

Parliamentary Inquiry into Fraud and Corruption Control in Local Government

Question on Notice

Question

Meng Heang TAK: Thank you, Chair. Thank you for your presentation. In VAGO's 2022 audit *Fraud Control over Local Government Grants* the Auditor-General noted that there was no official guidance or better practice documents for Victorian councils on what fraud controls they should be using in their grant programs. **My question is: has LGV provided this guidance since the release of the audit report?**

Response

Local Government Victoria (LGV) has not provided guidance on fraud controls in council grant programs since VAGO's 2022 *Fraud Control over Local Government Grants* audit. LGV was not an audited agency in this VAGO audit and the report contained no recommendations addressed to LGV.

The *Local Government Act 2020* provides that the Audit and Risk Committee (ARC) charter must specify the functions and responsibilities of the ARC. This includes section 54(2)(c) which requires the ARC to monitor and provide advice on:

- Risk management; and
- Fraud prevention systems and controls.

LGV is currently refreshing departmental guidance on Audit and Risk Committees and will consider the inclusion of reference to better practice on fraud controls in council grant programs.

Additional questions

1. What does LGV consider its responsibilities and obligations within the Victorian local government framework to be? How does LGV collaborate with integrity agencies to support local government?

LGV provides policy advice to the Minister for Local Government, oversees legislation and works with councils to support responsive and accountable local government services. It does this by:

- assisting the Minister for Local Government to perform their role in overseeing the system of local government in Victoria, advocating for local government issues within state government and supporting and monitoring the system of local government,
- supporting and implementing evidence-based initiatives that strengthen councils' finance and performance, such as the Local Government Performance Reporting Framework,
- administering the State's responsibilities for the local government sector in the provision of capital and recurrent funding,
- administering the councillor conduct framework which provides a clear hierarchy for the management of councillor conduct issues and providing good governance guidance and support to councils; and
- partnering with councils and local government peak bodies to deliver a range of programs and plans, including resources and practical guidance to boost gender equity in councils and the Victorian Aboriginal and Local Government Strategy.

LGV collaborates with independent integrity agencies by:

- considering and taking appropriate action in response to the advice and recommendations of various integrity bodies,
- consulting integrity agencies on the development of legislative and regulatory reforms, including through project Steering Committees; and
- consulting with integrity agencies on the development of guidance materials for the local government sector.

2. In VAGO's 2022 audit *Fraud Control over Local Government grants*, the Auditor-General noted that IBAC found 'councils it reviewed relied on general guidance provided by LGV or codes of conduct that did not clearly outline how staff should declare and manage conflicts of interest'.

a. Has LGV produced improved guidance or codes of conduct for councils that address this issue since release of the audit?

LGV notes that VAGO's 2022 audit focused on Council grants, which is a discrete operational matter that is at the discretion of councils. LGV notes that the *Local Government Act 2020* (the Act) includes a range of provisions designed to ensure the integrity of Council decisions and that

relate to these findings, including requirements relating to personal interests, conflicts of interest and Governance Rules.

LGV has developed comprehensive guidance to support Councillors and Councils to meet their legislative responsibilities in relation to personal interests and conflicts of interest which is available on the LGV website: <https://www.localgovernment.vic.gov.au/council-governance/how-we-regulate-councils>.

LGV also notes that the Local Government Inspectorate has published best practice guidance for councils when considering community grants which is available on the LGI website: <https://www.lgi.vic.gov.au/trends-recent-council-examinations>. Further, LGV notes that the *Better Grants by Design* guidance referred to in the VAGO audit from 2022 was developed by the Department of Treasury and Finance.

LGV is also currently co-designing Model Governance Rules and a Model Transparency Policy with the local government sector in response to the findings and recommendations of IBAC's Operation Sandon special report.

It is the responsibility of a Council's CEO to ensure the effective and efficient management of the day-to-day operations of the Council and to ensure that it receives timely and reliable advice about its legislative obligations. Any matters relating to the conduct and performance of Council staff are also matters for the CEO in the first instance, including developing and implementing a Code of Conduct for members of Council staff. A Council's CEO is therefore responsible for:

- ensuring that the processes a Council uses to make decisions are consistent with the relevant requirements of the Act; and
- determining procedures and disciplinary processes for dealing with alleged and actual breaches of conflict of interest by members of council staff.

There is also significant specific resource material available for councils such as the Australian Standard on Fraud and Corruption Control (AS 8001:2021), IBAC's Guidance material on Australian Standard on Fraud and Corruption Control (<https://www.ibac.vic.gov.au/australian-standard-fraud-and-corruption-control>), and IBAC's Controlling fraud and corruption checklist (<https://www.ibac.vic.gov.au/media/450/download>).

