



Parliamentary Inquiry into Fraud and Corruption Control in Local Government

Public Accounts and Estimates Committee

Response to Questions on Notice and Additional Questions from the Committee Chief Municipal Inspector Local Government Inspectorate

April 2025

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Accessibility

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1. Questions on Notice from the Hearing Day

1.1 Warnings issued to date in 2024-25 for non-election matters

Member Aiv Puglielli MP asked how many of the 213 warnings issued by the Local Government Inspectorate (LGI) to date in 2024-25 related to non-election matters.

Of the 213 warnings issued, none related to non-election matters.

1.2 *Warnings issued in 2020-21 for non-election matters*

The breakdown for warnings issued in the previous election, during 2020-21 is as follows:

- 22 warnings for failure to comply with initial personal interest return requirements under s133 of the Local Government Act 2020 (the Act)
- 3 warnings relating to prima facie breaches of the release of confidential information and conflict of interest provisions of the Act.

2. Additional Questions

2.1 What challenges are impacting the capacity for your agency to collaborate effectively with Local Government Victoria (LGV)?

As an independent integrity agency, it is essential that there is a clear separation between the LGI and LGV to ensure our integrity and autonomy is preserved.

Having said that, the LGI meets with senior staff from LGV on a monthly basis. Additional briefings and discussions occur as required.

Information sharing

There are at times challenges faced in the two-way communication of issues and sharing information that we believe is essential to optimal collaboration.

The LGI believes it is essential that, at times, LGV and the Minister be provided with detailed facts and information from the discussions we have with Councillors and Council Officers when it comes to poor governance practices and significant issues raised with the LGI. Sometimes this information does not come to us through an investigation or a formal complaint but through phone conversations/emails and proactive governance enquiries.

This is particularly important where there are matters where we believe the most effective interventions lie beyond our powers to address poor governance or poor councillor behaviour; for example, where we have recommended the appointment of a Municipal Monitor.

It would be beneficial, therefore, for the Act to provide the clear ability for the CMI to share sensitive and, at times, confidential information with the Minister to avoid any doubt or debate between the two agencies.

The sharing of confidential information also relates to the actions to be taken by the Minister in response to our recommendations to give the LGI a 'heads up' just before an announcement is made on intervention by the Minister so that the LGI can assist with supporting the Council and Administration in addressing the matters at hand.

Greater clarity around who is responsible for providing guidance to the sector around the Act's provisions, interpretation and implementation

The LGI has been dedicating additional resources to the development of fact sheets, quarterly newsletters and guidance material for the sector over the past two years.

This is in response to an expressed need from the sector, and peak agencies, for clear guidance around the Act's provisions and how to ensure compliance, particularly given the principles-based approach of current legislation (which leaves much room for interpretation).

Of particular note is the positive feedback LGI receives from Governance staff and CEOs across the sector, who are at the frontline of implementing the Act's provisions 'on the ground'.

The LGI is also dedicating significant resource to council visits, presentations, attendance at workshops and seminars as a means of improving awareness of, and compliance with, the Act.

It is noted that the Act does not prescribe an educative function for the Chief Municipal Inspector (CMI), however in the absence of any other dedicated programs from State entities, we believe this is an integral part of our work.

However, given our very limited resources, this focus on proactive education comes at the expense of investigations and compliance related work. It is an ongoing battle to balance the sector's need for guidance and education with the core functions the Act sets out for the CMI.

LGV has recently involved the LGI proactively in their work around implementing the legislative reforms of 2024, through participation on LGV's Governance and Integrity Working Group. For example, this Group provided input into the guidance material released by LGV in recent times around the Model Councillor Code of Conduct and mandatory councillor training.

We believe that it would be beneficial for LGI, LGV and the local government sector for there to be clearer roles and responsibilities around the provision of guidance material.

LGI often faces challenges with understanding how certain provisions of the Act have been phrased and the thinking behind the legislative reform. In these circumstances, LGV is best placed to develop guidance material given they oversee the legislative process.

