

Local Government Inspectorate Annual Report 2020–21



Annual Report 2020–21

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Message from the Chief Municipal Inspector

I am proud to present the Local Government Inspectorate's annual report for 2020–21, which is also my first report as Chief Municipal Inspector (CMI) after my appointment in April 2021.

COVID-19 continued to challenge Victorians – and councils – during 2020–21. We were challenged by multiple lockdowns, had to find ways of working safely and tried to support those who could not work.

Public health movement restrictions also provided additional challenges – and potential opportunities – for accountability and transparency. While councils had to limit public meetings and close down or restrict some services, this encouraged the growth of online meetings and forums and improved transparency of council activities to a wider audience. For the Inspectorate, the restrictions on movement forced the cancellation of planned face-to-face interviews and restricted our ability to visit councils and conduct legal proceedings. The COVID-19 restrictions also affected our education and prevention functions. I commend the professionalism and dedication of our staff in meeting these challenges.

In September 2020, we released a report on councillor expenses and allowances which made a number of recommendations to provide more guidance and consistency around the financial and other support given to councillors. We also recommended an increase in reporting and transparency.

The inspectorate prepared for months in the lead up to Victoria's council elections, which were held in October 2020. The rise of the influence of social media and restrictions on movement as a result of COVID-19 led to a doubling of complaints to the Inspectorate. The election period saw our staff dealing with 36 complaints a day and we received a total of 848 complaints.

Administratively, we transferred from the Department of Premier and Cabinet to the Department of Justice and Community Safety as part of machinery of government changes in April 2020 and in December 2020, we transferred our systems. I would like to express my thanks to both departments for a smooth transition.

In May 2021, the third tranche of the new *Local Government Act 2020* took effect. The new legislation is a major change for councils across the state and I commend councils for adjusting to the new rules and remind them that the adjustment period is now over.

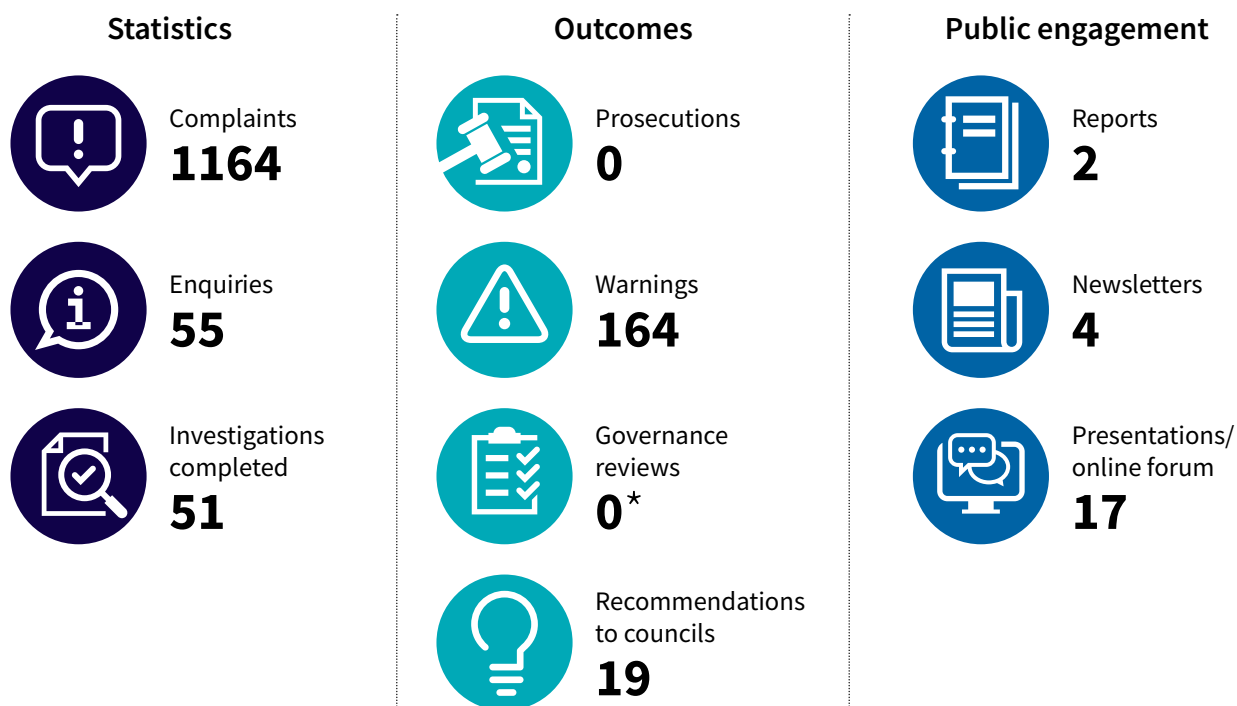
We released a report on the 2020 general council elections in June 2021, which analysed the complaints we received and made eight recommendations to help improve the integrity and democracy of local government elections. One concerning trend we looked at was the rise in complaints about social media and we recommended a change to the Act so that the rules and definitions of electoral material includes social media and online activities.

