

Local Government Investigations and Compliance Inspectorate

# Review of Councillor Discretionary Funds

October 2013

## Introduction

The Local Government Investigations and Compliance Inspectorate (Inspectorate) has completed a review of practices related to Councillor Discretionary Funds (CDFs) in Victorian councils.

The review was initiated to ensure that any discretionary spending by councillors was accountable, transparent and complied with the *Local Government Act 1989* (Act).

In November 2012, Inspectorate staff commenced an audit to identify:

- the prevalence of CDFs within councils
- whether practices related to CDFs complied with the Act
- what controls were in place to protect against fraud and corruption; and
- alternative funding arrangements.

The Inspectorate wrote to all councils with CDF programs in early 2013, to share its preliminary observations and provide an opportunity for comment. Feedback from councillors and Council Audit Committees was also considered.

In particular, councils were asked to explain how their CDF processes were open and auditable, and whether a CDF program was necessary given the alternative funding programs that exist.

This report presents a detailed analysis of the Inspectorate's findings, from the information provided by councils. This report addresses the risks associated with CDFs and provides examples of good and poor practice. It also summarises the feedback received from councils and recommends alternatives to the current CDFs observed at Victorian Councils.

## Background

On 26 May 2006, then Executive Director, Local Government Victoria and Community Information, Prue Digby, issued Circular No 11/06. It stated that Local Government Victoria had become aware of several councils that were allocating funds for individual councillors or ward councillors to spend at their discretion.

It further stated that expenditure may be incurred by the Council and a Special Committee, or members of staff by delegation, but not delegated to an individual councillor or group of councillors (ward), unless the group is properly established as a Special Committee.

In the period following the communication, a number of councils continued to allow councillors to expend council funds at their own discretion. This is evidenced by examining council policies since 2006. In some cases, inadequate guidelines were adopted, which allowed individual councillors to commit funds unchecked. The more robust guidelines stipulated that formal council approval must be obtained prior to committing to any expenditure.

The overall directive of the circular was that councils with councillor discretionary spending programs need effective accountability measures in place, and must ensure that spending practices comply with the Act. Council guidelines must ensure that individual councillors cannot incur expenditure and, as a minimum, should require formal approval by council resolution before a commitment is made to do so.

It is recommended in the circular that avoiding all discretionary spending is the most effective way to minimise risk.

## The risks

Those councils that do not require councillors to seek formal approval via a council resolution, or do not create and implement stringent approval guidelines, are exposed to unnecessary risks.

Some of the risks include potentially fraudulent or corrupt practices by individual councillors, whereby funds may be committed to self-interest groups; and potential reputational risk if public funds are misspent.

Section 140(2)(c) of the Act outlines a council's duty to do all things necessary to ensure that public funds are correctly expended and properly authorised. Councils are encouraged to ensure transparency and accountability.

Councillors also risk possible breaches of section 76D of the Act, as it pertains to 'Misuse of position'. Section 76D(2)(e) states that circumstances involving the misuse of position by a person who is, or who has been, a councillor includes using public funds or resources in a manner that is improper or unauthorised.

Failure to provide formal authorisation for expenditure may result in councillors (in some cases, unknowingly) breaching the Act, making them liable for the requisite penalty.

A full list of relevant legislation can be found in Appendix A.

## Councillor Discretionary Funds in Victoria

The Inspectorate's audit has produced a comprehensive picture of CDFs in Victoria as at 1 January 2013:

- 32 of Victoria's 79 councils reported some form of CDF program in place (40.5 per cent).
- Of the 47 councils who have not reported that they have CDFs, only Towong Shire Council is without an alternative funding arrangement.
- 27 councils reported that they had fixed annual CDF budgets, worth a combined total of more than \$2 million each year.
- Five other councils advised that CDF amounts varied annually and were determined in their annual budget processes.
- Grants offered through CDFs ranged from \$3,000 to \$500,000. The median amount of funding dispensed by councils under their CDF schemes annually is \$62,500.<sup>1</sup>
- In 22 councils, individual councillors take the initiative to recommend how CDF grants will be allocated, and one additional council also receives applications from prospective funding recipients
- 12 councils reported that councillors authorise CDF payments at their own discretion. Of these:
  - Kingston and Banyule City Councils were formally reviewing their CDF practices
  - Moonee Valley and Whittlesea City Councils retrospectively endorse the discretionary payments in a subsequent council meeting; and
  - Excluding the two councils reviewing their practices, these councils either set no limit on CDF payments, (ie, payments up to the total funds available are allowed), or have insufficient policies regarding the authorisation of CDF payments.
- Port Phillip and Ballarat City Councils have special committees which operate and administer their community grants and funding programs.
- The majority of Victoria's councils operate community funding and grant schemes through their administrative arms, rather than CDFs.

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<sup>1</sup> Inspectorate inquiries subsequent to 1 January 2013 have revealed that at least one council did not report all of its CDFs to the Inspectorate. For example, Geelong City Council did not disclose its \$7.2m Community Priority Scheme. Had it been included, it would alter the figures reported and bring the median amount of annually dispensed CDFs to \$287,500 and the total amount of CDFs dispensed annually to over \$9million.

