

Under Scrutiny

Council elections in one metropolitan municipality [have triggered](#) the interest of the **Police Fraud Squad, the Electoral Commissioner, and the Local Government Inspectorate**. Who knows where their investigations might lead – perhaps to Parliament, perhaps to the Courts.



Councils, like all public sector entities, come under intense scrutiny. Unfortunately this often occurs in an adversarial or accusatorial environment. Here at The Public Land Consultancy we think there should be more constructive, even friendly, forms of external scrutiny into (for example) a council's management of public land.

Law-courts are a far too hostile place in which to scrutinise public land policy. Whether our complaint relates to the [culling of feral horses](#), or the diminished [availability of wild abalone](#), or [adverse possession](#), there's little joy to be had from the court apparatus. The bushfires provoked a dozen court cases, but for actual useful analysis we turn to the findings of the Royal Commission.

The Victorian Auditor General's Office (VAGO)

These days, council audits go well beyond the verification of financial transactions. Best value principles were introduced in 1994, and performance reporting in 2003. But in May 2019 [VAGO found](#) that council performance reporting *remains inadequate, focused on inputs and operating activities, and offering little insight into the impact of services and the achievement of objectives*.

In exploring public land issues, the Auditor General certainly seeks to move from criticism to constructive reform. In June of this year VAGO published a highly critical report on [endangered grasslands](#); in March it published a highly critical report on the management of [development contributions](#). Each report made useful

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Six New Training
Courses for 2021

*We are looking for
new specialist
presenters*

Position Vacant
(*Jacqui Talbot is moving on*)

Training Course Manager

40 to 60 hours per month

Each month we run up to a dozen on-line training courses. Our clients are municipalities, statutory authorities and professional consultants.

We are looking for someone to manage these courses: to organise calendars, to liaise with presenters, to manage client communications, to respond to queries, and to handle bookings.

The person we want will be well-organised, systems-literate, and with a good on-line presence.

It's a position which would be ideal for someone who wants to work on-line rather than attend an office; someone who wants to determine their own working hours rather than be tied to a fixed time-regime.

Enquiries:

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(03) 9534 5128

*All the best, Jacqui
Thanks for all those years
of support!*

Under Scrutiny continued...

recommendations, which the relevant Departments accepted – but, sorry, there's a long history of VAGO recommendations just withering away into oblivion.

Of some relevance to public land managers was VAGO's 2016 report into the State's [Asset Management Accountability Framework](#): *Many of our audits show that asset management is often neglected or poorly done, with more focus on building or buying new assets than on managing them strategically to get the best value from them.* It's an observation pertinent to municipalities, even though they are not subject to the Financial Management Act 1994, under which the Framework is made.



One VAGO report we're still waiting for relates to below-market rentals for community tenants, which in our opinion are implied subsidies. Nothing wrong with that, but surely they should be recognised and brought to account.

While we're thinking about VAGO, let's not forget their 'Better Practice Guides' on topics such as [Asset Management](#), and [Public Participation](#) – each highly relevant to a public land portfolio.

The Ombudsman

The Ombudsman's primary focus is on complaints – including complaints against Councils. Here we find [investigations](#) into credit card misuse at the City of Warrnambool, the handling of parking fines at City of Melbourne, and conflict of interest at City of Ballarat.

Back in 2009, a report by the then Ombudsman led to the sacking of Brimbank Council, which had allowed internal politics to distort decisions about, for instance, the allocation of sporting facilities.

Whether a complaint is found to be justified or not, the Ombudsman's scrutiny is something we'd prefer to avoid. So the current Ombudsman (Deborah Glass) has recently provided useful advice on [Councils' Handling of Complaints](#).

Local Government Inspectorate

This agency focusses on Councillor integrity and election irregularities – but points out that its investigations may well touch on public land matters.

"It's important that councils responsibly manage public assets, exercise financial responsibility and good governance, and comply with all legislative requirements."

The sale of council land is invalid if legislation is not complied with; government grants and their recipients must be closely monitored; a council's own grants must be fairly distributed; public records must be properly maintained; authorised officers (such as park rangers and parking inspectors) must be properly appointed. ■

User-Friendly Scrutiny More than just an Audit

A Service for Municipalities
from The Public Land Consultancy

Every municipality in Victoria owns or controls a substantial portfolio of public land. Parks and gardens, sporting complexes, community centres, and public halls... It is a major interface with the community.

It's a portfolio which just rolls over from year to year – but it should periodically be subject to critical scrutiny.

In fact, the new *Local Government Act 2020* requires councils to have an *Asset Management Plan*, and a *Community Engagement Policy*.

Are you complying with the law? With your own policies?

Are you getting best value? And if not, what you should you do about it?

To discuss your needs in this area, contact Richard O'Byrne

richard@publicland.com.au
(03) 9534 5128

We can work with your own officers to advise on: -

- Whether titles, land status data, and other governance arrangements are properly recognised and understood
- Whether leases and licences have been properly issued, and whether tenants are complying with them
- Asset variation scenarios: acquisition or disposal of assets, impending end-of-lease scenarios
- Whether public land and community tenures are subject to a sound risk management and insurance strategy.