In October 2021, we published a report on personal interest returns following a major review of councillors' personal interest returns. This review was undertaken during 2020–21 and covered 650 councillors.

Finally, I would like to acknowledge Dr John Lynch PSM, the Acting Chief Municipal Inspector from January 2020 until my appointment in April 2021. Dr Lynch led the Inspectorate through a difficult year and his knowledge, experience and dedication ensured we continued our vital contribution to the integrity of the local government sector.

Michael Stefanovic AM

2020–21 at a glance



* Our ability to conduct governance reviews has been limited by COVIDSafe working practices. These reviews generally require us to spend time at council offices and the ability to do this was restricted during 2020–21.

Explanation of key categories and terms

Complaints: A complaint is a matter lodged with or referred to the Inspectorate for assessment in its capacity as the dedicated integrity agency for local government in Victoria. Most of the complaints we receive relate to councils but not all complaints we receive fall within our remit.

Enquiries: These include relevant contacts with the Inspectorate other than recorded formal complaints. Enquiries may involve multiple contacts with the public but only a single reference is included here.

Investigations completed: When the Inspectorate receives a complaint, an assessment is conducted to determine the best course of action. Formal investigations are resource intensive, so we are only able to dedicate resources to a limited number of investigations at any given time. Considerations for allocating resources include the prospect of matters proceeding to prosecution or being the subject of a public report.

Prosecutions: The Chief Municipal Inspector is empowered by the Local Government Act to prosecute individuals in a court. This power is taken very seriously and prosecutions are only pursued under certain circumstances. The Inspectorate must consider whether there is a reasonable prospect of conviction, whether or not it is in the public interest and whether or not there is an alternative to prosecution that may be more appropriate.

Warnings: A warning is issued when a prima facie breach of the Act is substantiated, but circumstances show that a prosecution may not be warranted. Warnings given to a person are considered if any further substantiated complaints are made against the same person.

Complaint assessment: When the Inspectorate receives a complaint, it undergoes an initial assessment to determine, among other factors, if the allegations fit within its legislative remit or the matter should be transferred to another agency. A matter is not considered under investigation at this stage.

Prima facie: In the Inspectorate's work, this refers to the presence of sufficient evidence to establish a fact or raise a presumption unless disproved or rebutted. It can also refer to matters that, on first appearance, may be a breach of offence under the Act but are subject to further evidence or information.

Public interest disclosure: In some circumstances, a complaint may be considered as a public interest disclosure (previously known as a protected disclosure or 'whistleblower' complaint). If a complaint appears to show that a councillor or member of council staff has engaged or proposes to engage in improper conduct, this could constitute a public interest disclosure. These matters must be sent to the Independent Broad-based Anti-Corruption Commission (IBAC) so they can determine whether or not the protections under the public interest disclosure regime apply.

Who are the Victorian integrity agencies, what do they do and what complaints can they deal with?

Local Government Inspectorate

The Inspectorate investigates matters related to council operations including criminal offences involving councillors, senior council officers or any person subject to the conflict of interest provisions of the *Local Government Act 2020*.

www.lgi.vic.gov.au

ombudsman VICTORIAN

The Ombudsman investigates the actions, decisions or conduct of public sector organisations and their staff. It also looks at whether a public sector organisation has acted in accordance with the *Charter of Human Rights and Responsibilities Act 2006*.

www.ombudsman.vic.gov.au



IBAC is responsible for exposing and preventing corrupt conduct in the public sector. It deals with serious corruption and misconduct in: state government departments and agencies, Victoria Police, members of parliament, judges and magistrates, and council employees and councillors.

www.ibac.vic.gov.au

What we do

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

The Inspectorate's work can be categorised under three main themes – responding to community need (reactive), ensuring compliance (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.

