

### **WELCOME** to the fifth edition of the Local Government Investigations and Compliance Inspectorate (Inspectorate) newsletter.

In this issue we share with you the most common compliance issues our inspectors encounter in the course of their audits and review the importance of lodging campaign donation returns. We hope you find this informative and engaging. We welcome your feedback on the current content and future topics via [inspectorate@dpcd.vic.gov.au](mailto:inspectorate@dpcd.vic.gov.au)

#### **Council Compliance Audits - Common Issues**

The Inspectorate is committed to assisting councils achieve clear, transparent and good governance for their local communities. To assist councils achieve this, the Inspectorate delivers a scheduled audit program to assess compliance with 26 components of the *Local Government Act 1989 (Act)*.

To date, over a third of Victoria's councils have been audited as part of this program, with some common issues arising that the Inspectorate then works with councils to rectify.

The following are the most common issues found in the course of the Inspectorate's compliance audits:



#### **Senior Officer's Contracts** (Section 95A)

- Senior council officers are employed under contracts and there are requirements under the Act that if not met, may make the contract void.
- Senior Officer's contracts cannot exceed the duration of five years. The Inspectorate has found examples that are extended beyond this duration or do not list the relevant dates
- Performance criteria is also required in the contracts at the time they are entered into.

#### **Special Committees** (Sections 81, 86, 87, 98)

- Special Committees perform delegated functions of council, and are subject to the same rules and regulations as they often make decisions for the community or expend ratepayer funds.
- Examples have been found where Special Committees are not properly maintaining minutes of their meetings or the delegation and terms of reference are unclear. The audits have also found examples where primary and ordinary returns have not met all the requirements under the Act.

#### **Primary & Ordinary Returns - Councillors & Nominated Officers** (Section 81)

- In the interests of transparency and accountability, councillors, special committee members (if not exempt) and nominated council officers must lodge primary and ordinary returns in a specific format and within a specified time frame. The returns are a record of interests held by a person and part of the process to guard against conflicts of interest.
- Examples have been found where either councillors or nominated officers have lodged their returns outside the required time frames or were incomplete and did not meet the requirements of the Act.

#### **Procurement** (Sections 186, 186A and 208G)

- The responsible expenditure of ratepayer funds is an important and essential function of council and one that should be properly scrutinised.
- Audits have shown that where councils are required to have a current procurement policy in place, issues arise where regular reviews are not occurring or the policy structure is not followed.
- It is also important that councils report to the community on expenditure and the 'Best Value Principles' as set out in the Act.

#### **Restriction on Power to Sell/Lease Land**

(Sections 189 and 190)

- It is imperative that the process of a council selling or leasing land be open, transparent and allow its residents to be aware of the decision making process.
- Examples have been found where councils have not provided the minimum required notice prior to leasing or selling land and when selling land councils must also ensure the prescribed valuation meets the requirements of the legislation.

The Inspectorate team will complete a compliance audit for each council over the course of the program. By identifying these common issues, councils have the opportunity to check their own processes to ensure they are achieving the best governance arrangements for their community.

For more information about the audit program contact the Inspectorate on 03 9665 9555 or visit our website.

#### **Complaints Hotline: 1800 469 359**

Call the Inspectorate's complaints hotline on **1800 469 359**. This service makes it even easier to lodge your complaint. You may still do so anonymously and the criterion for making a complaint remains the same. You may also be required to mail in supporting evidence for your complaint. This number is staffed on weekdays from 8AM to 5PM; a message bank will operate outside of these hours.

## Local council election campaign donations

Declaring campaign donations is an important element of the council electoral process and one that underpins good and transparent governance.

Following the 2008 council elections, five unsuccessful candidates were found to not have lodged returns and investigations into these matters were conducted. Prosecutions from the Inspectorate's investigations resulted in penalties including fines of \$250, written apologies to council CEOs and community work. In each case, the individuals were ordered to immediately complete donation returns.

In an effort to ensure that candidates for local government conduct their campaign in a transparent and open manner, the *Local Government Act 1989* (Act) provides clear guidelines on the reporting of campaign finances.

The Act indicates that all candidates standing for election must lodge an *election campaign donation return*, outlining all contributions in excess of \$200.

This return must be submitted to the CEO of the respective council no more than 60 days following the election date. Completing this return serves to identify any potential conflicts of interest that may arise between the potential councillor and the community's stakeholders.

Working in conjunction with the Victorian Electoral Commission (VEC), the Inspectorate works to ensure that the Act's electoral provisions are adhered to. The VEC's information package is a great resource as it outlines the candidate's responsibilities. Issues of non-reporting may be investigated by the Inspectorate.

This information is important for candidates in any by-election and for the next full council elections in 2012.

The Inspectorate reminds candidates that the maximum penalty for not lodging a return is currently \$5,841.

For more information contact your local council, VEC or the Inspectorate.

## How to make a complaint to the Inspectorate

One of the primary functions of the Inspectorate is to provide an avenue for people to raise matters they feel should be investigated.

The process for making a complaint of this nature to the Inspectorate is outlined below. Before putting a complaint forward it is important to have considered all steps in this process.

1. If there is an issue you have concerns about, seek to engage internal complaint mechanisms within the council where appropriate.
2. As a guide, use the following questions to assist you in deciding if your complaint is within the jurisdiction of the Inspectorate:
  - Is it a potential breach of the Local Government Act?
  - Is it regarding actions of councillor(s) or senior council officer(s)?
  - Do you have information/material to substantiate the allegation?

If you cannot answer yes to each question it is most likely your complaint will need to be directed to a more appropriate agency.

3. Proceed with the complaint by submitting the details to the Inspectorate. You can lodge it anonymously if you wish. The Inspectorate accepts complaints via post: GPO Box 2392, Melbourne, VIC 3001 or via email, [inspectorate@dpcd.vic.gov.au](mailto:inspectorate@dpcd.vic.gov.au)
4. You will receive an acknowledgement letter from the Inspectorate upon receipt of your correspondence and if more information is required you will be contacted.
5. Finally, be aware the investigation process can sometimes take longer than expected. All relevant parties are advised when an investigation is complete.

## Investigation Outcomes 2010-11

The Inspectorate completed 94 investigations in the 2010/11 period with a broad range of outcomes. The chart depicts the types and quantity of investigation outcomes.

- 47% of cases investigated found no breach of the Act had occurred and no further action required
- 9% of cases found no breach but recommendations were made the council
- 15% of cases identified a breach of the Act but insufficient evidence to take further action
- 7% of cases were referred to a more appropriate agency or to councils
- 11% of cases resulted in a prosecution before the courts
- 11% of cases identified a breach of the Act but resolved through recommendations

