

# VICTORIAN ombudsman

Councils and complaints:  
Glen Eira City Council's approach  
to contractor work

April 2023



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**The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.**

# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973* (Vic), I present to Parliament  
*Councils and complaints: Glen Eira City Council's approach to contractor work.*



Deborah Glass OBE

**Ombudsman**

26 April 2023



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# Foreword

“... [the] footpath works were conducted by a third-party contractor. Council is not, as a matter of law, liable for the alleged negligence of contractors and accordingly, you will need to direct your claim to the contractor ... ”

- Glen Eira City Council in response to the complainant

When is a complaint not a complaint? I asked this question in a report I tabled in 2019 when I was trying to compare Victorian council complaint numbers, which turned out to be the idiomatic apples and oranges. This definitional dilemma was so confusing we found a small rural council with over a thousand complaints but a large metropolitan council with fewer than a hundred – plus nearly 300,000 ‘requests for service’ it had decided were not complaints.

I said at the time that councils needed to adopt a wide definition of ‘complaint’ not only to improve their services to ratepayers, but also to help themselves. A complaint is, essentially, an expression of dissatisfaction. Complaints are free feedback about how the community regards council services. They can identify pressure points where things need to be fixed.

Happily, the State Government adopted my recommendations, which were reflected in the revamped Local Government Act. It required all 79 Victorian councils to adopt and maintain a complaint policy from 1 January 2022.

Less happily, while councils have updated their complaint handling policies and processes, some areas of apparent confusion remain. For at least one local council, a claim for compensation was not a complaint, even though it was an expression of dissatisfaction.

This report follows a complaint made by a Glen Eira City Council ratepayer about damaged stormwater pipes causing flooding on his property. His plumber said footpath works by a Council contractor likely caused the damage.

The ratepayer presented his plumber’s opinion and quote to the Council, expecting it to resolve the matter, no doubt by arranging for the damage to be fixed or at least considering his complaint. The Council, however, said the footpath works were done several years earlier, and the ratepayer should take it up directly with the Council’s contractor. The ratepayer’s reluctance to do so added a layer of complexity which was not helped by the Council’s stubborn position of persistently claiming it was not a complaint, but a claim for compensation.

I disagree. We found the Council’s handling of the matter to be wrong. A claim for compensation can still be a complaint, and almost invariably is. The Council’s handling of the complaint was contrary to the spirit of its own policy, not to mention the Local Government Act, both of which adopt a broad definition of complaint.

Frustratingly, while the Council accepted my recommendation in an early draft of this report to arrange an investigation of the damage and to liaise with the contractor to arrange repairs if appropriate, the complaint remains unresolved. The Council says it investigated and found no evidence the contractor was responsible. But it was vague in explaining how it arrived at such a firm view, and failed to offer the ratepayer a review of that decision.

Equally frustratingly, during our interactions, the Council centred much of its response around liability, when that is not, and has never been, the key point. Whether or not the Council, the contractor, or the complainant is liable to pay for the damage, the Council has a responsibility to deal with the complaint.

At one stage the Council appeared to suggest legal action might be necessary, though fortunately, it later clarified this view, as it simply cannot be right that the only recourse for a citizen alleging damage caused by council works is to take legal action against a third party.

So where has it landed? The Council has accepted my recommendation to provide the ratepayer with the evidence and detailed reasons for its view that the contractor did not damage the pipes, and to provide him with an option for review if he remains dissatisfied. I will monitor this with interest.

While this complaint involved one ratepayer and one council, I am tabling this report to highlight bigger issues. One is that complaints matter, and councils should not be paying lip service to the broad definition in the Local Government Act.

Second, during our investigation we found Victoria's 79 councils adopt widely varying approaches to handling matters involving contractor work, and it appears many may have more work to do in developing and explaining their processes for these types of complaints.

It is clearly in the interests of all councils to engage with complaints about their contractors' services, which are invariably funded by ratepayers. Among other things, it gives them the opportunity to identify poor quality of work, and keeps them informed about the status of local infrastructure. And it ensures they continue to have a direct relationship with their ratepayers.

Deborah Glass

**Ombudsman**





Figure 1: Timeline of relevant events



\*To protect the privacy of the complainant, he is referred to throughout this report by the pseudonym Mr Wilson.