The Victorian public sector provides vital community services and facilities that support Victorians. Every day, public sector employees in government departments, agencies and local councils make decisions that affect all Victorians. The community expects people working in the public sector to perform their duties fairly and honestly. When misconduct or corrupt activities are not identified or left unchecked, public money and resources are wasted. Misconduct and corruption undermine trust in government and damages the reputation of the public sector.

The Victorian integrity system exists so Victorians can have confidence in the state's public sector. Corruption in councils, government departments and agencies can negatively impact broader communities. Public sector corruption can occur when a public sector employee misuses their position or power for some form of gain. Some examples of public sector corruption include providing services to family and friends ahead of other members of the community, misusing information to help a particular company win a contract or accepting bribes or other benefits. Our integrity system also consists of integrity agencies such as IBAC, the Victorian Ombudsman and the Victorian Auditor-General's Office.

Highlights and challenges of 2020–21

New Chief Municipal Inspector

Michael Stefanovic AM started as Chief Municipal Inspector (CMI) in April 2021. Mr Stefanovic has 35 years of experience undertaking complex investigations in high-risk environments both within Australia and abroad. He was admitted as a Member of the Order of Australia for his significant service.

An expert in his field, having led teams specialising in fraud, corruption and misconduct investigations with the World Bank in Washington DC, he also served as the Director of the Investigations Division at the United Nations in New York.

Michael started his career in Victoria Police and served for 14 years in various roles, attaining the rank of sergeant. He has lectured at the NSW Police College and was Director of Investigations for the Royal Commission into the Management of Police Informants.

Michael is a sessional member of the Victorian Police Registration and Service Board. He holds an Associate Diploma in Police Studies, a Bachelor of Arts – Police Studies, a Graduate Diploma in Organisational Behaviour, a Master of Arts – Police Studies and a Master of Laws – International Criminal Law.

Ongoing impact of COVID-19 on operations

Travel restrictions due to COVID-19 impacted the ability for investigators to conduct in-person interviews, consequently extending the time frame for the completion of investigations. COVIDSafe working practices impacted on complex investigations at three regional councils and the planned reviews of Yarriambiack and West Wimmera councils' compliance with findings from investigations in 2018–19.

Our team faced challenges when transitioning to working from home but set up online working groups dedicated to election complaints. Inspectorate staff dealt with an average of 36 complaints a day during the council election period, double the number of complaints from the 2016 election period.

Complaint Management System (CMS)

The current Lotus Notes-based CMS has reached the end of its lifecycle and is no longer supported by the Victorian Government IT provider, CenITex. Producing investigation reports and statistical analysis using the current CMS is labour intensive and replacing the system is an urgent priority.

Work has commenced to replace the CMS with a fit-for-purpose system. The Inspectorate is working closely with technical experts from the Department of Justice and Community Safety to identify alternative systems.

Parliamentary privilege

Unlike other Victorian integrity agencies, reports published by the Inspectorate are not tabled in Parliament and subject to parliamentary privilege. This can delay the publishing of investigation findings while the Inspectorate responds to information requests from stakeholders and seeks legal advice prior to publication.

A major investigation - completed by late 2020 - has required the engagement of legal counsel to assist with concerns over the publication of the investigation outcomes.

New legislation

The *Local Government Act 2020* provisions commenced in four separate tranches. The first two tranches came into effect on 6 April 2020 and 1 May 2020. The third tranche commenced on 24 October 2020 and included qualification of councillors, strategic planning and budget processes, gifts, conflict of interest, personal interests returns and improper conduct. The fourth and final tranche commenced on 1 July 2021.

Responding to community need

Enquiries

The Inspectorate regularly receives enquiries from community members, councils and councillors seeking advice, information or raising issues that fall outside the Inspectorate's jurisdiction. Other enquiries received by the Inspectorate are often referred from other state government agencies and sector representative bodies. The Inspectorate endeavours to assist with enquiries where possible.

Complaints

The Inspectorate receives allegations pertaining to offences and/or breaches under the Act and has a responsibility to assess all complaints as part of its role. Investigators initially assess whether the allegation is within the Inspectorate's jurisdiction. Complaints are then subject to an 'initial action', where evidence is gathered to determine whether the allegation can be substantiated. This process will determine whether the allegation constitutes a breach or offence under the Act, if it should be referred to another responsible authority or if there is no breach or offence under the Act.

