

**WELCOME** to the second edition of the Local Government Investigations and Compliance Inspectorate (Inspectorate) newsletter for 2013.

In this edition, we share a landmark VCAT ruling; update you on the outcomes of several recent investigations; and take a look at Councillor Discretionary Funds. We welcome your feedback. Get in touch at [inspectorate@dtpli.vic.gov.au](mailto:inspectorate@dtpli.vic.gov.au)

### Inspectorate status update — a new home

As of 1 July 2013, the Inspectorate now resides with the Department of Transport, Planning and Local Infrastructure. This new Victorian Government department is focused on planning policy, strategic transport planning, ports, sport and recreation and local government.

The Inspectorate will continue to play an important regulatory role for local government, as well as deliver its highly effective investigations, audit and education functions.

### VCAT disqualifies councillor

Greater Shepparton City Council's Cr Milvan Muto has been disqualified from serving as a councillor for four years by the Victorian Civil and Administrative Tribunal (VCAT), due to gross misconduct.

The finding follows an investigation by the Inspectorate that resulted in an application to VCAT under section 81E of the Local Government Act 1989 (Act).

VCAT members stated that it was their "clear view that Mr Muto is not a fit and proper person to hold the office of councillor, and that this has been amply demonstrated by his behaviour in various ways and over a considerable period, in spite of previous orders of the Tribunal, and the efforts of the previous mayor, and others, to counsel and advise him."

It was noted that the decision to disqualify Cr Muto was taken to protect the council, councillors, council officers and staff, and to ensure good governance for Greater Shepparton, rather than to punish Cr Muto.

VCAT also found serious misconduct by Cr Muto in a proceeding brought by six councillors. It ordered that Cr Muto be suspended for a period of six months. He will be ineligible to hold the office of mayor, or chair a special committee, for a period of four years.

A countback of ballots cast during last year's council election is scheduled for 12 August 2013, to determine who fills the extraordinary vacancy.



### Election candidates prosecuted

Failure to submit a campaign donation return following the 2012 local government elections has resulted in prosecutions against 17 candidates.

Five candidates have so far been found guilty of breaching section 62 of the Act, which requires all candidates to submit their campaign donation return to the council's chief executive officer (CEO) within 40 days after the election. The election was held on 27 October 2012.

Lawry Borgett was convicted and fined \$500. The Moorabool Shire Council candidate was also ordered to pay \$500 in costs.

Jason Evans, a candidate for Port Phillip City Council, was fined \$1,000 and ordered to pay \$500 in costs.

Mohamed Elrafihi received a \$500 fine and Jocelyn Ouaida was ordered to perform 20 hours of community work. Both were candidates for Moreland City Council.

Stephen Thurling, a candidate for Wyndham City Council, was placed on a 12-month good behaviour bond and ordered to pay \$200 to the Court Fund, in addition to \$892 compensation.

No convictions were recorded for Evans, Elrafihi, Ouaida or Thurling. Hearings for the remaining 12 candidates are scheduled to continue throughout July and August.

Acting Chief Municipal Inspector Ross Millard said that despite ample information and reminders, the 17 candidates failed to comply with the law.

"The transparent disclosure of campaign donations by all election candidates is important to maintain the integrity of local government elections and future governance," Mr Millard said.

The maximum penalty for a breach of section 62 of the Act is a fine of up to \$8,450.



## Public office is no solo act

Moonee Valley Councillor Shirley Cornish pleaded guilty to misuse of position at the Broadmeadows Magistrates' Court in April 2013, with regards to a decision she made about council business without first obtaining a resolution of council.

The investigation and successful prosecution stemmed from an Inspectorate audit of Moonee Valley council, which revealed a number of breaches of the Act.

Cr Cornish made a unilateral decision in 2010 to increase the salary package of the Moonee Valley City Council CEO by five per cent, without the knowledge, or by a resolution, of council.

At the time, then Mayor Cr Cornish authorised the salary increase after advising that the CEO's annual performance review had been completed to the satisfaction of council.

No committee of council was established to undertake the review and the CEO had resigned prior to the decision being made. The salary increase was backdated, which resulted in an inflated separation payout.

Acting Manager Investigations David Walker said that section 76D of the Act (misuse of position) makes it clear that councillors cannot act alone.

"No councillor, including a mayor, has the power to make decisions without a resolution of council," said Mr Walker.

Cr Cornish was placed on a 12-month good behaviour bond without conviction and ordered to pay \$8,000 in court costs.



## Review of Councillor Discretionary Funds

The Inspectorate has nearly completed its review of practices related to Councillor Discretionary Funds (CDFs). The review aims to ensure that councils with CDFs have adequate policies in place to protect against misuse.

Acting Chief Municipal Inspector Ross Millard said any form of councillor discretionary spending needed to be accountable, transparent and comply with the Act.

"Failure to implement effective controls can put a council at significant risk." Mr Millard said. "For example, our audit has identified a number of councils that do not set limits on CDF payments, or have insufficient policies regarding the authorisation of such payments."

The Inspectorate has written to all councils with CDF programs to share its preliminary observations and provide an opportunity for comment. Feedback from councillors and Council Audit Committees is also being considered.

"Councils have been asked to explain how their CDF processes are open and accountable, and whether a CDF program is necessary given the alternative funding programs that exist," Mr Millard said.

"The majority of Victoria's councils operate community funding and grant schemes through their administrative arms, rather than CDFs."

The Inspectorate will release a response to its findings in the future.

## What is CDF best practice?

A good CDF program requires strong and auditable processes, which are open and transparent. Some characteristics of good CDF programs include:

- a requirement to submit written applications that indicate how funds will be used
- publicly available policy regarding who is eligible for CDF grants and how eligibility is assessed
- transparent processes for assessing applications
- publicly available information regarding CDF recipients
- a requirement for acquittals, to ensure that grants are used for the purpose that council has granted the funds
- measures to protect against conflict of interest; and
- appropriate approval mechanisms in compliance with the Act.

## Know your caretaker policy

A recent investigation by the Inspectorate highlights the importance of knowing your caretaker policy and guidelines in the lead up to local government elections.

The case concerned an alleged breach of section 55D of the Act, which prohibits a council from printing, publishing and distributing material that could affect voting during the election period.

A CEO approved the publication of a newsletter in the week prior to the 2012 council elections. While the matter was not prosecuted as a breach of the Act, the production of the newsletter was found to contravene the council's own caretaker policy.

It serves as a reminder to all council officers and CEOs of the risks they can be exposed to if they do not familiarise themselves with their obligations during the caretaker period, as set out by their council's caretaker policy and the Act.

Day-to-day tasks, including communicating to the media and releasing publications, can be affected by the special requirements of the period.

All councils should offer comprehensive staff training to ensure a sound understanding of caretaker policy and guidelines. Knowing what you can and cannot do will help maintain the integrity of Victoria's electoral process in 2016.