2.2 *Given that each council varies significantly in geographical size, population and demographics, how can a control framework cater to the whole sector?*

The LGI acknowledges the challenges faced by smaller councils, particularly those in regional areas, in meeting the wide range of requirements, policies and procedures that constitute the fraud and corruption control framework for local government.

However, the LGI considers it essential that every council, regardless of size, must have a sufficiently robust fraud and corruption framework in place to enable it to manage public funds and to effectively discharge its responsibilities under legislation.

The identification of a minimum standard for a fraud and corruption control framework would greatly assist all councils in preventing the misuse of power or resources. This could be achieved through:

- Additional training and support for Council's Governance staff as mentioned by the CMI during the Committee hearing
- Template policies and procedures (eg fraud and corruption strategy) that meets minimum requirements to reduce resource implications of developing a framework that is compliant with legislation – these could be developed by LGV or a peak body with input from integrity agencies
- Templates and model policies/procedures could be supported through the use of a provision in the Act that has not yet been utilised - Good Practice Guidelines issued by the Minister under Section 87, which states:

"87 Minister may issue good practice guidelines

- (1) The Minister may issue good practice guidelines for or with respect to any matter under this Act or the regulations relating to compliance by Councils.*
- (2) Good practice guidelines must be published on an Internet site maintained by the Department.*
- (3) Compliance by a Council with a relevant good practice guideline can be used as evidence that the Council has complied with the corresponding requirement under this Act or the regulations."*

Some councils are more efficient as they have more staff, with a broader range of skills and expertise within the Administration, more sophisticated/integrated IT

systems and resources to implement monitor and audit control frameworks, but a minimum standard is achievable to provide a functional framework for all.

The setting of clear minimum standards would also, as outlined under the extract from S87 above, enable integrity agencies such as VAGO and the LGI to implement standard audit programs to measure and test compliance.

2.3 How and at what stages in the VAGO audit process were your agencies engaged with/advised of the audit?

A review of records from the LGI's interactions with VAGO around the fraud and corruption audit indicates the following:

- The LGI was initially contacted by VAGO in April 2018 around the scoping of their audit and any awareness around fraud and corruption impacts that the LGI had been able to identify and quantify
- Further contact was made by VAGO in July 2018 informing us of the particular councils to be audited to confirm that they would not compromise any current any investigations being undertaken by the LGI
- VAGO sought our views in June 2019 in relation to one of the recommendations around the approval and reporting of CEO expenses.

Please note that VAGO may have contacted the former CMI and Operations Manager to discuss the audit, however no records are available to current LGI staff to confirm this.

2.3.1 Would there be a benefit to integrity agencies tracking the implementation of VAGO audit recommendations by local councils? If so, which agency would be best placed to undertake this?

Our written submission to the Committee identified that there may be a gap in terms of tracking the implementation of VAGO recommendations across the sector. We do note that VAGO does revisit the councils that they examine in detail, but it is that broader implementation of recommendations that is currently not assessed.

In terms of resources alone, VAGO may be the most appropriate agency to lead this work, however there could be benefit in devising a mechanism for a multi-agency approach which includes the LGI and IBAC in supporting this work.

This would be a new way of integrity agencies operating together, and there would need to be careful consideration given to how each agency maintains its independence and stays within its remit, but it may provide a more comprehensive approach to monitoring fraud and corruption frameworks in the future.

It should be noted, however, that any additional workload for any of the agencies be assessed in terms of additional resources, or what work is sacrificed in order to achieve this integrated approach.

2.4 The LGI and other integrity agency's submissions noted resource limitations to undertake the 'proactive' work needed to prevent the occurrence of fraud and corruption. MAV's submission also noted that more funds were required for LGI to expand council preventative training, guidance and support.

2.4.1 What benefit would coordination efforts by LGV have on streamlining education offerings across the local government sector?

We believe there would be significant benefit in LGV streamlining education offerings across local government. As outlined above, the LGI has taken on the role of providing guidance and education, however this is not within our prescribed remit under the Act.