There were 1,164 complaints accepted for assessment by the Inspectorate in the 2020–21 financial year. This almost tripled the previous year's complaint volume and is in line with the overall trend of an approximate 11 per cent increase in complaints across the four-year council cycle.

How complaints were received in 2020–21



Case study

Report on 2020 council elections

Victoria held its general council elections in October 2020 amid restrictions on movement caused by COVID-19. The unprecedented conditions led to our office receiving 848 complaints during the election period – an 107 per cent increase on 2016.

Most complaints (78 per cent) were generated by 22 councils while 20 councils generated no complaints. Three councils did not hold elections because they were under administration. A quarter of all complaints related to just three councils: Nillumbik, Stonnington and Wyndham.

Alongside a rise in complaints, we heard anecdotal evidence that the election period was the most toxic and vitriolic election ever held in the state. We saw underhand and unethical behaviour – but it was behaviour which did

not breach any laws. We believe there were two major factors behind this trend.

In October 2020, Melbourne was coming to the end of a long and tough lockdown. Restrictions on movement to just 5km from home for only two hours per day limited the amount of in-person campaigning that could be done. The lockdown heightened the anxiety of the electorate and provided another reason for people to file complaints against other candidates for breaching restrictions.

In addition, we continued to see the rise in dominance of social media which led to a 241 per cent rise in complaints about false or misleading material, unfavourable interaction or harassment and abuse. We published a [comprehensive report on election complaints](#) in June 2021.

Investigations

While complaints are a main driver of investigations, the Inspectorate may launch an own motion investigation into any matter that potentially breaches the Act. During 2020–21, 51 investigations were completed.

Reporting period	Complaints	Investigations complete
2016–17 (election year)	576	56
2017–18	417	39
2018–19	421	29
2019–20	336	22
2020–21 (election year)	1,164	51

As with the previous financial year, major investigations drew significant resources, and a reduction in staff resulted in a decreased capacity to investigate. 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.

Case study

Undeclared gift to councillor

We received a complaint that a local developer had commissioned an artist to paint a portrait of a councillor. The allegation was that the portrait was a gift to the councillor and was presented to him at a time when the developer had made an application for a major development. The gift was never recorded on the gift register by the councillor.

We investigated and found the developer did commission the artist and the written agreement between the two parties stated that the portrait of the councillor would be paid for by the developer but would be given to the council. The invoice for about \$7,500 was sent to the developer's development company. In August 2019, the portrait was unveiled by the mayor at the 'Citizen of the Year' awards and presented to the councillor. The developer made a planning application to council in late 2019.

We interviewed the councillor under caution. He said that he was not aware of the portrait before the award ceremony. The councillor advised that he did not want to accept it and asked the portrait to be taken to the local history centre. He did not take possession of the portrait.

We also interviewed the mayor at the time who told us that the portrait was a gift to the council, not the councillor. We confirmed that the portrait had been taken to the history centre shortly after the awards ceremony. The developer also denied that the portrait was a gift to the councillor.

We accepted that the donation of the portrait was made to the council and therefore it was not mandatory that the gift register was updated in accordance with s. 81 (7) (e) of the Act. However, a donation by a philanthropist to council and not an individual was not covered by the Act or by any council policy. We recommended that council's 'Receiving Gifts, Benefits and Hospitality Policy (2020)' should be updated to include the gifts to council. Council updated its policy in August 2020.

We were satisfied with council's response and closed the matter. We found no breach of the Act.

Coercive powers

Under the Act, the CMI has powers to require the provision of reasonable assistance, which may require the production of documents and evidence or require a person to appear for examination under oath. In 2020–21, the use of the powers were approved on 50 occasions to obtain documents or interview people.

We interviewed 28 individuals in 2020–21 and the vast majority of interviews were voluntary. We used our coercive powers once to interview one individual.

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. During 2020–21, we issued 139 warnings in relation to the council elections, 22 in relation to interest returns and a further three warnings. Warnings are used as an educational tool in making recipients aware of their obligations under the Act and of the consequences for further transgressions.

Case studies

Warnings for delayed declaration and voting card error

Warnings are issued when, on the face of it, a breach of the act is substantiated but a prosecution is not warranted. A warning aims to educate people and help them improve their behaviour.

