

Local Government Inspectorate Annual Report 2018/19



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Foreword

David Wolf, *Chief Municipal Inspector*



From my perspective, the Local Government Inspectorate achieved incredibly positive results for the local government sector in the 2018/19 period. The year was not without challenges, primarily in meeting sector and community expectations with our finite resources but this was offset by the recent government budget commitment of additional investment in this office to assist in our integrity role. We welcome this investment and are committed to continuing the excellent performance with greater capacity.

Throughout the year we continued to provide an avenue for the sector and the community to raise concerns or seek advice relating to the governance operations of councils. Our complaints function received and assessed more than 420 formal complaints for the period, which is the highest number of complaints for a non-election year and continues the trend of an 11% increase per year calculated across the four year council term.

There are three pieces of work from the past year that I would like to highlight, the first being the review and report into the relationship between the elected council and their employee, the Chief Executive Officer. This work explored this very

complex relationship and highlighted cases where either the employer, the employee or a combination had failed their local community and their organisation. The resulting report highlighted areas to assist councils and CEOs in this complex employer/employee relationship and I am pleased to see this report referenced across our state and in other jurisdictions.

Secondly, a component of one of our more complex investigations related to a challenge of our investigative powers. This matter was heard in the Supreme Court of Victoria and the finding supported the legitimacy and fairness of our processes and the necessity of our powers, both being essential when delivering an integrity service for the sector and the community.

Finally, I would like to thank my team for their dedication in working with and at many smaller regional councils through the year as part of our governance examination work to assess and help improve their operations. The challenges of travel and resources aside, we have developed positive relationships with these councils and delivered excellent outcomes to assist their delivery of contemporary council governance.

Year at a glance - 2018/19

Statistics

Complaints

421



Enquiries

595



Investigations
completed

29



Outcomes

Prosecutions

8



Warnings

11



Recommendations

42



Public engagements

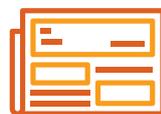
Reports

4



Newsletters

3



Presentations

13



What we do

The Local Government Inspectorate is the dedicated integrity agency for local government in Victoria. It has the remit to investigate offences and breaches under the Local Government Act 1989 or examine any matter relating to a council or council operations.

The Inspectorate's work can be categorised under three main themes – reactive, proactive, and our guidance and education function. Reactive work includes responding to

requests for information and enquiries, assessing complaints, conducting investigations and in some cases, prosecutions. Proactive work includes specific council governance examinations and reviews of systemic or thematic issues across the sector. Our guidance and education to the sector is generated by our reactive and proactive work outcomes and includes newsletters, presentations, reports and other communication tools.