## Characteristics and examples of CDFs

As part of the Inspectorate's review, councils were requested to justify their need for a CDF program. Their responses often reflected a desire to align the CDF program with the council's corporate plan, particularly objectives aimed at engaging the community and contributing to the wellbeing of constituents.

Councils are required to operate in an open and transparent manner, and to the highest standard of integrity, to ensure public faith in a council's effectiveness, value and accountability to the community.

When CDF programs do not have effective controls in place to ensure transparency and integrity, they may act to advance a councillor's political aspirations or allow for funds to be awarded by corrupt or fraudulent means.

By allowing a councillor to determine the allocation of funds at their own discretion, a council also exposes itself to potential breaches of the Act, such as committing to expenses without the proper authorisation.

### What makes an accountable CDF program?

An accountable CDF program requires strong and auditable processes, which are open and transparent. What follows are some characteristics of accountable CDF programs.

#### **Applications**

The person requesting funds from the council should be required to apply in writing, indicating the need for the funds and how the grant will be used. Furthermore, applications should include some type of justification for the requested amount, such as a quote.

#### **Criteria for eligibility**

A policy outlining who is eligible to apply for CDF grants and how eligibility is assessed should be made publicly available. The policy needs to include stringent requirements regarding the type of recipients, the amount of funding that can be awarded, and the method by which payments are authorised. For example, does a resolution of council authorise the grant of monies or will an authorised person with adequate financial delegation perform this function?

#### **Transparent assessment of applications**

A council needs to be able to provide evidence that applications have been properly assessed against stated assessment criteria. It should also provide unsuccessful applicants with the reasons behind the decision, and make publicly available the evidence supporting the assessment of successful applications.

#### **Information regarding CDF recipients**

Information such as who received CDF grants, how much was received, and for what purpose, should be made publicly available. A council can use its meetings, website or its annual report to convey this information. Councils are required to make prescribed documents available for inspection. Such documents include council grants and donations.

## **Acquittals**

Grant recipients should be required to submit an acquittal, to ensure that grants are used for the purpose that council has allocated the funds.

## **Protect against conflicts of interest**

Those involved in the decision making processes of CDF programs should be required to make declarations as to whether they have real, perceived or no conflict of interest in the matter being determined. This includes council staff as well as councillors. All approval mechanisms should also comply with the Act.

## **Examples of accountable CDF programs**

Of the 32 councils with CDF programs as at 1 January 2013, based on the information provided by those Councils about their programs the Inspectorate ascertained only four whose CDF programs demonstrated accountable practices.

### Greater Dandenong City Council

- Applications for grants up to a maximum of \$1,000 are made in writing to Council.
- Applications are assessed by council officers, to ensure they are feasible and align with council policies and the corporate plan.
- If deemed suitable, council officers make an electronic transmission to all councillors through a specially-devised computer package, advising of the nature of request and amount requested.
- All councillors, regardless of their ward, may choose to contribute any amount from their annual fund of \$6000 toward the cause.
- Council staff approve the payments. If more than one councillor decides to allocate funds, thereby exceeding the \$1,000 maximum per request, council officers round the donation down to \$1,000 and split it equally among each contributing councillor's fund.
- Councillors can nominate to deliver the funding cheque personally, in which case the media department handles the opportunity. Otherwise, council officers organise the payment.
- This system allows the assessment process to be audited, and recipients to be publicly acknowledged.

### Maribyrnong City Council

- Council allocates \$500,000 annually in its budget for Councillor Priorities Initiatives, which are small one-off community projects.
- Councillors nominate a project, for example, a small capital improvement, or non-recurrent strategic or planning project.
- Councillors must consult with council staff regarding costings, feasibility and alignment with council policies and plans.
- Councillors then submit an application to the director of relevant section for further assessment.
- The application is then assessed by the Executive management team.
- Viable projects are included in the draft budget, which goes through the statutory processes prior to being adopted formally by Council.
- This system allows the public to be aware in advance of funding to be provided during the next financial year, and allows for submissions throughout the budget process.

### South Gippsland City Council

- Written applications are submitted to the Council's grants office via an online template form. The form requires the applicant to nominate the ward councillor(s) they are seeking funds from.
- Council staff assess all applications against relevant policies, the corporate plan, and the published assessment criteria. They then forward eligible applications to relevant councillors.
- If a councillor recommends approval of the funding, they must complete a funding template and raise a motion for approval to Council.
- If funding is approved by Council resolution, council staff advise the recipient on how to obtain the funding.
- This policy requires applicants to apply for funding in writing and be formally approved by Council.
- All the relevant policies and template forms are available online.
- Project acquittal forms must be completed by successful applicants, or they are ineligible for future funding.