In 2020–21, a councillor was warned after submitting their primary personal interests return two and a half years late. This was a breach of section 81(2)(a) of the *Local Government Act 1989*, which requires a councillor to submit a primary interest return within 30 days of election day or 7 days of making the oath or affirmation of the office of a councillor. They are then required to submit ordinary interest returns twice a year.

The councillor explained they were elected via countback and did not have the same induction process as other councillors. As their ordinary interest return was due shortly after they were elected, they thought this was the only interest return they needed to complete.

Our request to the council for provision of all councillors' primary interest returns prompted the governance staff to have this councillor submit a primary interest return. The councillor was very apologetic and said they would be more diligent going forward.

In another case, the 'how to vote' card pamphlet for four candidates contained an error. The card had an example of how to preference each of the candidates. However, it included the number 12 twice and no number 14. If a voter followed the suggested preferencing, it would lead them to cast an informal ballot. This constituted a prima facie breach of section 288(2)¹ of the *Local Government Act 2020*.

The candidates said the error was corrected as soon as they became aware of it and the material reprinted. However, some of the incorrect cards were distributed to the public. We issued five warnings – one to each of the four candidates, and one to the person who authorised the pamphlet.

¹ Causing, permitting, or authorising to be printed, published or distributed, electoral material that contains a representation of a ballot-paper, which one should reasonably be expected to know is likely to induce a voter to mark the voter's vote otherwise than in accordance with the directions on the ballot-paper.

Compliance actions

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 Inspectorate has a proactive function to encourage better governance in councils, and a reactive role in reviewing governance procedures.

During investigations into Wyndham City Council in 2016–17, the Inspectorate detected many issues with councillors' interest returns, and subsequently undertook a comprehensive review of councillors' personal interest returns across Victoria to determine the overall level of compliance. The review also allowed the Inspectorate to provide more informed input into the *Local Government Act 2020*.

Case study

Personal interest returns review

During 2020–21, we completed a major review into councillor compliance with personal interest returns requirements. We did a high-level review of councillors from 61 councils and a detailed review of councillors from 17 councils. In total, we checked 4,600 returns for 650 councillors from 78 councils from October 2016 to February 2020.

While transgressions of the Act varied in severity, from failing to disclose an obvious personal interest, to submitting a return less than a week late, we found that half of all councillors did not strictly comply with the *Local Government Act 1989* as required on at least one occasion.

We also surveyed selected councillors and council staff to better understand what the issues were, and to assist in the identification of ways to improve compliance. The [report](#) was published in October 2021.

Case study

Report on councillor expenses and allowances

In September 2020, we published a [report on our review](#) of councillor expenses and allowances.

Our review of councillor expenses and allowances was based on surveys of councillors and governance staff and an audit of several councils to assess compliance with legislation. We were also able to identify best practice to benefit the whole sector.

The report found large variation between councils in the content of their expenses policies, and what and how much would be reimbursed. We urged councils to improve transparency by making expenses information publicly available on a regular basis.

The audit exercise revealed some deviations from policy in practice, such as claims being submitted outside stipulated periods and incorrect claims forms being used. Some risks such as a CEO's corporate credit card being used for councillor expenses and claiming expenses by way of petty cash were also identified. Overall, significant deviation from policy and public expectation was not identified.

The survey results showed that councillors are largely content with the resources and facilities provided to them but there were comparatively greater levels of discontent with the allowance they receive.

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.



2
Reports



4
Newsletters



17
Presentations/online forums



89,800
Impressions of @CMI_Vic tweets



49,063
Website – unique views

Newsletter

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

Newsletters were sent to more than 1,692 subscribers and published on the Inspectorate website. This increased the reach of information beyond traditional mailing lists and assisted in meeting Victorian Government accessibility requirements.

General engagement

We presented to various stakeholder groups and sector representative bodies prior to the October 2020 elections, including joining panel discussions for a Victorian Local Government Association (VLGA) Electoral Integrity forum and an IBAC forum for Public Interest Disclosure Coordinators.

Case study

Presentation at local government sector conference

Our newly appointed CMI had a chance to introduce himself to some of the sector at the Victorian Branch of the Australian Local Government Women’s Association (ALGWA) Conference.

Mr Stefanovic presented complaint data and information about the 2020 general council elections when he presented at the in-person conference, which was held in April-May 2021. There was representation from 55 councils at the annual event.