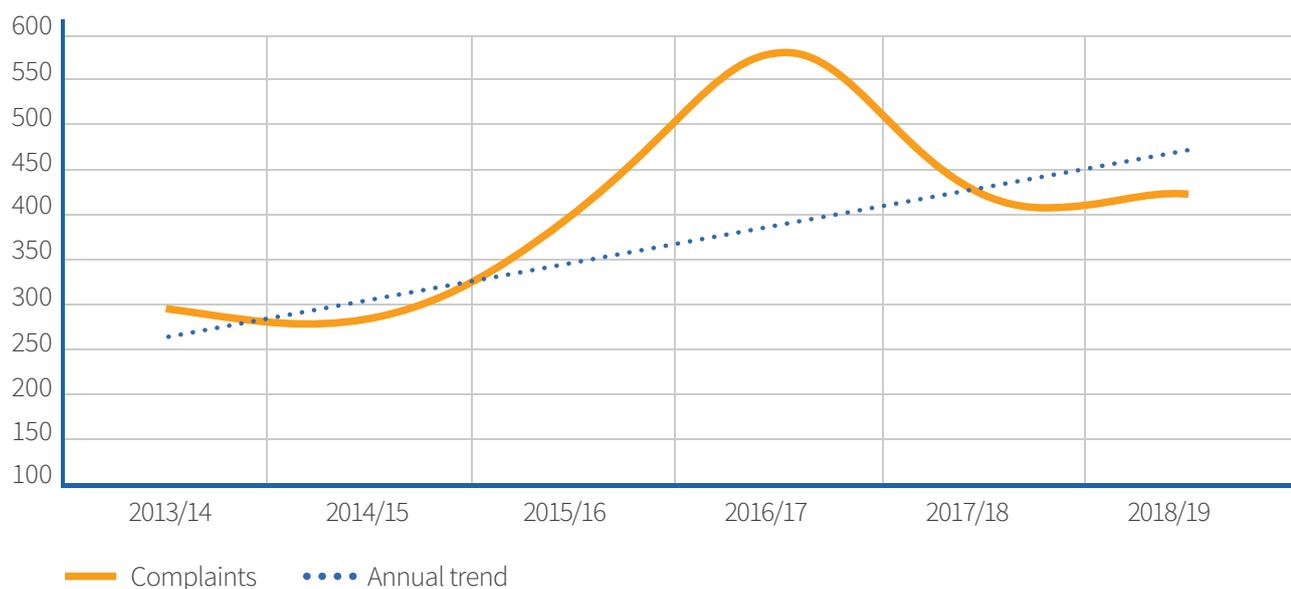
Reactive work

Enquiries

The Inspectorate regularly receives contacts from community members, councils officers and councillors seeking advice or information or raising issues that fall outside the Inspectorate’s jurisdiction. Many contacts from the general public also result from referrals from other state

government agencies and sector representative bodies and the Inspectorate endeavours to assist with enquiries where possible. While the majority of the enquiries are easily addressed, 595 specific matters were logged for future reference.

Complaints



The Inspectorate receives allegations about offences and breaches under the Act and has a responsibility to assess all complaints as part of its role. Complaints staff initially assess whether the allegation is within the Inspectorate’s jurisdiction. Complaints are then subject to an initial action to substantiate the allegation that forms the basis of the complaint, determine whether this constitutes a breach or offence under the Act or if it should be referred to another responsible authority.

The Inspectorate has a target of receiving, acknowledging and assessing all complaints within five working days. There were 421 complaints accepted for assessment by the Inspectorate in 2018/19. This marginally exceeded the previous year’s complaint volume for a non-election year and is in line with the overall trend of an 11% increase per year calculated across the four year council term.

How complaints are received

In person	3%
Email	27%
Online form	29%
Mail	6%
Phone	35%

Investigations

Twenty-nine investigations were completed for the year. While complaints are a main driver of investigations, the Inspectorate may launch an own motion investigation into any matter that potentially breaches the Act.

As with the previous financial year, major investigations drew significant resources, and, as a result of a reduction

in staff and the number of active significant and complex investigations, our capacity to undertake further investigations was reduced. These challenges have been offset by an improved initial assessment process, which has enabled complaints to be assessed and either dismissed, referred to other agencies or allocated to an investigator in a more efficient manner.

Reporting period	2015/16	2016/17 (election year)	2017/18	2018/19
Complaints	397	576	417	421
Investigations completed	49	56	39	29

Is it a conflict of interest?

Many complaints received by the Inspectorate are of perceived conflicts of interest held by councillors or council staff in decision making. The Act is very specific about what is, or is not, a conflict of interest.

Many complainants are also not aware of the conflict of interest laws that govern councillors' participation in local matters.

The Inspectorate received a complaint regarding a councillor participating in a matter before council relating to an entity in which they held a position. The complaint alleged the councillor had a conflict of interest as they served on the board of a community football club and had recently voted on a grant to that club without declaring a conflict.

On review, the councillor had been appointed to the position by council as a nominee director, which is specifically provided for under section 78B(3)(ba) of the Local Government Act 1989. This provision of the Act allows for the council to appoint a councillor to an entity to serve the council interests. It does not prevent the councillor from participating in decision making when matters relating to the entity come before council.