We know through engagement with the sector, including peak bodies, that there is a strong need and desire for more education and guidance. This is particularly pertinent given the legislative reforms introduced to the Act in mid-2024, which are still being rolled out.

As mentioned previously under 2.1, LGV are best placed to take the lead on education and advice to the sector given they draft the legislation / regulations and understand it best.

The LGI does work with LGV to enhance training and education – a case in point was our discussion paper on the need to reform the Mandatory Candidate Awareness Module, which is a pre-requisite to be a candidate in a local council election.

We provided a range of recommendations, including topics and content, to ensure that the candidate awareness training provided potential candidates with a realistic view of what it means to be a councillor.

These recommendations arose from our sector surveys (with over 300 responses) around the efficacy of the Councillor Conduct Framework introduced by the Act in 2020.

2.4.2 Are there any longer-term consequences of having to adopt a 'reactive' approach to focus available resources on investigations and enforcement, over a 'preventative' approach through promoting local government knowledge relating to fraud and corruption?

Our initial written submission to the Committee outlined the consequences of a reactive versus proactive approach to fraud and corruption.

In summary, we said that one could not be at the expense of the other, however we do believe that prevention is far more efficient, resource friendly and effective than

the cure. This is particularly so when one of the cures is prosecution, which we have outlined is a rare and uncertain course of action.

2.5 What role does Victoria Police have in collaborating with integrity agencies on investigations into suspected fraud and corruption in local government?

If a financial fraud is reported to the LGI, the matter would be referred to Victoria Police as the appropriate investigative agency; fraud related matters are not covered by the Act.

Financial fraud matters are covered by the *Crimes Act 1958*, which falls within the jurisdiction of Victoria Police

Some corruption matters such as making and using a false document, secret commissions and activities of a similar matter also fall within the investigative jurisdiction of Victoria Police.

The LGI could certainly provide advice and information around how the local government sector operates, but would generally provide no direct collaboration.

In the past, Victoria Police have assisted LGI in two matters where they sought and executed evidence search warrants on our behalf to obtain evidence in premises as LGI does not hold those powers.

Once the evidence was obtained Victoria Police had no further involvement. This type of collaboration can only occur for matters involving an indictable offence, such as Misuse of Position (Section 123).

2.5.2 Under what circumstances would police become involved in prosecutions?

The only time Victoria Police has become involved in one of LGI's prosecution was providing a witness statement in relation to the execution of a search warrant and the continuity of evidence that was seized as a result of that action.

2.6 Submissions from the LGI and IBAC have noted that only the most serious examples of non-compliance have been prosecuted, leading to an impression across the sector that there are little consequences for compliance failings in relation to 'lesser' offences.

2.6.1 What accounts for the low number of prosecutions?

The reason behind the low number of prosecutions is caused by many factors which are included in our Prosecution Policy as detailed in Attachment 2.

A further factor relates to the significant cost to mount a prosecution and the minor penalties that have been applied in the past, which do not serve as a deterrent for others.

For example, a summary offence such as failing to lodge a campaign donation return may cost \$7000 to progress to the Mention stage and from there on, the costs will increase depending on the number of Court appearances and whether it is a Contested Matter. A Contested Matter for a summary offence may end up costing in excess of \$20,000.

Unfortunately, as with most regulatory bodies, the Court does not hold the same weight for these types of offences as they do for Crimes Act related offences in that the punishment can be very minor, such as a good behaviour bond or a small fine that in no way justifies the expense to achieve the outcome.

A prosecution for an Indictable Offence increases greatly. The last prosecution undertaken by the LGI for a misuse of position matter cost approximately \$80,000, with a plea of guilty by the accused.

The accused received a three-month good behaviour bond and was required to pay a nominal amount to the Court Fund.

Again, there is no tangible deterrent to the sector when the accused parties receive minor punishment for serious offences.

Overall, the prohibitive costs of prosecuting offences of the Act, and the uncertainty of testing new principle-based provisions of the Act, are well known across the sector and therefore provide little deterrent at present.

