATION	BREACH OF ACT (BY SECTION)	PROOFS/FACTS IN ISSUE	AVENUE OF INQUIRY (PRIMARY TASKS)

Likely recommendations (section 430 investigations only):

Objective and File Number:	Expected result by review date:
Review Date:	

Task No	AVENUES OF ENQUIRY (Primary Tasks) ⪡ Action Steps ⪢ (Related Tasks)		I/We will need these Resources/People/Money/Facilities	Seq	Days/Hours	Start Date	Expect Finalise
1							
2							
3							
4							
5							
6							
7							
8							

Date of Investigation Review:		Date of next Investigation Review:	
ISSUES TO BE DISCUSSED		**OUTCOMES:** ➢ **Amended Investigation Planner** ➢ **Amended Annual Plan**	
1			
2			
3			
4			
5			

FOR EACH REVIEW: Senior Investigator to prepare list of issues to be discussed

- Amended investigation planner detailing next stage
- Amended time frames agreed at meeting