Without knowledge of the conflict of interest legislation in the Act, the complaint scenario may appear to be a conflict but the law specifically allows for it to occur.

Coercive powers

Under the Act, the Chief Municipal Inspector has powers to require the provision of reasonable assistance, the production of documents or require a person to appear for examination under oath. For the 2018/19 period, the

powers requiring reasonable assistance were exercised on 11 occasions. One person was required to appear for examination and 10 parties were required to produce documents or evidence.

Misuse of confidential information

Councillors are often privy to confidential or sensitive information that is important to the business of the municipality.

Confidential information about a CEO contract, related to a termination payment clause, was leaked to the media in December 2018 at an outer metropolitan council. A local newspaper published an article relaying that information to its readers.

Our investigation established that the information published in the article was deemed confidential according to rules set out in the Act and that disclosing that information without authorisation may have constituted an offence with potential penalties up to \$80,595.

The investigation also established that a limited number of people were privy to the information, including 11 councillors and six council staff, and furthermore, that three of those councillors had telephone contact with the media organisation during the relevant time period.

It was clearly evident that the confidential information was disclosed, however the Inspectorate was not able to establish, beyond reasonable doubt, the individual or individuals who released the confidential information to the journalists.

While the individual could not be identified, the councillors were reminded that their role demands that they act with honesty, integrity and impartiality at all times. Any release of confidential information undermines the confidence of the community in the governance of the council. In addition, it can cause reputational damage and discourage individuals, organisations and other levels of government from dealing with the council.



Prosecutions and other enforcement action

The Chief Municipal Inspector has powers to initiate proceedings in various court jurisdictions, where it is deemed to be in the public interest to prosecute offences under the Act.

One major case related to the South Gippsland Shire Council investigation where the coercive powers of the Chief Municipal Inspector were tested in the Supreme Court and found to be valid and properly exercised.

While the majority of prosecutions relating to campaign donation return disclosures were completed in 2017/18, two additional candidates were brought before the courts in the past year for allegedly failing to disclose campaign donations. One case was concluded and the remaining matter is still before the courts.

Warnings

Warnings are issued for matters where a breach of the Act is substantiated but an alternative to a prosecution is considered to better serve the public interest. Eleven warnings were issued in 2018/19. Warnings are utilised as an educational tool in making recipients aware of their obligations under the Act and the consequences for further transgressions.

There were eight prosecution cases in 2018/19, including:

- In July, a Wyndham councillor was prosecuted and convicted on eight charges related to interest return non-disclosures.

- In October, a former Murrindindi Shire councillor was convicted on five charges of misuse of position related to making improper use of council information, and a Wyndham Council candidate was charged over making and using false documents submitted during the 2016 elections.

- In December, the former Central Goldfields Shire Council CEO was convicted on five charges of dishonestly obtaining for himself a financial advantage by deception, related to misuse of a corporate credit card.

- In April 2019, two candidates in the Moonee Valley and Moreland Council elections were charged over non-disclosure of information on their campaign donation returns, and the Supreme Court ordered that a South Gippsland resident be examined under oath following a hearing the previous June.

- In May, a South Gippsland councillor was charged with misuse of position related to providing information to a local resident who was involved in a Supreme Court proceeding against the council.

Conviction over interest returns

Councillors are required to submit updated interest returns twice a year, which is an important document for recording their interests in their municipality and identifying any possible conflicts of interest that may arise in their decision making. Non-disclosure can attract significant penalties.

The Inspectorate commenced criminal proceedings against Wyndham City councillor Intaj Khan with the matter being heard in July 2018.

The matter included three charges of failing to disclose companies in which he held office during the return period; three charges of failing to disclose companies in which he

held a financial interest; and two charges of failing to submit ordinary returns between February 2016 and February 2017.

This prosecution came after Cr Khan received a warning from the Inspectorate in 2015 for a similar offence and was provided additional training by his council.