Given the tight budget and resourcing constraints of the LGI, we must be selective in which matters we consider are significant enough to prosecute, and that have the most impact as a deterrent across the Local Government sector.

Another factor to consider is the changes introduced in 2020 in relation to the offences that LGI can prosecute. The changes have made it harder to prove a prima facie case, especially Misuse of Position, which added an element of intention into the points of proof making it incredibly challenging to prove beyond reasonable doubt.

2.6.2 Does allowing lower-severity breaches increase the likelihood that higher-severity breaches occur?

This is a difficult question to answer given it is speculative, however we can say that, based on our experience, the majority of councillors or council officers that receive an official warning for breaching the Act do address the behaviours of concern. That is to say, often a warning avoids the individual from escalating their behaviour given that they will be more actively monitored in the future and also given access to education and support.

However, in terms of sending a message to others across the sector, or addressing behaviours of individuals that wish to 'test the system', the issue of a warning will not have the impact that a prosecution with significant penalties applied would.

2.7 Why has the LGI's budget been decreasing year-on-year? What has been the impact?

We have submitted budget bids year on year to at least re-instate the resourcing we had for an effective proactive governance/compliance team over the past four years.

However, due to broader Government financial constraints our budget has been significantly cut instead (as per Attachment 3 from our initial written submission).

This has impacted on the capability of the LGI to investigate complaints in an efficient and timely manner. Our visibility across the sector has also suffered in regard to compliance / governance issues or delivering an educative function.

We believe the significant drop in funding to the LGI has prevented a number of serious matters that were considered for prosecution to not proceed.

2.8 LGI's submission notes the impacts of the principle-based Local Government Act 2020, which has limited LGI's ability to enforce legislation due to a lack of direction and minimum standards.

We have mentioned above under 2.6.1 the challenge of introducing the need to prove intent into some of the offences the LGI is able to prosecute under the Act.

There are no metrics in terms of prosecutions given we have been unable to prosecute the revised approach to offences under the 2020 Act as yet given all of the constraints and considerations outlined by our initial written submission, and through this response to Additional Questions.

2.8.1 Can LGI characterise these impacts with reference to metrics?

It is difficult to provide metrics around the impact of the principle-based approach of the 2020 Act given we do not have any case law or prosecutions to draw upon.

However, we can provide commentary on the changes around Conflict of Interest and Confidential Information provisions as there are now grey areas, open to interpretation and debate as to their meaning and application, which did not exist under the previous Local Government Act 1989.

For example, the General Conflict of Interest provisions (section 127) is a breach open to interpretation due to the 'reasonable person' test that would determine whether or not a breach has occurred.

S127 states:

*"a relevant person has a general conflict of interest in a matter if an **impartial, fair-minded person would consider** that the person's private*

*interests **could result** in that person acting in a manner that is contrary to their public duty"*

The 'impartial, fair-minded person' test is hard to prove in Court or at a Councillor Conduct Panel due to the inherent differences of interpretation between individuals.

The Confidential Information provisions also introduce a test around whether a person could 'reasonably understand' that the information was deemed to be confidential. Section 125(1) states:

*"a person who is, or has been, a Councillor, a member of a delegated committee or a member of Council staff, must not **intentionally or recklessly disclose information that the person knows, or should reasonably know, is confidential information"***

The explanations and defences provided to us by individuals investigated by the LGI for such breaches have given accounts which mean that while a prima facie breach may have occurred, the certainty of prosecuting the case is in significant doubt given the open-ended wording.

LGI has, therefore, issued many of warnings and reminders of a subject's obligations given the response to our investigations of allegations around these two types of offences has been that there is a broad spectrum to the phrase '*impartial, fair-minded person*' and '*information that the person knows, or should reasonably know, is confidential information*'.

The fact that no prosecutions have been undertaken since the implementation of the 2020 Act highlights the concerns around the new principle-based Act.