### Greater Geelong City Council\*

- Council has a stringent application process which is detailed on its website.
- Council staff receive and assess applications, and deliver recommendations to Councillors, who then approve or reject applications.
- Reports on councillor-approved funding requests are endorsed by Council resolutions.
- Once Council approves applications, council staff organise payment.
- The council has strict, clear policies which are available publicly, as are its assessment criteria for applications, including the weighting given to particular aspects of each application.
- Individual Councillor discretion is minimal, which protects against integrity risks. No applications are made directly to any councillor.
- In addition, acquittal reports are required by Council.  
(\* During the course of the Inspectorate's inquiries into the CDF program at Greater Geelong City Council, and its alternative grant schemes, it has discovered concerns relating to its Community Priorities Scheme, which was not disclosed to the Inspectorate until September 2013, and appears to be a CDF. These concerns will be addressed later in the report.)

A further three councils — Hume City Council, Macedon Ranges Shire Council and Yarra Ranges Shire Council — demonstrated good practice in some areas of their CDF programs, such as making information regarding the availability of funds available publically, and involving council staff in some processes. Overall these programs still exposed the councils to risks concerning the integrity of the process, as they lacked transparency in the assessment of applications.

### **What makes a poor CDF program?**

A poor CDF program lacks the processes necessary to ensure that applications are made for legitimate purposes, by legitimate persons, in an open and transparent manner. What follows are some characteristics of poor CDF programs.

#### **No applications**

Without written applications for funding there is no explanation or record of why particular recipients have been chosen to receive funding, and what the purpose of the funding is.

The public deserves some assurance that public money is not being used inappropriately or for other illegitimate means.

### **No assessment criteria**

Council should not make ad hoc decisions about who to give money to, and what amounts to award, without some justification. A broad theme, like health or community wellbeing, for example, is insufficient justification for the allocation of public money.

### **No policy**

Decision makers, and the public, need to be guided by policies which protect the public's money from misuse. The absence of a policy, or one without clear guidelines, may expose a council to potential reputational risks and financial losses.

### **No conflict of interest controls**

Councils are required to act in an open and transparent manner for the benefit of their communities. The conflict of interest provisions of the Act do not apply to CDF matters determined by councillor discretion or outside of council meetings. Where councillors determine matters on their own initiative or discretion and there is no policy in place to ensure conflicts of interests are declared, Council involvement in matters where conflicts of interests exist may be improper and illegal.

### **No publicly available information**

The public is entitled to know where public money is being awarded. In the absence of publicly available information, including the recipient, amount and purpose of CDF grants, the public can lose confidence in a council's ability to act impartially and transparently. Such practices may also be contrary to the Act.

### **No acquittal process**

No requirement on recipients to demonstrate how funds have been expended or whether it has been in accordance with the original request for funding and/or the terms under which the grant was paid.

### **Examples of poor CDF practices**

The three councils below offer examples of risky CDF practices.

#### Hobsons Bay City Council

- Council has a mayoral discretionary fund of \$44,000.
- Each year, the Mayor decides on a theme for the Mayoral program, which is very general and broad. Provided that Council approves the annual theme, there appears to be no other accountability regarding funds expended on the theme of the Mayoral program.
- No costings or timeframes are provided in the mayoral fund report, yet council votes to approve associated expenditure.
- This program has no transparency, no assessment criteria and no accountability on the part of the Mayor.

#### Cardinia Shire Council

- Council has no policy or guidelines for the distribution of funds.
- Councillors nominate where they want to allocate their discretionary funds and Council endorses these payments.



- Applications do not appear to be scrutinised; rather the Council resolutions approving payments are seemingly a formality.
- No indication is given as to how CDFs are budgeted, nor are the payments detailed in financial reports or in the annual report.
- No public information is made available on how funds are allocated.

#### Mitchell Shire Council

- The Mayor has unlimited discretionary funds for which only he must provide proof of expenditure.
- Mayor also has a \$3,000 allowance for community support funds. These funds are also discretionary, however guidelines on what these funds may be spent on are contained in the councillor expenses policy.
- The CDF policy is ambiguous and the Mayor's discretionary fund is an integrity risk.
- Council meeting minutes also show that other Councillors have given donations and sought reimbursement for these.
- This may potentially expose the Council to committing to expenditure without the proper authorisation.

#### *Concerns from findings*

The Inspectorate has also identified several instances where the administration of a council's CDF program may give rise to serious breaches of the Act.

#### Moonee Valley City Council

- Council policy previously supported a more robust process for the assessment and grant of ward funds.
- The processes for allocating ward funds and monies for urgent or emergency capital works, were contained in the same policy
- Council passed a motion on 6 September 2011, giving councillors individual discretionary power to allocate ward funds for urgent or emergency purposes. It no longer needed to be for capital works, thus circumventing its stricter ward funds disbursement rules.
- Council then authorised \$72,000 worth of CDFs at its last meeting prior to the election period, (18 September 2012), for purposes which appeared to be non-“emergency/urgent” works, as required by the less stringent newer policy. Some examples include contributions to purchase computer equipment and toner, purchase of a cover for a bocce court, donations to sporting and social groups, and a contribution to a sports dinner.

#### Whittlesea City Council

- Payments were made to an organisation where a councillor is a board member.
- Subsequently the amount for payment came to council on 25 September 2012 for endorsement.
- The Councillor in question declared a conflict of interest in accordance with the Act, but the payment had already been made.
- Council also resolved to allocate payments under its CDF program, (consisting of unexpended mayoral discretionary funds), on 25 September 2012; the first day of election period.