3. The *Local Government Act 2020* (Vic) was approved on 24 March 2020, with further changes adopted under the *Local Government (Government and Integrity) Amendment Act 2024* (Vic). The Act now adopts a principle-based approach rather than a rule-based approach, a fundamental change from the previous *Local Government Act 1989*.

a. What was the rationale behind these amendments?

As principles-based legislation, the *Local Government Act 2020* removes prescriptive and unnecessary regulatory and legislative requirements and provides a modern, streamlined legislative framework.

Balanced with increased accountability, the Act provides councils with autonomy to develop and adopt their own policies and procedures in accordance with clear principles that promote

transparency, accountability, community engagement, strategic planning, and sound financial management.

By being outcome focused, the Act allows councils the ability to choose how best to meet their responsibilities and obligations that is suited to their local context. Rather than prescribed requirements and processes, the principles-based approach is to encourage innovation, collaboration and continuous improvement.

The principles-based approach is balanced with increased oversight and accountability measures to ensure councils provide good governance.

Increased oversight and accountability measures introduced by the Act include:

- giving citizens meaningful performance information about their local council - through the implementation of comparable public reporting of council performance against a uniform set of legislated performance measures captured in the Know Your Council website,
- giving Victorians confidence in councillor integrity- through the introduction of mandatory training and mandatory standards of conduct; and
- strengthening the role of council audit and risk committees in monitoring council compliance with their own policies, including the community engagement policy.

The Act retains the ability to impose specific requirements on councils through subordinate legislation, where this is appropriate. It also enables Ministerial guidelines to be made, that if followed will be evidence that a council is providing good governance.

b. What evidence informed adopting a principle-based approach?

The *Local Government Act 2020* was introduced following an extensive consultation process with the local government sector and wider community, including the establishment of six technical working groups made up of local government specialists that informed the reform directions underpinning the Act, and the engagement of eminent local government experts. This consultation process occurred in five stages and spanned over four years.

Further information about the *Local Government Act 1989* review process and what evidence informed these reforms is available on the LGV website:

<https://www.localgovernment.vic.gov.au/our-programs/local-government-act-2020-1/local-government-act-1989-review-process>.

c. What have been the benefits of adopting the approach? Please refer to relevant metrics and data.

Under the previous Local Government Act there was unnecessary prescription and red tape, such as requiring Ministerial approval for councils to enter into contracts of a certain value. It provided for a one size fits all set of standards to be applied by all 79 councils, regardless of their specific local needs and circumstances and without factoring in or accommodating the diversity of councils.

The benefits of the new principles-based Act include that it removes this unnecessary and outdated prescription and enables councils of all sizes to be more autonomous, innovative and progressive, and operate to the best of their ability.

Increased autonomy is balanced by a framework that promotes and provides greater governance and integrity. This includes the ability to regulate the sector through the introduction of prescriptive subordinate legislation where necessary, and for the State and the local government peak bodies to develop detailed guidelines and model policies to assist councils, particularly those less resourced councils, to comply with the Act.

A mandatory system of performance reporting for all Victorian councils also builds a comprehensive picture of council performance. The Local Government Performance Reporting Framework is made up of 59 measures from a range of service areas, including roads, planning, animal management and waste. It is complemented by a Governance and Management checklist of 27 items, which shows the policies, plans and procedures in place at each council. Further information on this is available on the Local Government Victoria website: [Performance reporting](#).

d. What implementation challenges have been observed and how have they been addressed by LGV?

The *Local Government Act 2020* received Royal Assent on 24 March 2020 and was proclaimed in four stages.

The Act introduced new requirements for councils to implement an integrated approach to strategic planning, budgeting, and reporting. New policies and documents were required to be developed by councils as part of the transition to these new arrangements under the Act. To support councils to achieve this, the new Act requirements were phased in across four stages over 24 months.

As a principles-based Act, there is a continuous need and responsibility for the State to provide support and oversight to the sector. This includes working closely with peak bodies and integrity agencies to identify opportunities for improvement to council governance practices through the development of subordinate legislation and supporting materials, as necessary.

In recognition of these challenges, throughout the implementation of the Act, LGV worked with the local government sector to develop documents and guides to support councils to comply with the requirements of the Act. LGV also hosted webinars, workshops and over 100 consultation sessions to support councils to meet the requirements of the Act.

The Local Government Inspectorate's 2023 Report '*Checking compliance: A review of council policies*' found that councils had a very high rate of compliance with adopting the new and updated policies required under the new Act.