What we can deliver -

- Assurance that your tenure arrangements will withstand scrutiny by formal auditors and a critical community
- Identification of governance deficiencies and a plan for their remediation
- Benchmarking against similar tenure arrangements in comparable municipalities
- A sound basis for negotiations about future tenure arrangements. ■

Parking Infringements The Intersection between the Law, Policy, and Money

The closest most citizens get to committing an offence is receiving a parking ticket. In doing so, they activate the mechanisms of the *Infringements Act 2006*.

It's a system set up by Attorney General Rob Hulls – who also gave us the Charter of Human Rights and the Traditional Owner Management Act.

The themes of this article arose in three presentations of our 'Offences on Roads' course. Thanks to the enforcement teams at City of Wyndham, City of Melbourne and Department of Transport (VicRoads)

Before that time, the processes for issuing, appealing and enforcing infringements were set out in more than 50 different Acts of Parliament, administered by numerous Ministers and their agencies.

Offences are still created under many different Acts (on public land we have everything from the *Impounding of Livestock Act 1994* to the *Retail Tenancies Act 1998*) but the processing of infringements has been rationalised.

Offenders now have options other than going to Court. They may still choose to appear at the Infringements Court (previously the PERIN Court – whatever that stood for).

And we have a clear set of rules for how infringements are to be handled by the agency issuing the fine. In particular, the agency must have a process for internal review of alleged offences (other than the most serious offences).

The rules are clear. Or are they?

It's a question which underlies several reports by the State Ombudsman (Deborah Glass).

Perhaps the most contentious issue addressed by Ms Glass is the meaning of 'internal review.'

Various Councils had outsourced their internal reviews to a private sector agency. In doing so they were, no doubt, just following principles first laid down by the Kennett Government.

In a February 2020 report Ms Glass found that this was contrary to the Act, and that 'internal' meant internal. The current Attorney General (Jill Hennessy) confirmed that this is also the Andrews Government's policy position: the Act will not be amended to facilitate outsourcing.

Overall, various Councils have now refunded tens of thousands of fines incurred over a 10-year period – total value some \$19 million.

Then, in September 2020, the Ombudsman took a further look at parking infringements in the City of Melbourne.

She considered the driver who has confused the number 0 with the letter O. An honest mistake – but appeals for internal review were rejected. The driver had to pursue the matter in court.



From December 1, all peak-hour clearways within 20 kilometres of the CBD will become tow-away zones

“This is a cash grab by the Victorian government ... Boroondara council, in Melbourne’s inner-eastern suburbs, has been enforcing 44 clearways in its municipality for several decades and estimates it will lose about \$600,000 annually after the recent changes”

[The Age, 9 Sept 2020](#)

Sorry, Boroondara – the purpose of parking fines is not to raise revenue!

In response, Ms Glass found certain staff lacked a *fundamental comprehension of discretionary decision making*. A harsh perception of drivers who infringe parking rules, she said, is at odds with the legislation and the community's understanding. These are minor offences for which a fine, rather than court attendance, is an appropriate remedy.

Her report leaves no doubt on one point: the official purpose of parking fines is not to raise revenue.

It had been alleged that officers in the City of Melbourne Parking Branch reviewed or decided to prosecute parking infringements with the aim of raising revenue for the Council. Ms Glass found this allegation to be unsubstantiated.

Nevertheless, we sympathise with the Councils concerned. And their ratepayers, left with the burden of filling the revenue shortfall. ■

Two Half-Day Workshops



ENCROACHMENTS

A half-day workshop for Councils called on to authorise desirable encroachments onto roads, lanes and reserves, and to prevent or remove the undesirable...

**Friday 27 November
9.30am to 12.30pm**

[More Details](#)



ROAD CLOSURES AND DISCONTINUATIONS

A half-day workshop for Councils wanting to get better value out of road reserves

**Friday 11 December
9.30am to 12.30pm**

[Book Me In](#)

New and Revived Courses

Let's hope that in 2021 the world gets back to normal. Whether Covid-19 persists or not, public land will still be there, and professionals working in or with the public sector will need to understand it.

The Law governing Aboriginal Heritage and Native Title

We have a well-established course in these areas of policy and law, but we need an alternative presenter. Is that you?

Working with Community Organisations

Here we are building a new course, exploring the relationships between Councils, Incorporated Associations, Churches, and Not-for-Profit Sector

Offences and Enforcement on Public Land

We have a well-established course in these areas of policy and law, but we need a presenter. Is that you?

Environmental Law for Public Land Managers

We have a well-established course in these areas of policy and law, but we need an alternative presenter. Is that you?

Working with a Council's Property Portfolio

Here we are building a new course on the acquisition, retention and disposal of a Council's land assets

The Law governing Works on Roads

We have a well-established course in these areas of policy and law, but we need an alternative presenter. Is that you?

Readers of *Terra Publica* should not act on the basis of its contents which are not legal advice, are of a general nature, capable of misinterpretation and not applicable in inappropriate cases. If required, The Public Land Consultancy can obtain legal advice from one of its associated law firms.