### Frankston City Council

- Councillors have publicly committed funds to sports groups, and advertised this in council publications, just prior to the election period.

### Knox City Council

- Councillors allocated a total of \$10,482.27 of their ward contingency funds on 24 September 2012; the day before the election period.
- The report to council noting these allocations was submitted on 23 October 2012, during the election period.
- The overwhelming majority of these funds were awarded to sporting clubs, despite Council having a dedicated sports grant program to fund works and activities.
- A council officer with financial delegation actually authorises the payments.

Some councils operate CDF schemes under policies stating that funds are only to be authorised through Council resolutions. In the case of two councils, it appears that the endorsement of payments is mere formality; almost anything can be approved provided it goes to a council meeting.

Murrumbidgee Shire Council previously operated a Councillor Holiday Season Allocation program, which allocated each councillor \$1000 for distribution at their discretion for celebratory activities associated with the holiday season. There was no policy or guidelines in place to administer this process. Subsequent to a compliance audit conducted at the council by the Inspectorate in 2012, where inspectors raised the issues associated with this practice, Council resolved to cease the program.

### *Investigations*

Emanating from the Review, a council will be the subject of an investigation for offences under the Act. The Inspectorate has ascertained that three councillors appeared to have committed council to expenditure without proper authorisation. These councillors stated to their council that these payments constituted donations, yet they sought and received reimbursement for these payments from council.

The Inspectorate is also investigating complaints about another council's allocations through its CDF program.

In addition, the Review has identified issues of concern about wider discretionary spending amongst Councils under the guise of budgeted projects. The most recently notable of these is the City of Greater Geelong's Community Priority Scheme (CPS). The CPS and the nature of the Inspectorate's inquiries are addressed below.

The CPS was not initially identified by or to the Inspectorate as part of the Review, however, following further enquiries into council funding arrangements, the extent of the scheme became apparent.

The CPS (originally known as Ward, Councillor or Community Priorities and separate from Council's CDF scheme) was first introduced as part of the 2005-2006 budget process. Each councillor was invited to nominate projects in their ward requiring funding for what were considered priority one-off capital projects. In that financial year, \$4.78m (approximately \$400,000 per Councillor) was allocated under this scheme. Since that time these amounts

were increased and now Council budgets \$7.2m (\$600,000 per councillor) under this scheme.

Council has advised the Inspectorate that funding under the CPS is not intended to operate as a grant scheme but to provide funding for specific “named” initiatives. However, the Inspectorate notes that these initiatives are accounted for as Capital, Non-Capital or Disbursements. Council defines disbursements as grants, donations, sponsorships or contributions.

Under the CPS, Councillors nominate projects in their ward to receive part of the \$600,000 funding allocated to each ward and these nominations go through the Council’s budget process. To date, Councillors have presented the view that this process is transparent because the budgetary process allows for public submissions. Such a scheme does not present an integrated response to the whole of the Geelong community’s needs.

Based on the information provided by the City of Greater Geelong to date about its CPS, it does not align with the criteria set out in this report for transparent and accountable CDF schemes. The money awarded under the CPS is not underwritten by a council policy, business or feasibility study. Public money is allegedly being allocated without adequate assessment against published criteria and without auditing the ratepayer benefits.

Despite the Council advising that the money in the CPS goes through a budgetary process, the Council’s budget papers do not acknowledge the fund. Its \$240,000 CDF is widely advertised and reported on.

The Inspectorate is making further inquiries to determine that the CPS complies with the Act and presents best value for these funds. In addition, the Inspectorate will ascertain whether funds awarded under the CPS are free of conflicts of interest and ascertain the circumstances surrounding previous incidences of Councillors raising reallocation of budgeted CPS funds motions, which have been passed at Council meetings. This is as a result of the Inspectorate’s concerns and also due to the receipt of complaints raising concerns about the operation of the program.

## **Feedback from councils to the Inspectorate’s concerns**

The Inspectorate sought council feedback in relation to its concerns with the CDF practices reported and asked councils to comment on the need to maintain CDF programs. This feedback was requested from all councils with CDF programs.

The Inspectorate sought the councils’ comments as to why their CDF programs remain in place when alternative funding arrangements are available which can adequately deal with the matters for which funding under CDF programs is distributed.

### **Feedback from Councils with accountable CDF programs**

In its letters to the four councils with accountable CDF programs, (Greater Dandenong City Council, Maribyrnong City Council, South Gippsland Shire Council and Greater Geelong City Council - for the one CDF program it reported to the Inspectorate), the Inspectorate acknowledged the positive aspects of these programs but still sought comment on the need for these councils to maintain these programs.

Each of these councils advised that they considered there was a clear requirement that their CDF programs be maintained in conjunction with their separate grants programs as the objectives of the two programs differed greatly. Despite strong policies from a governance perspective, some of these programs allowed for significant sums of money to be allocated. , Maribyrnong City Council approved an annual funding pool of \$500,000 for 2013/14 financial year and Greater Geelong City Council has allocated \$240,000 for the same period.

