

Memorandum

To:	Michael Stefanovic & David Walker Local Government Inspectorate	Date: 28 February 2023
From:	Jennifer Butler, Principal Solicitor Jenny van Veldhuisen, Solicitor Victorian Government Solicitor's Office	Your ref:
		Our ref: 2203357
Subject:	Draft media release/ information bulletin for LGI's consideration	

DRAFT MEDIA RELEASE/ INFORMATION BULLETIN

BREACHES OF THE *LOCAL GOVERNMENT ACT 2020* AND WARNING TO COUNCILLORS TO AVOID MISUSE OF POSITION

1. It is an indictable offence under the *Local Government Act 2020* (**Act**) for Councillors to intentionally misuse their position or to aid and abet (assist or help) another Councillor to misuse their position.
2. A person who commits such an offence may be fined up to 600 penalty units (presently \$110,952) or imprisoned for up to five years.

Investigations into misuse of position

3. The Local Government Inspectorate (**LGI**) has recently investigated various allegations of misuse of position committed by former **and current** Councillors in breach of both the Act and its predecessor, the *Local Government Act 1989*. These allegations relate to:
 - 3.1 Councillors seeking legal advice purportedly on behalf of the Council but not having obtained a resolution of Council authorising the procurement of legal services;
 - 3.2 An attempt to misuse Council resources, by seeking to have the Council pay invoices for legal services when those services had not been authorised by Council;
 - 3.3 Making improper use of information acquired as a result of their position as Councillor, to gain or attempt to gain an advantage; and
 - 3.4 Participating in a decision with a conflict of interest.

Councillor obligations

4. LGI reminds all Councillors that:
 - 4.1 Councillors must not intentionally misuse their position, including (but not limited to) the following actions:
 - (a) Improperly using information acquired in their role as Councillor;
 - (b) Disclosing confidential information;
 - (c) Directing or improperly influencing a member of Council staff, or seeking to do so;
 - (d) Exercising or performing a power, duty or function that is not authorised, or purporting to do so;
 - (e) Improperly using public funds or resources, or doing so without authorisation; and/or
 - (f) Participating in a decision with a conflict of interest.
 - 4.2 Councillors are held to a high standard in their roles as democratically elected civic leaders and are required to act with integrity and in the interests of the local community.
 - 4.3 Misuse of position of any kind is considered an abuse of power and is contrary to good governance.
 - 4.4 Councillors must perform their role impartially and solely for the public benefit of each municipal district.
 - 4.5 In addition to the principles for the role set out in section 28 of the Act, Councillors must adhere to the 'Councillors Code of Conduct' developed and adopted by the Council they serve.
 - 4.6 Specifically in relation to LGI's recent investigations, Councillors have no authority to engage legal services on the Council's behalf or use Council resources, unless:
 - (a) There is a Council resolution authorising the procurement of legal advice; or
 - (b) A Councillor engages the service through an authorised member of Council staff (such as the CEO); or
 - (c) A Councillor obtains and pays for legal advice as a private client of the legal service.
5. LGI encourages Councillors to familiarise themselves with offences criminalised by the Act. The relevant provisions of the Act are set out in the **Annexure**.

Prosecutions

6. LGI has previously prosecuted Councillors for misuse of position, including where Councillors:
 - 6.1 Exceeded their authority in agreeing to contractual arrangements without a Council resolution during a CEO appointment process, where the arrangements were favourable to the CEO and exposed the employer to financial risk;¹ and
 - 6.2 Made improper use of information acquired as a Councillor regarding a proposed rating strategy which was used in submissions to gain a commercial advantage in relation to properties owned personally by the Councillor.²

More information

7. More information can be found at:
 - 7.1 LGI's website <https://www.lgi.vic.gov.au>;
 - 7.2 The *Local Government Act 2020* Governance Resources <https://www.localgovernment.vic.gov.au/council-governance/how-we-regulate-councils>;
 - 7.3 The Act, by searching <https://www.legislation.vic.gov.au>; and
 - 7.4 The Municipal Association of Victoria's website <https://www.mav.asn.au/what-we-do/procurement/resources-hub/for-councils>. General inquiries may be made to (03) 9667 5555.
8. Should you wish to discuss the issues raised in this media release, please contact:

Local Government Inspectorate
Level 27, 1 Spring Street, Melbourne, VIC 3000
1800 469 359
inspectorate@lgi.vic.gov.au

Approved by:



Jennifer Butler
Principal Solicitor

¹ See LGI's website: <https://www.lgi.vic.gov.au/case-studies-investigations#councillors-misusing-their-position>.

² See LGI's website: <https://www.lgi.vic.gov.au/four-charges-misuse-position-upheld-former-councillor>.

Annexure

Who is a 'Councillor'?

1. A Councillor is a person who holds office as a member of a Council: see section 3 of the Act.

Section 28 - Role of Councillor

2. The role of every Councillor, as required by section 28(1) of the Act, is:
 - 2.1 to participate in the decision making of the Council; and
 - 2.2 to represent the interests of the municipal community in that decision making; and
 - 2.3 to contribute to the strategic direction of the Council through the development and review of key strategic documents of the Council, including the Council Plan.
3. In performing the role of a Councillor, a Councillor must, as required by section 28(2) of the Act:
 - 3.1 consider the diversity of interests and needs of the municipal community; and
 - 3.2 support the role of the Council; and
 - 3.3 acknowledge and support the role of the Mayor; and
 - 3.4 act lawfully and in accordance with the oath or affirmation of office; and
 - 3.5 act in accordance with the standards of conduct; and
 - 3.6 comply with Council procedures required for good governance.

Section 123 - Misuse of position

4. It is a criminal offence for a person who is, or has been a Councillor, or is a member of a delegated committee to intentionally misuse their position to gain any advantage for themselves or others, or cause detriment to the Council or another person: see section 123(1) of the Act.
5. The maximum penalty for the offence is 600 penalty units or imprisonment for five years. As at the date of publication, 600 penalty units is \$110,952.
6. Circumstances where a Councillor or member of a delegated committee could be charged with misuse of position include but are not limited to the list set out in section 123(3) of the Act, being:
 - 6.1 making improper use of information acquired as a Councillor;
 - 6.2 disclosing confidential information;

- 6.3 improperly influencing a member of Council staff;
 - 6.4 performing a duty or function that is not authorised;
 - 6.5 improperly using public funds or resources; or
 - 6.6 participating in a decision with a conflict of interest.
7. This offence operates and can be charged in addition to any other legislation relating to criminal or civil liability of Councillors or members of delegated committees: see section 123(4) of the Act.

Section 319 - Persons who are liable for offences

- 8. Where a person aids, abets, counsels, procures or is knowingly concerned in any way with any offence in the Act, they will be held to be guilty of that offence: see section 319(1) of the Act.
- 9. Where two or more people are involved, they are each liable to be charged separately with the offence, independent of each other: see section 319(2) of the Act.