# Background

## What and why we investigated

1. Mr Wilson, a resident of Melbourne's south-eastern suburbs, noticed flooding at his property after heavy rain in early 2022. He hired a plumber who reportedly found 'a swimming pool' of water under the house.
  2. The plumber inspected the property's stormwater system using CCTV imaging. He reported drains inside the property were 'in good condition' but pipe running from the fence to the kerb was 'full of rock'. This was preventing water draining away properly. He quoted \$4,125 for repairs. In the plumber's opinion, Council footpath works likely caused the alleged damage.
  3. Mr Wilson emailed the plumber's report and quote to the Glen Eira City Council ('the Council') in March 2022 asking them to pay for the repairs.
  4. The Council responded on 23 May 2022 that footpath works on two street frontages of Mr Wilson's property in 2018 were carried out by its third-party contractor, and commented:

Council is not, as a matter of law, liable for the alleged negligence of contractors and accordingly, you will need to direct your claim to the contractor ...
  5. Mr Wilson approached the Ombudsman because he felt that the Council was not taking enough responsibility for investigating or resolving his complaint:

I do not agree I should enter costly and time consuming civil engagements with a third party

[The Council] should be responsible for works undertaken by them whether they engaged a third party or not ...
  6. He told the Ombudsman he was intimidated at the prospect of having to confront an unknown party with an allegation of damage, and he did not believe he could fairly represent himself in this situation.
  7. The Council maintained it was not liable for the alleged damage. It considered the matter a 'claim', not a 'complaint'. By adopting this position, the Council appeared to be avoiding its obligations as a public body as well as under the *Local Government Act 2020* (Vic) ('the 2020 Act').
- “[The Council] should be responsible for works undertaken by them whether they engaged a third party or not ...”
- Mr Wilson
8. The focus of this investigation report is not the cause of the alleged damage or who was liable for it, but whether the Council's approach to Mr Wilson's concerns was in line with expectations of a council and with the new complaint handling provisions of the 2020 Act.
  9. When members of the public complain to a public authority, they rightfully expect the organisation will properly consider and respond to their concerns directly. The Ombudsman encourages all councils to adopt a proactive approach to receiving complaints.

10. By not treating Mr Wilson's matter as a complaint, the Council seemed to have missed opportunities to potentially reach a timely and constructive resolution. For example, it could have reviewed the plumber's CCTV footage when Mr Wilson's complaint was received. Instead, some months passed before it requested the footage, by which time the plumber had apparently recorded over it.
11. The Council also appeared not to have used appropriate discretion given specific factors in Mr Wilson's case, such as his reluctance for personal reasons to deal directly with the contractor or an insurer, or to give them his private contact details.
12. On 5 September 2022, the Deputy Ombudsman notified the Minister for Local Government, Glen Eira City Council's Mayor and Chief Executive Officer, and Mr Wilson of a formal investigation.
13. While liability was not the subject of this investigation, it is noted the stormwater pipes remain damaged. Mr Wilson is relying on temporary above-ground pipes to redirect water on to his lawn to stop it pooling under his home (see Figure 2).

Figure 2: Photograph of temporary pipework at Mr Wilson's house



Source: Victorian Ombudsman

## Context

14. Local councils deliver a broad range of services to their rate and fee paying residents, including stormwater infrastructure, local roads and footpaths. Decisions about these services often have an immediate and tangible impact on people's daily lives. Handling residents' complaints about services is a core public function of councils. The 2020 Act recognises this.
15. Many basic yet significant council services are provided by third-party contractors on behalf of councils. This office has for some time noted differences in how Victorian councils treat citizen complaints about contractors and their work.
18. The report also highlighted the Ombudsman's view that councils are accountable for their services, irrespective of who delivers those services on the council's behalf.
19. The Ombudsman's 2019 report *Revisiting councils and complaints* included a survey of all Victorian councils. The report noted that while councils had largely improved their complaint handling processes, various inconsistencies remained.
20. The Ombudsman made recommendations to the Minister for Local Government and Local Government Victoria aimed at improving the sector's approach to complaint handling.
21. Most of the Ombudsman's 2019 recommendations, including those around service delivery and complaint handling, were incorporated into the 2020 Act.

Handling residents' complaints about services is a core public function of councils.