Cr Khan was convicted and fined \$26,000 in Sunshine Magistrate's Court after pleading guilty to eight charges. Cr Khan initially appealed against the sentence in the County Court but withdrew the appeal and the sentence stood.

A conviction for these charges does not disqualify a councillor and Cr Khan continues to serve as a councillor.

Proactive work

Governance examinations

The Inspectorate conducts both council-specific governance examinations and broad reviews of systemic or thematic issues identified during council visits, investigations or feedback from the sector or the general community. Examinations and audits of council governance arrangements are a key proactive function of the Inspectorate in assessing the effectiveness of councils' risk management and governance processes. The objective of this function is

to ensure council operating procedures are compliant with relevant legislation and avoid breaches of the Act. The governance arrangements and operations of three councils were examined during the financial year resulting in specific reports to each organisation setting out the scope and findings of the work. A total of 42 recommendations were made in the course of this work, with one report and accompanying recommendations yet to be finalised.

Working with western regional councils

Three examinations of regional councils – West Wimmera, Golden Plains and Yarriambiack – were conducted during the year. Governance examinations are conducted regularly at councils across the state and are designed to assess governance requirements and ensure operating procedures are compliant with relevant legislation.

While issues at each council varied due to individual circumstances, the Inspectorate identified key themes across the three councils, including required improvements to record keeping and document management; policies either

not in place, inadequate or not being followed; and the management of staff contract arrangements.

Detailed reports with recommendations were provided to the councils and the Inspectorate will conduct periodic checks to ensure improvement actions are undertaken.

An example of this work can be found on the [West Wimmera Shire Council website](#), where the Inspectorate examination report and detailed action plan is available.

Thematic reviews

Thematic or systemic issue reviews are a function of the Inspectorate to assess a theme or issues that affect the entire sector and draw on cases, information and/or intelligence from across the state. The primary objective of this work

is to guide or change individual, organisational or sector behaviour to deliver better outcomes for the community. Often this results in the identification of policy or legislative reform.

CEO employment arrangements report

Information from the sector and findings from several examinations and investigations drove a major thematic project, completed in 2018/19, relating to the employment relationship between a CEO and elected councillors. Previous investigations had demonstrated sub-optimal outcomes for either the council or the individual but with a consistent theme of a financial cost to the community.

In February, the Inspectorate published *Protecting integrity: leading the way – Managing the employment cycle of a council CEO*, which included views from across the sector and recommendations for improvements to legislation, policies or processes that would enhance future management of the CEO employment cycle. In case studies reviewed for

the report, there were either adverse outcomes for the CEO, adverse outcomes for the councillors, or significant challenges for the council as an organisation.

The report was widely distributed and read by the local government sector, both in Victoria and interstate, and has had an immediate impact on CEO employment processes.

Several councils used the report as guide during their CEO recruitment process and the recommendations relating to contract terms, advisory committees and performance management were regularly discussed at various sector forums and workshops attended by the Inspectorate. Policy recommendations are under consideration by the Victorian Government.

Guidance and education

Reports, newsletters, presentations and social media posts are key aspects of the Inspectorate's guidance and education program. Engagement occurs across various channels to ensure the Inspectorate's reactive and proactive work is

communicated effectively to state government, councils, council representative bodies, the community and other stakeholders.

Reports – public and internal	4
Newsletters	3
Presentations	13
Impressions of @CMI_Vic tweets	110,800
Website – unique views	50,902



Examples of the Inspectorate's publications, (from left) CEO report and newsletter

Newsletter

The Inspectorate published three newsletters to provide information and updates about significant reports, prosecutions, events and other relevant information.

Newsletters were sent to more than 3210 subscribers and from the Winter 2018 edition, individual stories were also published on the Inspectorate website. This increased the reach of information beyond traditional mailing lists

and assisted in meeting State Government accessibility requirements.

Some of the most popular stories including advice and a case study on improving councillor/staff interactions and an explainer on the negative impacts of councillors releasing sensitive or confidential information.