One council advised its Councillor Discretionary Program was intended to be a 'donation' program, guided by specific criteria and procedures which cover a different range of expected outcomes, in contrast to its Community Support Grants Programs which are 'grant' programs with specific accountability criteria associated with effective grant management.

Despite these four Councils maintaining stringent integrity processes in their CDF practices and attempting to highlight the variances between their funding programs, their responses confirmed that there were minimal differences in the fundamental premise of the discretionary funding programs and the grant funding programs for these councils.

### **Feedback from councils with poor CDF practices**

The Inspectorate wrote to the councils with poor practice examples of CDF programs and those with risky CDF practices, seeking clarification on how they manage the integrity risks and ensure compliance with the Act.

The Inspectorate requested these concerns be put to Council and council's audit committee, seeking their comments as to why these risky practices are in place when the risks of breaching the Act are high and alternative funding arrangements are available which can adequately deal with the matters for which funding under CDF programs is distributed.

The Inspectorate received an overwhelmingly positive response to its review and the concerns being raised with the practices of particular councils, however in stark contrast two Councillors contacted the Inspectorate to state that they knew what they were doing with "their" money. This response highlights the concern of the Inspectorate for poorly managed CDF schemes.

### **Summary of responses from councils to Inspectorate's concerns**

As at 1 October 2013, the feedback received by the Inspectorate from 31 Councils can be summarised as follows

<b>ACTION</b>	<b>NUMBER</b>
Ceased CDF practices completely	3
Suspended CDF practices pending further council review	1
Continue with existing CDF policy	4
Continue CDF practices with amended/updated process	7
Committed to reviewing existing CDF practice/policy	16
No response to date*	1

\*One council has not responded as their Audit Committee is yet to consider the Inspectorate's concerns in order for council to respond.

The responses received indicate that each of the councils had an understanding of the risks involved in maintaining some form of CDF program. However the differing level of action committed to, indicates that some councils' are dealing with the issues identified with their individual councils in more depth than others.

Whilst the Inspectorate did not make any recommendations to Councils regarding their practices, three councils (Mildura Rural City Council, Buloke Shire Council and Murrindindi Shire Council) resolved to cease maintaining a discretionary fund program, whilst Corangamite Shire Council has suspended their program indefinitely, pending a full review of their current policy. Each of these councils advised that they would explore the possibility of transferring their practice from the current councillor discretionary process to their existing general community funding programs, which operate with greater levels of scrutiny, transparency and accountability. Buloke Shire Council has already resolved to incorporate its CDF policy into a consolidated Community Grants and Sponsorship Program for 2013/14.

Three councils provided a detailed self-assessment of their existing policies, which they stated characterised transparency, accountability, communication, disclosure and general good governance practices. Councils advised of their desire to continue with their existing discretionary programs without making any changes, as they believe there are discernable differences between these and their other formal grants programs. Two of these councils were those identified by the Inspectorate as having good CDF practices (Maribyrnong and Greater Geelong City Councils). The other was Knox City Council.

Knox City Council considered the matters raised by the Inspectorate during its Audit Committee meeting of 20 June 2013 and by council at its meeting of 23 July 2013, at which time they strongly committed to their existing policy. The issues raised by the Inspectorate to the council included, approval of allocations without the need for a formal council resolution, a failure to detail the eligibility criteria and a failure to report individual allocations publicly. A detailed explanation of their adherence to the above recommendations was provided, along with a description of the difference between their Ward Contingency Fund and their Community Development Fund. They confirmed that Councillors were very supportive of the role that the Contingency fund plays in fostering and supporting community groups and other community events and activities in a manner consistent with the commitments in the Council Plan.

Maribyrnong City Council advised that it did not believe that its community grants program was a suitable alternative to its CDF program as it provides direct funding grants or in kind support to community groups and organisations, whilst the CDF program funds small, one-off capital or planning projects for council.

Similarly, Greater Geelong City Council advised that its Councillor Community Grants Program (CCGP) program differed from its other specific purpose grant programs which generally operate through funding rounds and can be dispersed over more than one year. The CCGP program aims to provide an opportunity for a wide range of not for profit community groups to share grant funds for a varied range of projects to benefit the wider community. Funds for the CCGP are also adopted through the budget process (adopted 25 June 2013), with a total of \$240,000 made available for the 2013/14 financial year.<sup>2</sup> These funds do not include those allocated under the Councils CPS which is under review in its own right by the Inspectorate, as detailed on pages 10 and 11.

### **Review of policies by Councils**

Upon receipt of the Inspectorate's letters regarding their CDF policies, five councils undertook a review of their existing policies, (Campaspe Shire Council, Casey City Council, Monash City Council, Greater Dandenong City Council and Cardinia Shire Council) with each determining a requirement to maintain their discretionary programs, on the basis that they incorporated the characteristics of what the Inspectorate outlined were accountable

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<sup>2</sup> At the time that Greater Geelong City Council provided this advice, it had not disclosed any information regarding the CPS, but provided information regarding its other grant schemes.