16. In February 2015, the Ombudsman published *Councils and complaints – A report on current practices and issues*. It noted it is generally in a council's interest to engage with complaints about contractor work. These complaints provide an opportunity for a council to monitor the condition of its infrastructure and the quality of work delivered under its contracts – usually funded, at least in part, by ratepayers.
17. The report identified that one of the main causes of complaints against councils was the way they dealt with complaints, sometimes offering bureaucratic or unhelpful responses.
22. The 2020 Act required councils to develop a suite of new policies and to update or amend existing policies. Importantly, section 107 sets out complaint handling expectations for councils, including requiring councils to develop a complaint policy and processes, and an internal review process. It also defines a 'complaint', expressly including complaints about contractors (see Appendix 1).
23. To assist councils in preparing for their obligations under section 107, the Ombudsman consulted the sector and in July 2021 published *Councils and complaints – A good practice guide (2nd edition)*.

## The 2020 Act

24. Since the 2020 Act was introduced, the Ombudsman has continued to receive a steady flow of complaints from residents across Victoria about services or work performed by council contractors.

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25. We have resolved some of these matters informally by discussing with councils their obligations under the 2020 Act. In other cases, council contractors have agreed to settle the complaints. In the case at hand, given the Council appeared to have failed to recognise the complaint element of Mr Wilson's contact, the Ombudsman decided to investigate.

## Authority to investigate

26. A person aggrieved by an action or decision taken by an 'authority' may make a complaint to the Ombudsman under section 14 of the *Ombudsman Act 1973* (Vic).
27. A council and its staff are each an 'authority' for the purposes of the Ombudsman Act.
28. Section 15B of the Act provides that the Ombudsman may conduct an investigation into a complaint.

## Procedural fairness

29. This report includes adverse comments about the Council and its approach to dealing with and resolving Mr Wilson's complaint. In accordance with section 25A(2) of the Ombudsman Act, the investigation gave the Council reasonable opportunity to respond to the material in this report. This report fairly sets out their responses.
30. This report does not contain any adverse comments about individuals. In accordance with section 25A(3) of the Ombudsman Act, any persons who are or may be identifiable in this report are not the subject of adverse comment or opinion. They are identified because the Ombudsman is satisfied:
- it is necessary or desirable to do so in the public interest
  - identifying those persons will not cause unreasonable damage to their reputation, safety or wellbeing.



# Council's handling of Mr Wilson's complaint

31. In March 2022, Mr Wilson emailed the Council, stating:

After engaging a plumber due to some flooding at our property during periods of heavy rain, he has advised the issue is due to the damaged pipes under the footpath outside of the property which were replaced by council works.

...

We are seeking reimbursement from Glen Eira Council for the amount in the attached quotation to fix the issue as it was caused by council works to replace the footpath.

32. Along with a quote for repairs totalling \$4,125, Mr Wilson submitted his plumber's report, which noted the use of a camera to investigate the pipework under the footpath and that the pipes were 'full of rock'.

33. In its response on 23 May 2022, the Council noted the footpath works on two street frontages of Mr Wilson's property were carried out in 2018 by a third-party contractor, adding:

Council is not, as a matter of law, liable for the alleged negligence of contractors and accordingly, you will need to direct your claim to the contractor ...

## Complaint or claim?

34. The 2020 Act expressly includes a definition of 'complaint'. [The Council's 2021 Complaints Handling Policy](#) ('the Policy') adopts this definition with only very minor changes. The Policy states:

5.4 "Complaint" includes the communication, whether orally or in writing, to Council by a person of their dissatisfaction with:

- 5.4.1 the quality of an action taken, decision made or service provided by a member of Council staff or a Contractor engaged by Council;

5.4.2 the delay by a member of Council staff or a Contractor in taking an action, making a decision or providing a service; or

5.4.3 a policy or decision made by Council or a member of Council staff or a contractor.

35. From the outset, the Council did not consider Mr Wilson's email as a 'complaint', but as a 'claim' for damages caused by its work on the footpath. This distinction is important because under the Council's Policy, complaints and claims are treated differently. (See Appendix 2 for the full policy.)

36. In an email on 10 August 2022 responding to questions from the Ombudsman, the Council said it did not consider Mr Wilson had made a complaint because:

Mr [Wilson's] initial communication with Council, sent on 11 March 2022, contained a compensation claim. It did not communicate in writing that he was dissatisfied with any of the matters contained in the [three dot points in Council's definition of complaint].

Mr [Wilson's] communication did not contain the word "complaint" and was not directed to Council's Complaints Officer.

Even if elements of the communication were to be considered a complaint, which is denied, elements (if any) were dealt with by Council as the first point of contact, as provided for in clause 8.1.2 of the Complaint Handling Policy, by allocating the matter Council's Claims Management Officer.

"Mr [Wilson's] communication did not contain the word 'complaint' and was not directed to Council's Complaints Officer."