General engagement

Presentations to councils, sector representative bodies and partner agency events continued to build the Inspectorate’s engagement and visibility within the local government sector.

Aside from visiting councils for investigations and examinations, the Inspectorate welcomes the opportunity to gain real-time feedback from the sector while delivering key

findings from reports and expert perspectives on trending and systemic issues.

Inspectorate representatives gave presentations at events including the LGPro CEOs forum, VLGA Mayors and FastTrack forums, governance groups and regional Corruption Prevention and Integrity Insights forums in Traralgon and Ballarat.

	2017/18	2018/19
Presentations and events	21	13
People present (approx.)	1530	750



David Wolf (left) and panellists at the VLGA FastTrack forum

Social media

The Inspectorate continues to use its Twitter account to provide updates on its work and highlight key issues for the sector in a more contemporary and immediate timeframe. The report on managing CEO employment was one of the

most popular posts for the year, with 3800 views on LinkedIn and 4100 impressions and nearly 500 engagements on the [@CMI_Vic](#) Twitter channel. There were 2569 engagements with tweets and a 43% increase in followers over the previous year.

Website

The Inspectorate website provides easy access to information about the Inspectorate's work publications, news, media releases and the secure online complaint form.

Year	2017/18	2018/19
Page views	40,306	50,902
Top downloads	1359 (Central Goldfields report)	1204 (CEO report)
Complaint form (clicks)	342	282

Source: Google Analytics

When reactive, proactive and guidance and education streams all come together

A key factor in the integrity of local government is ensuring transparency on who has financially supported candidates and councillors.

The Inspectorate plays a key role in the current campaign donation reporting system and our work in this area encompasses reactive and proactive work, and guidance and education function and also informs policy change.

Campaign donation returns are a record of donations and gifts, including in-kind support, given to a candidate during the donation period. Candidates are required to declare each donation and/or gift received that exceeds the \$500 threshold; or declare, on the campaign donation return form, that no donations were received.

Persons nominating for council must currently lodge an accurate return to the CEO of council within 40 days after election day. If the return contains false or misleading material, the person lodging the return is guilty of an offence punishable by a fine of up to 60 penalty units.

Following a lengthy program of reminders, warnings and, for 15 candidates, prosecution for failing to provide correct returns, the Inspectorate received specific complaints related to two candidates failing to disclose donations received towards campaign advertising costs.

The Inspectorate completed an investigation into the two candidates and charged them in April 2019.

A candidate in the 2016 Moreland Council elections received a six month good behaviour bond for non-disclosure of campaign funding at Broadmeadows Magistrates Court on Wednesday 15 May. The Inspectorate alleged that the candidate failed to declare a \$3000 gift from the an employees fund, which is associated with his employer.

A Moonee Valley Council candidate was charged with two counts of failing to declare donations and after two adjourned hearings, will face court again in March 2020.

Proposed reforms to the Local Government Act, supported by Inspectorate work and findings, will introduce tighter restrictions around donation returns and capping on the value of electoral campaign donations and gifts.

Planned legislative reforms will see all returns submitted directly to the Chief Municipal Inspector, who will then publish campaign support for all communities' information. These reforms are expected to vastly improve the immediacy and transparency of campaign funding disclosures, while also allowing the Inspectorate to more swiftly check the veracity of returns during the election period.