There has also been ongoing action to continue to address and improve local government culture, councillor conduct and governance and accountability, alongside councils, local government peak bodies and other key stakeholders.

These initiatives include the Local Government Culture Project which has involved extensive engagement with the local government sector, including with the peak bodies, which has provided insight into the major challenges facing culture and behaviour in the local government sector, including early intervention and effective dispute resolution.

Additionally, reports from integrity bodies, including IBAC and the Local Government Inspectorate, have identified areas for improvement in relation to council governance.

Informed by these reports, the *Local Government Amendment (Governance and Integrity) Act 2024* made various amendments to the *Local Government Act 2020* to support improved governance, accountability and councillor conduct ahead of the 2024 council general election.

4. LGV administers and enforces the Model Councillor Code of Conduct under the Councillor Conduct Framework, which includes mandates on good governance and integrity for councillors.

a. How are breaches of the code identified and investigated by LGV?

Although LGV is responsible for administering the legislative framework that establishes the Councillor Conduct Framework, it is not responsible for identifying or investigating specific breaches of the Model Councillor Code of Conduct.

The Councillor Conduct Framework established under the *Local Government Act 2020* provides a structured hierarchy for the management of councillor conduct issues to address different levels of misconduct –

- **Misconduct** means a breach by a councillor of the Model Councillor Code of Conduct (Model Code of Conduct).

A council, a councillor or a group of councillors can make an application under section 143 of the LG Act for an internal arbitration process to make a finding of misconduct against a councillor.

- **Serious misconduct** is defined in section 3 of the LG Act and covers more serious conduct issues such as bullying, disclosure of confidential information, and failure to disclose a conflict of interest.

A council, a councillor, a group of councillors or the Chief Municipal Inspector (CMI) can make an application under section 154 of the LG Act for a Councillor Conduct Panel to make a finding that a councillor has engaged in serious misconduct.

- **Gross misconduct** is defined in section 3 of the LG Act and means behaviour that demonstrates that a councillor is not of good character or is otherwise not a fit and proper person to hold the office of councillor.

The CMI can apply to the Victorian Civil and Administrative Tribunal (VCAT) to make a finding that a councillor has engaged in gross misconduct.

In the first instance, councils are empowered to address conduct that does not meet expected standards through the Councillor Conduct Framework. The CMI may also make an application for a councillor conduct panel to hear allegations of serious misconduct or make an application to VCAT to hear allegations of gross misconduct.

Internal arbitration processes and councillor conduct panels are independent processes that hear allegations of misconduct and serious misconduct impartially and fairly.

If LGV becomes aware of the existence of conduct issues at a council, it may refer the matter to the council (usually the Mayor) to consider utilising the councillor conduct framework available to council to address those issues. LGV may also refer the matter to the CMI or relevant integrity agencies where it's considered that the conduct would be more appropriately dealt with by that agency.

b. How are councils supported to adhere to the code and what are the consequences of non-adherence? Is it proving an effective deterrent?

Recent reforms to the *Local Government Act 2020* include the introduction of a model councillor code of conduct to ensure consistent standards of behaviour at all Victorian councils and promote early and effective intervention.

Recent reforms also introduce a comprehensive training program for councillors throughout their term in office that builds up their skills and understanding of the role. The new training program requires:

- councillor induction training to be completed within four months of taking the oath or affirmation of office (currently councillors have 6 months to complete this training),
- professional development training to be completed by all councillors each year of their term, beginning in the year following their election,
- Mayoral training to be completed by all mayors, deputy mayors and acting mayors (if appointment for one month or more) within one month of appointment.

The matters that must be covered as part of this mandatory training include conduct (such as knowledge and skills to support councillors to understand the conduct expected of them when performing the role of a councillor) and the knowledge and skills related to the mayor's role as the leader of the elected body of councillors (such as the role of the mayor in respect of the Model Councillor Code of Conduct and the internal resolution procedure).

In addition, LGV has issued guidance on the Model Councillor Code of Conduct to support councillors in performing their role in a manner consistent with the Model Code of Conduct. This is available on the LGV website: <https://www.localgovernment.vic.gov.au/council-governance/how-we-regulate-councils>.

LGV has also issued guidance for councils in relation to Councillor Conduct Framework processes, which includes information about the requirements for making applications and the conduct of these processes. This is available on the LGV website: <https://www.localgovernment.vic.gov.au/council-governance/councillor-conduct-framework-and-councillor-conduct-panels>.