CDF programs. These amended policies have subsequently been adopted by the respective councils. These new policies established clear eligibility and evaluation criteria along with robust decision making guidelines. Stringent Conflict of Interest provisions were also implemented.

Campaspe Shire Council's CDF program, as at 1 January 2013, was identified as having several risk issues. These included a lack of formal assessment criteria, low level scrutiny of funding endorsements, the lack of acquittal reports and allowing unexpended funds to roll over from year to year. Following the Inspectorate's communication, the council adopted an amended policy at its June 2013 meeting. A list of improvements provided to the Inspectorate included:

- (a) the council annually allocating a sum of money through the budget that cannot be carried over into the following year;
- (b) that all funding requests require a letter from the applicant outlining how/why the funds will be spent as well as a letter from the requesting councillor;
- (c) the requirement for funding agreements to be signed;
- (d) completed acquittal forms to be provided by recipients to council to confirm how the funds were spent; and
- (e) the inclusion of approval criteria in the amended policy to provide clarity and add transparency to the assessment process.

Significantly the council confirmed that it had reduced the amount available through the budget from \$270,000 in 2012/13 to \$90,000 in 2013/14.

Monash City Council accepted that there were issues with their existing process as at 1 January 2013, which included the lack of a formal policy governing the allocation process, and the council not making recipient details available publicly. Subsequently the council resolved to approve a formal Councillors' Discretionary Funds Policy and Procedure document at its 25 June 2013 meeting. Key features of the policy included clear eligibility and evaluation criteria, funding limits, clear application and decision making processes and terms and conditions of funding guidelines, showing the council to be cognisant of its responsibility to its community following the recommendations of the Inspectorate.

Despite Greater Dandenong City Council's CDF policy having a stringent application process and a process whereby assessments are carried out by council staff with recommendations made to councillors for acceptance/decline, the council still reviewed its policy. The council further tightened the approval process and conflict of interest provisions of its policy.

Following advice from the Inspectorate outlining their governance shortfalls, which included not having a formally adopted policy, Cardinia Shire Council adopted an 'Allocation of Ward Funds Policy' at the council meeting of 15 July 2013. The policy addressed the issues identified by the Inspectorate as characteristics of a good CDF policy .

The remaining councils identified as maintaining Councillor Discretionary Fund programs, all confirmed that they wished to retain their programs as opposed to ceasing them, or merging them with alternative funding programs. However prior to fully committing to their programs long term, each have provided an undertaking to the Inspectorate to conduct a full review of their current policies, taking into account the issues identified by the Inspectorate.

### **Inspectorate observations based on Council responses and feedback**

In general, the practices of Councillor Discretionary Funds sit uncomfortably with the Inspectorate particularly where public funds are considered a resource for personal distribution in what can only be regarded a mechanism to generate popular support.

Many did have councils have processes in place that require formal approval via council resolution, however many processes lacked a suitable level of accountability, particularly where Councillors are approving applications without considering the merits of individual applications or taking advice from Council officer reports. Allegations of “rubber stamp” approvals for CDF payments in council meetings were common in the course of the Inspectorate’s review.

The Inspectorate also considered complaints from community members alleging that the distribution of such funds has not been consistent with that expected of transparent public expenditure processes.

With the exception of the 4 councils that have ceased/suspended their programs, each of the respondent councils made a case for maintaining their discretionary fund programs, despite having alternative grant programs with stringent approval guidelines. Most of these councils stated that the programs were:

- (a) typically aimed at different sections of the community;
- (b) for greatly differing purposes; and
- (c) in a majority of the cases the Councillor discretionary funds were more readily available as they were often not subject to a formal budgetary process.

This review has allowed for councils to be aware of the risks they face should they continue to operate such funding programs, however, despite efforts by councils to tighten their individual processes, a gap remains between the accountable and transparent processes the community expects and Councillor Discretionary Funding schemes..

## CDF practices interstate

The Inspectorate has found that only Queensland has specific legislated provisions in its Local Government Act pertaining to CDFs. This legislation came into force after the Queensland Auditor General conducted a review in 2008 into local government's administration of community grants.

In the report, the Auditor General identified problems with accountability and transparency, and recommended the adoption of guidelines for local governments to assist them in improving their management practices for the administration of grants to local communities. These guidelines were published in 2009. The grants referred to by the 2009 guidelines incorporate council and mayoral discretionary funds.

The guidelines refer to the grant application process and acquittal process as being the core accountability mechanisms of councils' discretionary funds schemes. The guidelines require that grants allocated from CDFs be aligned to a council's strategic goals; are not able to be made through alternative means; and are administered under a well-articulated council policy, which is consistent with other grants programs administered by councils.

The guidelines provide sample template documents and policies for councils to utilise. The benefit is that they ensure uniformity of policies and processes across Queensland councils.

The guidelines do not appear to have been reviewed since coming into effect. However, they underpin the provisions relating to discretionary funds contained in the Queensland *Local Government Act 1999* (QLGA) and its associated regulations. These legislative provisions guide the allocation of monies and set out the annual reporting requirements for councils that operate discretionary grant schemes.

