

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

In this edition you'll find out about the investigation outcomes for 2012 and get a closer look at three of the latest cases, one of which led to a prosecution. We welcome your feedback. Get in touch at inspectorate@dpcd.vic.gov.au

Inspectorate Status Update

The Inspectorate will continue to deliver the important regulatory and integrity function for Local Government until at least 30 June 2013. The highly effective investigations, audit and education functions will remain with the Inspectorate and details of continued operation or transitional arrangements will be provided as they are known.

Individual Councillors cannot act alone

Moonee Valley Councillor Paul Giuliano pleaded guilty to misuse of position at the Broadmeadows Magistrates' Court in December 2012 regarding a decision he 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 Giuliano was found to have approved a variation to the CEO's employment contract which increased his salary by 5%, without the knowledge or by a resolution of council.

Chief Municipal Inspector, David Wolf, 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 Wolf.

During the investigation, it was also revealed that Cr Giuliano had previously made decisions without a resolution of council,

including changes to the CEO's contract, increasing an employee's salary without performance reviews and approving the conversion of 50 days of sick leave into a cash payment, which cost the Moonee Valley ratepayers over \$22,000. These matters were detected after prosecution time limits had expired.

Cr Giuliano was placed on a 12 month good behaviour bond without conviction and ordered to pay \$6000 in fines and court costs.



False enrolment forms

In the lead up to the 2012 local council elections, the Inspectorate commenced an investigation into allegations it received of an attempt to submit false or fictitious voter enrolment forms for the Melbourne City Council elections.

The investigation found that an attempt was made to enrol 442 voters with false or fictitious details under the provision allowing non-citizen residents to enrol under the City of Melbourne Act 2001. Serious criminal penalties, such as a \$84,500 fine or five years imprisonment, apply to persons that submit false enrolment information or offer money for votes.

Chief Municipal Inspector, David Wolf, said the seriousness and complexity of the allegations led to the deployment of all Inspectorate resources to protect the integrity of the election.

"Attempting to deliberately manipulate the electoral roll strikes at the heart of democracy in this State," Mr Wolf said.

The investigation team conducted a thorough investigation, working with Victoria Police, the Victorian Electoral Commission and Melbourne City Council, whose internal processes initially picked up the discrepancies. "The terrific collaborative effort by all agencies prevented the fraudulent activity and quarantined the tainted enrolments from the election," said Mr Wolf.

The investigation found that a candidate for the election sought voter enrolment forms and was careless or reckless in certain actions, however, at this time there is insufficient evidence to support a prosecutable case.

"The role of the Inspectorate is not only to investigate but also to protect the integrity of the democratic process. The Inspectorate will scrutinise similar actions very closely and also provide advice should this provision of the City of Melbourne Act 2001 be reviewed," said Mr Wolf.

The candidate was not elected to council.

The public must be informed

A recent Inspectorate audit successfully identified a gap in a council's process that meant council land was sold without adhering to the requirements set out under the Local Government Act 1989 (Act).

Section 189, being the restriction on the power to sell land, stipulates that when selling land, council must issue a public notice four weeks prior to the sale and obtain an official valuation of the land. The audited council failed to fulfil these requirements: they did not offer a public submission process and were unable to provide any record confirming that the sale was authorised by a formal resolution of council. Manager of Investigations, Ross Millard, said that the requirements of the Act are there to promote a competitive process that is open and transparent.

"Council land is a public asset and the public must be informed and consulted prior to the sale of it. The public also need the opportunity to make a formal submission to council on the proposed sale or exchange, if they wish to," Mr Millard said.

A formal warning was issued to the CEO resulting in the council acknowledging the failure and immediately implementing new processes to ensure compliance with the Act in the future.

The Inspectorate team capped off a busy 2012 with 14 audits resulting in 60 recommendations to councils for legislative compliance and process improvement. All recommendations were accepted by councils and, more importantly, were noted on review to have been implemented.

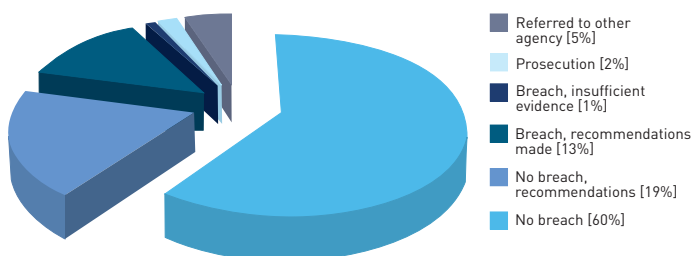
Mr Millard said that the audit program continues to enhance the accountability, integrity and transparency of local government and adds broader public value.

For more information about Inspectorate audits [click here](#).



Year in review

The small but highly effective Inspectorate team resolved a record number of enquiries and complaints in 2012, which improved practices and ensures high levels of accountability and transparency in local government.



Fast facts

- Over 530 complaints were received and actioned (a 130% increase on 2011; this does not include telephone enquiries that are referred or resolved)
- 428 complaints were escalated to investigations
- 383 complaints specifically related to council elections were received in a ten week period
- Prosecutions were conducted for misuse of position, conflict of interest and electoral offences.

The Inspectorate will continue to investigate complaints until at least 30 June 2013. To make a complaint, call 1800 469 359 or email inspectorate@dpd.vic.gov.au

- 251 election complaint investigations resulted in a finding of no breach of the law
- 81 investigations found no breach of the law but the Inspectorate made recommendations to improve practices, processes or transparency
- 56 investigations found a breach of the law and the Inspectorate made suitable recommendations for corrective action, for example to authorise electoral material or by issuing formal warnings
- 4 investigations found a breach of the law but could not identify the responsible person
- 22 investigations were found to be outside the Local Government Act and were referred to other agencies such as Victoria Police or the relevant council
- 7 investigations resulted in prosecution action by the Inspectorate against individuals for offences of misuse of position, conflict of interest and electoral offences.

New council priorities

Nearly six months on from the elections, it is time for the newly formed councils across Victoria to develop key documents that are integral to effective governance and transparency and which will guide council decisions and operations.

Five major priorities should be:

- Council annual plan
- Council budget
- Councillor code of conduct policy
- Councillor and Mayoral allowances
- Delegations.