Examples of the Inspectorate’s publications, (from left) elections report and summary

Social media

The Inspectorate continues to use its Twitter and LinkedIn accounts to provide updates on its work and highlight key issues for the sector. We saw a modest increase in queries directed to our @CMI_Vic Twitter account about election campaigning practices, councillor or candidate behaviour or council activities. This was replicated in a much greater increase of complaints relating to social media and online activity during the 2020 council elections.

Over that time, we received 351 allegations relating to online content, with 75 per cent of these allegations relating to social media, 10 per cent about email, 11 per cent about websites and 4 per cent unspecified.

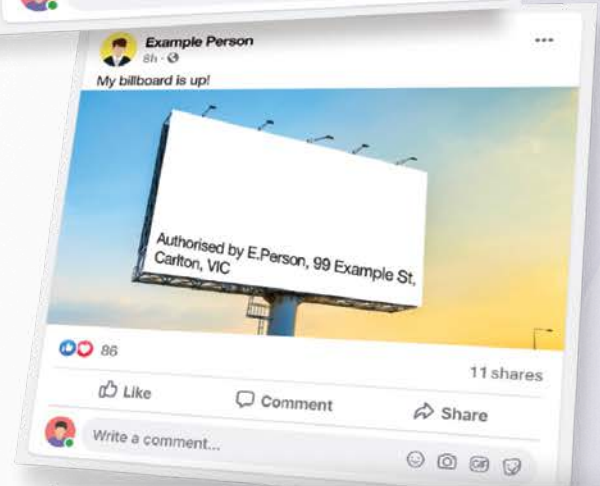
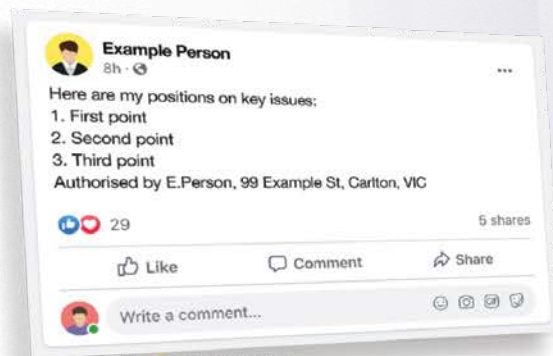
On 9 October 2020, we published a guide, with input from the Victorian Electoral Commission, detailing the appropriate method of ensuring social media posts are transparent and their author is clearly stated. (See examples shown on the right.) We also worked with sector representative bodies to deliver messaging to their members on social media usage and will continue to monitor the evolving role of social media in council and election activity and develop suitable materials for our audience.

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	Page views	Top downloads
2018–19	50,902	1,204 – CEO report
2019–20	43,763	1,252 – Yarriambiack report
2020–21	49,063	1,386 – Campaign donation returns FAQ 1,186 – Election complaint form (hard copy version)

Source: Google Analytics and Google Datastudio



Corporate

Our people

The Inspectorate had 10 full-time equivalent (FTE) positions filled as at 30 June 2021. We also employed two contractors for part of this period and had two FTE positions vacant.

Challenges and opportunities

As experienced in 2019–20, resource constraints continued to prove challenging in 2020–21, however the Inspectorate has endeavoured to identify and recruit suitable staff and provide training to upskill and retain current staff.

The further proposed reforms to the local government legislative framework will expand the role of the CMI and create new responsibilities particularly in the collation and publication of councillor candidate election donations. The progress and timing of the legislative reform have bearing on the implementation program for the Inspectorate leading up to the 2024 general council election year.

Freedom of Information

The Inspectorate received and responded to one Freedom of Information (FOI) request in 2020–21. FOI requests are handled in accordance with guidelines and processes set down by the Office of the Victorian Information Commissioner (OVIC).

Gifts and donations

Our staff were offered and accepted one gift during this financial year. Incoming CMI Michael Stefanovic AM accepted flowers worth approximately \$50 from the Australian Local Government Women's Association Victoria. This gift and all other gifts for each financial year are recorded under a gifts register, available on our [website](#).

Financials


Under the *Public Administration Act 2004*, the Inspectorate is an administrative office hosted by the Department of Justice and Community Safety and the Inspectorate uses corporate services, including finance, from the department. Financial information is incorporated into the [Department of Justice and Community Safety's 2020–21 Annual Report](#).





Local Government Inspectorate

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

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