Queensland's *Local Government and Other Legislation Amendment Act 2012* amended the definition of discretionary funds in section 109(2) of the QLGA, to clarify that councillor discretionary funds must only be granted for community purposes, consistent with the scope of the regulations to that legislation.



## Alternatives to CDFs

As part of its CDF review, the Inspectorate reviewed community grants programs across Victoria. Almost every council runs community grants programs, with the only exception being Towong Shire Council.

In all cases, community grants programs were found to be a good alternative to CDF programs. This includes the four councils considered to be examples of CDF best practice.

In the majority of cases, the objectives of the community grants programs were similar to those of the CDF programs. The main difference was that the community grants programs had more stringent, transparent and accountable processes.

One could therefore question the value of a CDF program at all, when the only difference between the stated objectives of each program is whether or not an individual councillor, or group of councillors, is publicly seen to be giving money to certain persons or groups.

This can create public perceptions or expectations of councillors who have discretionary money at their disposal. This in turn creates opportunities for councils to be exposed to financial and reputational risks, and creates integrity risks for both the role of the individual councillor and the council itself.

During the course of its review, the Inspectorate contacted both the Victorian Ombudsman and the Victorian Auditor General's Office. Neither of these offices has conducted an audit or plans to conduct an audit into CDF practices in local government in the next two years.

## Recommendations for consideration

Based on the information contained within this report, the Minister may consider:

- (a) allowing CDF practices by Victorian Councils to continue as they are;
- (b) issuing guidelines to Councils promoting 'best practice' principles; or
- (c) commencing legislative reform, to either abolish CDFs or mandate their requirements.

### ***Allowing CDF practices to continue as they are***

The Inspectorate's review has revealed a lack of consistency in the way that councils administrate their CDF schemes. Even the four examples of accountable CDF practices differ greatly from each other.

The Inspectorate ascertained that as at 1 January 2013, there were 32 councils with CDF programs. Subsequent to the Inspectorate raising its concerns about CDF practices, 27 out of the 32 councils have either ceased, suspended, reviewed or are reviewing their policies. These Councils have advised the Inspectorate that the new policies address, or will address, issues of application processes, eligibility criteria, transparent assessments, publicly available information, acquittals of monies granted and conflict of interest.

Whilst the Inspectorate is pleased that it has brought the risks with CDF programs to Councils' attention, it is concerned that there are so many differing programs around the State, which may not adequately address all areas of concern. For example, whilst the relevant risks may be addressed in each Council's new policy, there is no standard at which they need to be addressed, which could still present risks to these Councils.

The Inspectorate relied on Councils to provide information regarding their CDFs for the purposes of this review. As seen with the City of Greater Geelong, the Inspectorate was not informed of the existence of the CPS until nearly 10 months after commencing the CDF review. In addition, despite having the characteristics of a CDF, Council has renamed the scheme so that does it not appear to be a Councillor driven discretionary ward fund. Preliminary inquiries suggest that Councillors have utilised the budgetary process and council resolutions to award monies without proper consideration. The Inspectorate is concerned that other Councils may operate alternative schemes which they have not disclosed to the Inspectorate.

### ***Issue 'best practice' guidelines***

During the course of its review, the Inspectorate received many requests from Councils to "approve" their policy reviews or provide a comprehensive guide on how to prepare, and what to include in a CDF policy.

The Inspectorate did advise Councils of the items an accountable CDF program policy should address, however it is inappropriate for the Inspectorate to approve Council policies or issue practice notes to Councils. This would be a matter for the Minister for Local Government or Local Government Victoria.

### ***Legislative Reform***

CDF programs are not specifically covered by current legislation. Whilst councils are accountable for reporting annually on financial matters, many do not specifically report on their CDF expenditure as a separate item in their annual reports. Furthermore, councils risk contravening the Act if they do not make documents pertaining to the granting of CDFs available for public inspection.

The Act is currently insufficient to adequately cover the risks to councils that the operation of CDF schemes can create. The Act does not contain sections specifically applicable to the discretionary powers of councillors, which creates an integrity risk that may allow corrupt practices to occur. Legislation can mandate what is required in the exercise of discretionary spending and provide options for dealing with wrongdoers.

Legislative requirements regarding the administration of CDF programs and councillor discretionary spending (by whatever scheme name), will help instil community confidence in the council and the councillors dispensing these funds. This would give councils the option to assist the community in special circumstances, but public funds would still be protected and the integrity of councils maintained.

Amending legislation to be prescriptive about the administration of CDF schemes and discretionary spending may alleviate some of the associated risk for a council; however this could bring further problems. For example, it would not be in keeping with the spirit of CDFs to have particular groups feel they are entitled to annual council handouts, or having individual councillors using CDFs as self-serving political tools.

Alternatively, legislation could prohibit the operation of CDF programs and/or councillor discretionary spending in their current format. Councils need not expose themselves to the risks associated with operating CDF programs, when they already have effective community grant and funding schemes in place. Despite the fact that the Inspectorate identified four councils with well run CDF programs, each of these councils still operate effective alternatives which do not carry the risks associated with CDFs.