As a means of underlining the difficulty in applying some aspects of the current legislation, when recently working with LGV to identify offences for which an infringement notice could be issued following legislative changes in mid-2024, only a handful of offences are now subject to this new CMI power. This is because other offences, such as those discussed above, introduced a 'human element' into the matter and therefore was open to motive, understanding and interpretation.

Lack of prescribed minimum standards leading to varied public accountability and transparency between councils

We have commenced our work in reviewing compliance with election campaign donation returns by candidates in the 2024 elections and have quickly found that there is a lack of prescription around the level of publicly available information that meets the Act's requirements.

An audit of all council websites in January 2025 found that there is a wide variety of information provided by Chief Executive Officers summarising the election campaign donation returns; some identify when a candidate lodged their return

(which can identify if they were submitted on time), who made the donation and the like. Again, there is no prescribed format for the CEO's summary of election campaign donation returns and so each CEO is providing their own interpretation of the Act's requirements. This in turn leads to reduced public accountability and transparency.

There is also a lack of minimum standards and prescription around the information councils must make available through their website, and through inspection on premises, compounding the inconsistent achievement of public transparency and accountability across the sector. There is a wide variety in information readily available in terms of delegation instruments to officers, reporting of councillor expenses, details in conflict of interest registers, details on gifts and benefits registers and so on.

2.9 LGI's submission notes that despite new requirements under *the Local Government Act 2020* for council Audit and Risk Committees (ARCs), there is variation across the sector in terms of transparency on these committees, the information they receive from councils and how well that information is interrogated.

2.9.1 Why is it important that the governance, agendas and membership of council ARCs is transparent and publicly accessible?

Our initial written submission to the Committee identified the real and potentially significant risks to council and the sector of ARCs not performing as they were envisaged to under the Act.

Through our work with Councils over the past couple of years, we have seen instances where the ARC added significant value and oversight, and others where the Committee does not operate as it should, leaving the organisation open to significant and tangible risk (which has unfortunately manifested).

We believe it is vital for information about all ARCs to be more readily available.

An increase in public visibility around how a council's ARC operates, and the nature of the agenda items it considers, can be a useful part of a robust fraud and corruption framework.

We also believe that it is important for the community to understand the workings of the ARC given independent members are provided with a stipend, therefore are being paid public money (albeit nominal amounts) to provide oversight of council operations within their remit prescribed by the Act.

A standard approach to what is publicly available also enables integrity agencies to understand how the ARC is operating without necessarily approaching council and would therefore assist with high level compliance assessments.

2.9.2 How can the transparency and effectiveness of ARCs be improved?

Our initial written submission to the Committee identified ways in which public transparency could be improved.

Public information around the Annual Workplan of the Committee should also be seen as important information to be made public, along with the schedule for internal and external audits.

This would include publicly available information as to how council is progressing with responses to actions identified in internal and external audits to strengthen its fraud and corruption control framework, as well as achieving the continuous improvement in the provision of council services prescribed the Act.

ATTACHMENT 1 INVESTIGATION AND WARNING DATA

Metric	2020-21 ¹	2021-22 ²	2022-23	2023-2024	2024-25 (as of 28 February 2025)
Number of investigations undertaken *	51 (excluding election matters)	203	314	512	1221 (including election matters)
Official Warnings	164 including 139 warnings for election offences 22 warnings for failure to comply with personal interest returns requirements (councillors)	132 including 108 warnings for failure to submit a campaign donation return	2 warnings 2 letters of caution 10 recommendations to councils for governance improvements	7 recommendations to councils for governance improvements 15 warnings for prima facie breach of the Act	213 After reviewing our records following questions from the Committee, all of these relate to election offences (eg failure to authorise material, misleading or deceptive material).