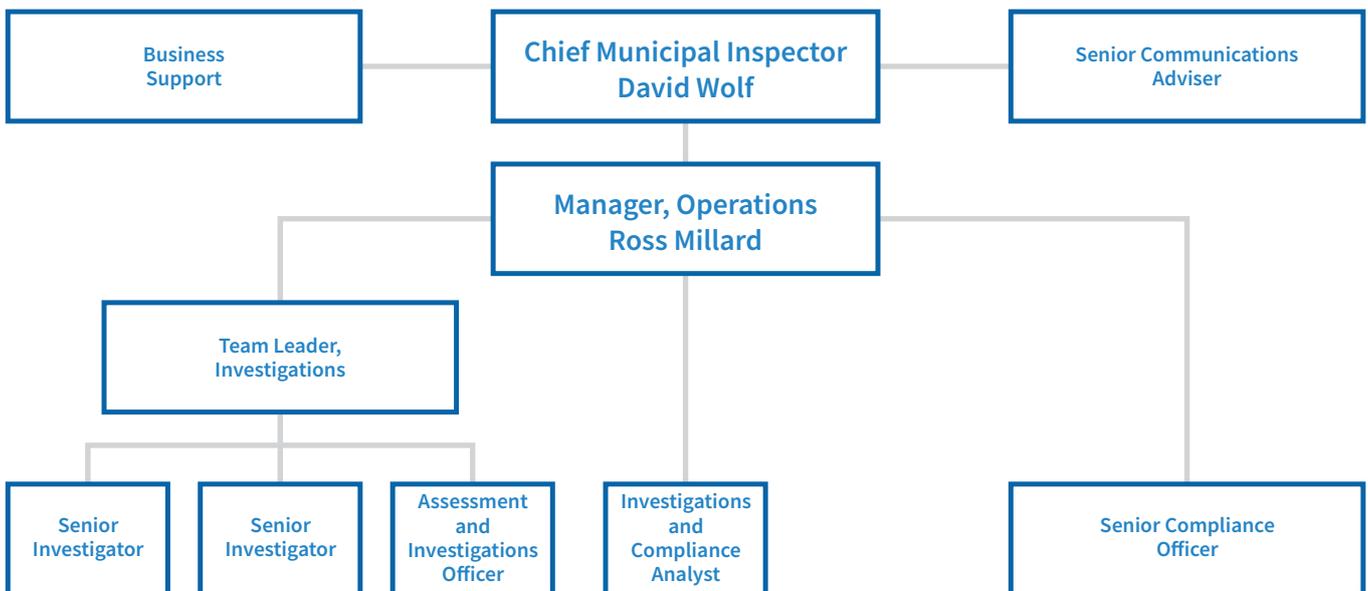
Importantly, they will provide access to real-time information about outstanding returns, which will assist in actively promoting submission by the 40 day deadline and hopefully reduce resource-intensive compliance action.

Corporate

Our people

The Inspectorate employed 10 full-time equivalent (FTE) staff in 2018/19, a decrease from 11 staff at the commencement of 2017/18 due to budget constraints.

Organisational structure



Inspectorate organisation chart (to 30 June 2019)

FOI

The Inspectorate received and responded to one Freedom of Information (FOI) request in 2018/19. FOI requests are handled in accordance with guidelines and processes set down by the Office of the Victorian Information Commissioner (OVIC).

Gifts and donations

LGI staff were not offered nor accepted any gifts during this financial year.

Financials

Under the Public Administration Act 2004, the Inspectorate is an administrative office hosted by the Department of Premier and Cabinet (DPC) and the Inspectorate utilises corporate services including finance from DPC. Financial information will be incorporated into the DPC 2018/19 Annual Report.

Challenges and opportunities

The 2018-19 period proved challenging with resource constraints, however, the additional funding investment by the government for 2019-20 will provide additional capacity once suitable staff are identified and engaged. This process is in progress.

The proposed reforms to the local government legislative framework will expand the role of the Chief Municipal Inspector and create new responsibilities particularly in the collation and publication of councillor candidate election donations. The progress and timing of the legislative reforms have a bearing on the implementation program for the Inspectorate leading onto the 2020 general council election year.

In addition, the implementation of the Public Interest Disclosure Act from 1 January 2020 provides for the Inspectorate to receive public interest disclosures from IBAC for investigation. This reform further expands the Inspectorate’s role in local government integrity.

Local Government Inspectorate

Encouraging higher standards of integrity, accountability and transparency in local government

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