All alternative grants programs operated by Councils demonstrate stronger integrity and accountability measures, through publicly available policies, processes, evaluation criteria

and acquittal requirements. This would suggest that there is no need for CDF schemes, as the benefits can be derived from other grant programs.

Councils would be wise to incorporate their CDF schemes into their other grants programs voluntarily; however a Ministerial directive and/or legislative amendments prohibiting CDF practices would ensure effective expenditure of public monies.

## Appendix A: Relevant legislation

1. Section 3(5) of the Act provides that where a council is empowered to do any act, matter or thing, the decision to do the act, matter or thing is to be made by a resolution of the council.
2. Section 3(6) of the Act provides that for the purposes of section 3(5) of the Act, resolution of council means:
  - (a) a resolution made at an ordinary meeting or special meeting;
  - (b) a resolution made at a meeting of a special committee;
  - (c) the exercise of a power, duty or function delegated to a member of Council staff under section 98 but does not include any business transacted at an assembly of Councillors.
3. Section 3C of the Act provides that primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions. The Act provides that in order to do this, a Council must have regard to the following facilitating objectives:
  - (a) to promote the social, economic and environmental viability and sustainability of the municipal district;
  - (b) to ensure that resources are used efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;
  - (c) to improve the overall quality of life of people in the local community;
  - (d) to promote appropriate business and employment opportunities;
  - (e) to ensure that services and facilities provided by the Council are accessible and equitable;
  - (f) to ensure the equitable imposition of rates and charges;
  - (g) to ensure transparency and accountability in Council decision making.
4. Section 76D(1) sets out the offence of misuse of position and provides that a person who is, or has been, a Councillor or member of a special committee must not misuse his or her position:
  - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person; or
  - (b) to cause, or attempt to cause, detriment to the Council or another person.Penalty: 600 penalty units or imprisonment for five years or both.
5. Section 76D(2) of the Act provides the circumstances involving the misuse of a position by a person who is, or has been, a Councillor or member of a special committee include:
  - (a) making improper use of information acquired as a result of the position he or she held or holds; or
  - (b) disclosing information that is confidential information within the meaning of section 77(2); or
  - (c) directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E; or
  - (d) exercising or performing, or purporting to exercise or perform, a power, duty or function that he or she is not authorised to exercise or perform; or
  - (e) using public funds or resources in a manner that is improper or unauthorised; or
  - (f) failing to disclose a conflict of interest as required under this Division.

6. Section 76E(1) of the Act provides that a Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member..
7. Section 76E(2) of the Act provides that a Councillor must not direct, or seek to direct, a member of Council staff:
  - (a) in the exercise of a delegated power, or the performance of a delegated duty or function of the Council; or
  - (b) in the exercise of a power or the performance of a duty or function exercised or performed by the member as an authorised officer under this Act or any other Act; or
  - (c) in the exercise of a power or the performance of a duty or function the member exercises or performs in an office or position the member holds under another Act; or
  - (d) in relation to advice provided to the Council or a special committee, including advice in a report to the Council or special committee.
8. Section 79 of the Act provides that if a Councillor or member of a special committee has a conflict of interest in a matter which is to be considered or discussed at a meeting of the Council or the special committee, the Councillor or member must, if he or she is attending the meeting, disclose the conflict of interest in accordance with subsection (2).
9. Section 79(2) of the Act provides that a Councillor or member of a special committee who has a conflict of interest and is attending the meeting of the Council or special committee must make a full disclosure of that interest to Council, the Special committee or the CEO; classifying the type of interest that has given rise to the conflict and describing the nature of the conflict.
10. Section 79(9) of the Act provides that the Minister exempts a person from having to comply with the provisions of section 79 of the Act, a Councillor or member of a special committee who fails to comply with this section is guilty of an offence and liable to a fine not exceeding 120 penalty units.<sup>3</sup>
11. Section 140(2) of the Act provides that a Council has a duty to do all things necessary to:
  - (a) ensure that all money payable to the Council is properly collected;
  - (b) ensure that appropriate arrangements are implemented for the security of all money received by the Council;
  - (c) ensure that all money expended by the Council is correctly expended and properly authorised;
  - (d) ensure that adequate control is maintained over assets owned by or in the custody of the Council;
  - (e) ensure that all liabilities incurred by the Council are properly authorised;
  - (f) ensure efficiency and economy of operations and the avoidance of waste and extravagance;
  - (g) develop and maintain adequate internal control systems.

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<sup>3</sup> The conflict of interest provisions of the Act do not apply to CDF matters determined by Cr discretion or outside of council meetings. Where councillors determine matters on their own initiative or discretion and there is no policy in place to ensure conflicts of interests are declared, Councils risk awarding public monies through corrupt or fraudulent means.

12. Section 140(3) of the Act provides that a Council has a duty to ensure that its accounts and records are kept up to date and ready for inspection at any time by any person authorised to inspect the accounts and records.
13. Regulation 11(o) of the *Local Government (General) Regulations 2004* provide that a Council must make available for public inspection documents containing a list of donations and grants made by the Council during the financial year, including the names of persons or bodies which have received a donation or grant and the amount of each donation or grant.