¹ [Local Government Inspectorate Annual Report 2020-21](#)

² [Local Government Inspectorate Annual Report 2021-22](#)

ATTACHMENT 2 EXTRACT FROM LGI'S PROSECUTION POLICY

Prosecution Policy/Discretion

1. It is important that when the LGI assesses evidence, with a view to possibly initiating a prosecution against a councillor or a council staff member, it must give appropriate consideration to the relevant Prosecution Policies to ensure that it is guided by reasonable principles of whether a certain matter should be recommended for further action in the form of a prosecution.
2. The decision of whether to prosecute an offense is the most important consideration carried out by the LGI. The burden of proof rests on the prosecution to prove matters beyond a reasonable doubt (standard of proof).
3. The initial consideration in the exercise of the prosecutorial discretion is whether the evidence is sufficient to justify the institution of a prosecution. A prosecution should not be instituted unless there is **admissible, substantial and reliable evidence** that a criminal offense known to law has been committed.
4. In deciding whether the evidence is sufficient to justify the institution of a prosecution, the existence of a bare prima facie case is not enough. A prosecution should not proceed if there is **no reasonable prospect of a conviction** being secured.
5. If satisfied that the evidence is sufficient to justify the institution of a prosecution, the LGI must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, **the public interest** requires a prosecution to be pursued.

Reasonable prospect of conviction

6. In determining whether there is a reasonable prospect of conviction, the LGI must have consideration for the following factors:
 - a. all the admissible evidence
 - b. the reliability and credibility of the evidence
 - c. the possibility of evidence being excluded
 - d. any possible defence
 - e. whether the prosecution witnesses are available, competent and compellable
 - f. any conflict between eyewitnesses
 - g. whether there is any reason to suspect that evidence may have been concocted
 - h. how the witnesses are likely to present in court
 - i. any possible contamination of evidence
 - j. any other matter relevant to whether a magistrate would find charges proven.

Public interest

7. If there is a reasonable prospect of a conviction, consideration must be given to whether the prosecution is in the public interest. The prosecution must proceed unless there are public interest factors tending against prosecution which outweigh those tending in favour. Consideration can be given to the following public interest factors:
 - a. the seriousness of the offense
 - b. the age of the offense
 - c. the offender's culpability
 - d. the offender's antecedents and background
 - e. the age, physical health, mental health or disability of the offender
 - f. whether the offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the offender has done so
 - g. the attitude of the victim and/or Council to a prosecution
 - h. the entitlement of the victim and/or Council to compensation
 - i. the age, physical health, mental health or disability of the victim
 - j. community protection or the interests of the community
 - k. the likely sentence
 - l. the prevalence of the offense and the need for specific and general deterrence
 - m. the need to maintain public confidence in constitutional institutions such as the courts and Parliament, including local government
 - n. whether the consequences of a conviction would be unduly harsh or oppressive
 - o. any circumstances that would prevent a fair hearing
 - p. the age, physical health, mental health or disability of any witnesses
 - q. the obsolescence or obscurity of the law
 - r. whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute
 - s. the availability and efficacy of any alternatives to prosecution
 - t. the likely length of a hearing and when the hearing might be heard
 - u. whether a sentence has already been imposed on the offender which adequately reflects the criminality; or
 - v. any mitigating or aggravating circumstances.

8. A decision whether or not to prosecute **must not** be influenced by:
 - a. Political pressure or interference
 - b. the race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the teacher or any other person involved (unless they have special significance to the alleged conduct or should otherwise be taken into account objectively)
 - c. personal feelings of the investigator or LGI concerning the alleged conduct, the alleged offender or a victim

- d. possible political advantage or disadvantage to the government or any political party, group or individual
 - e. the possible effect of the decision on the personal or professional circumstances of those responsible for the hearing or otherwise involved in its conduct; or
 - f. possible media or community reaction to the decision.
9. In consideration of the prosecution policy, as outlined above, the allegations which are detailed in this report are not recommended for prosecution for the following reasons:
- a. There appears to be **a lack of persuasive evidence** capable of proving the alleged conduct on either allegation
 - b. There does **not appear to be a reasonable prospect of success** in prosecuting the matter
 - c. It would **not be in the public's interest** to prosecute this matter.

GENERAL CONSIDERATIONS

10. The Inspectorate must take into account the public interest to pursue the matter, including by taking into account community expectations.