If an arbiter has made a finding of misconduct against a councillor, the arbiter may do any one or more of the following:

- direct the councillor to make an apology in a form or manner specified by the arbiter
- suspend the councillor from the office of councillor for a period specified by the arbiter not exceeding 3 months
- direct that the councillor be removed from any position where the councillor represents the council for the period determined by the arbiter
- direct that the councillor is removed from being the chair of a delegated committee for the period determined by the arbiter; direct a councillor to attend or undergo training or counselling specified by the arbiter

- direct that the councillor is not to attend or participate in a council meeting specified by the arbiter that occurs after the meeting at which the decision and statement of reasons are tabled
- direct that the councillor is ineligible to hold the office of Mayor or Deputy Mayor for a period specified by the arbiter not exceeding 12 months.

The *Local Government Amendment (Governance and Integrity) Act 2024* strengthened sanctions available for councillor misconduct. Sanctions that may be imposed by an arbiter now include suspending a councillor for a period of up to three months (rather than one month), preventing a councillor from attending a specified meeting and directing that a councillor is ineligible to be mayor or deputy mayor for a period of up to 12 months.

Continued or repeated misconduct after a finding has already been made against a councillor amounts to serious misconduct and is subject to more severe penalties.

c. How does the framework complement the activities of integrity agencies without duplication?

The Councillor Conduct Framework established under the *Local Government Act 2020* provides a multilayered framework for managing councillor behaviour and addressing conduct issues. The framework provides various mechanisms for dealing with complaints, based on the seriousness of the alleged conduct.

The Councillor Conduct Framework complements the activities of integrity agencies by enabling councils to manage conduct issues internally, thereby reducing the reliance on integrity agencies such as the Chief Municipal Inspector (CMI) for less serious matters.

The Councillor Conduct Framework operates alongside provisions of the Act that make it an offence to engage in certain conduct. Breaches of specific offences under the Act carry penalties and may result in criminal prosecution and conviction. The CMI through the Local Government Inspectorate is responsible for investigating and prosecuting alleged breaches of the Act.

The CMI also separately has the ability to bring applications for alleged serious misconduct and gross misconduct. This includes in relation to serious misconduct which also constitute offences under the Act. Where an alleged offence also amounts to serious misconduct, the CMI has the discretion to either prosecute the matter in court or seek a finding of serious misconduct through a councillor conduct panel. This provides the CMI with a less formal and more efficient enforcement mechanism.

Councillors cannot be subject to both prosecution and a serious misconduct application for the same conduct.

5. In evidence to the Inquiry, the integrity agencies have advised they are not adequately resourced to undertake 'proactive' prevention activities as efficiently as they could be.

a. What role does, or could, LGV play in coordinating the prevention and education effort of integrity agencies to reduce duplication?

The resourcing, activities and performance of integrity agencies is a matter for those agencies and any responsible Minister, such as the Attorney-General for the LGI. It would not be

appropriate for LGV, which is a function within the Department of Government Services, to play any role in coordinating the activities of independent integrity agencies. LGV consults with integrity agencies when designing legislative reform for the local government sector, including to identify any resourcing impacts for those agencies.

- 6. The Local Government Inspectorate's submission put forth several recommended reforms to the *Local Government Act 2020* (Vic). Can LGV outline their position regarding the following:**
- a. Increasing probity and transparency around council Audit and Risk Committees including membership, agendas and minutes on council websites**
 - b. Introduction of mandatory joint Council/Audit and Risk Committee sessions to identify risks and mitigations around fraud and corruption and the efficacy of general governance structures overall**
 - c. Introduction of a mandatory requirement for the preparation and 2-yearly review of a fraud and corruption strategy**
 - d. Return to the 1989 Act and Regulation provisions around the minimum standard of information, including a live online Conflict of Interest Register.**

LGV works closely with integrity agencies such as the LGI to identify opportunities for improvement to the legislative framework and to develop good practice guidelines and other materials. Given that councils retain responsibility for the implementation and review of their own fraud and corruption controls in conjunction with their Audit and Risk Committee, LGV welcomes suggestions for improvements to better support councils meet these and other responsibilities.

For example, work is currently underway to address outstanding recommendations from IBAC's Operation Sandon report in relation to Model Governance Rules and a Model Public Transparency Policy to support improvements to the integrity and transparency of council decision-making. This will include consideration of the procedures for the disclosure of a conflict of interest by councillors and members of council staff.

Further, LGV is currently responding to a 2024 recommendation by the Victorian Auditor-General regarding local government Audit and Risk Committees. This includes the refresh of departmental guidance on ARCs to support these committees to operate more effectively.

There has also been ongoing action to continue to address and improve local government culture, councillor conduct and governance and accountability, alongside councils, local government peak bodies and other key stakeholders since the introduction of the Act in 2020.