- Email from the Council

37. While on its face Mr Wilson's email to the Council could appear to be a claim for compensation, the email was clearly expressing dissatisfaction with the quality of the Council's footpath works. It had elements of both a complaint and a claim for compensation.
38. As the Ombudsman's good practice guide for council complaints noted, the 2020 Act implies complaints should be taken at face value. Treating concerns as a complaint allows councils to assess the issue and keeps open the option of an internal review.
39. In some instances, the outcome of a complaint process will satisfy the complainant and avoid the need for a claim. However, if the claim element of a complaint is not resolved by a complaint process (including an internal review), a council may then consider the appropriate claim pathway.
40. The investigation considers the Council adopted the wrong approach in its interactions with Mr Wilson. Treating his initial communication solely as a claim made it more difficult for him to get his problem assessed and resolved. Insisting he deal with the contractor and not providing enough information about options for internal review also made it more difficult for him to resolve the matter.
41. In June 2022, the Council told the investigation that Mr Wilson could submit a complaint about its response to his original email about the damaged pipes. The Council said this subsequent complaint would be handled in line with its Policy. This approach was officious and unhelpful.

42. Mr Wilson did not submit a fresh complaint to the Council because the Ombudsman was already making enquiries. Further, lodging a new complaint was surely unnecessary as Mr Wilson had already clearly expressed dissatisfaction during his initial contact, which the Council could and should have accepted and handled as a complaint. It was not too late to do so.

## Contractor involvement

43. A prominent factor in Mr Wilson's decision to complain to the Ombudsman was his objection to the Council's advice that he deal directly with the contractor. Mr Wilson said as a ratepayer, he expected to deal with the Council about its footpath, not an unknown third party. He was also not confident dealing with the contractor by himself.

Mr Wilson said as a ratepayer, he expected to deal with the Council about its footpath, not an unknown third party.

44. Mr Wilson's reluctance to have direct contact with the contractor, and subsequently to allow the Council to pass his personal contact details to the contractor or its insurer, undoubtedly made this case more complex.
45. The Council told us in its experience, claims that were directed to third-party contractors were generally resolved by direct communication between the contractor and the complainant:

Council's provision of guidance to complainants to direct their claim to the relevant party is a vital component in claims resolution.

46. The Council told the investigation that directing complainants to engage directly with a contractor did not detract from its overall responsibility, or commitment to, managing complaints about contractors and contractor work.
47. The investigation recognises that sometimes complaints will be most easily resolved by direct communication between a council contractor and a complainant.
48. However, councils must consider the circumstances in each case. In some instances, insurance or legal professionals might act on behalf of a complainant, for example, who will be comfortable dealing with third parties. Conversely, there will be times where a complainant is not willing or able to deal directly with a council contractor, and the council will need to take carriage of the complaint, at least in the first instance.
49. If a council removes itself from managing a matter where a complainant and a contractor are not communicating, progress on resolving the complaint is likely to come to a standstill. This is not in the best interests of the council, the contractor, or the complainant.

## Council's view of its role

50. The Council's response to Mr Wilson's complaint and to the Ombudsman's enquiries was largely through a lens of negligence, liability, and its financial responsibility to its ratepayers.
51. It noted that the Council is not responsible for maintaining stormwater drainage on or from private properties to the point of connection with Council's pipes, pits, or kerbs:
- It would not be reasonable for Council to commit to repairing any damage identified in circumstances where Council is neither legally liable for the alleged negligence of third-party contractors, nor where, after undertaking an investigation, there is no evidence that the third-party contractor was responsible for the damage.
52. Having consistently maintained that Mr Wilson lodged a 'claim', the Council said its primary focus was linking him to the footpath contractor or its insurer. The Council said it would ask the contractor to contact Mr Wilson to investigate and resolve his claim, monitor the contractor's progress on this, and ensure that Mr Wilson was kept updated by the contractor. The Council also provided its corporate counsel's mobile phone number to Mr Wilson.
53. In August 2022, the Council outlined its general view on the extent of its role should a contractor not comply with good complaint handling. One part of that response stated:
- If a contractor fails to correspond with a complainant, we will write to the contractor and advise them of their obligations under the contract.
54. However, in the context of Mr Wilson's case, the investigation noted internal Council correspondence discussing its contract with the footpath contractor, which observed:
- There are no specific requirements in the contract for the contractor to have a complaint handling policy or procedure.
55. In its August 2022 outline of its general view, the Council also stated:
- If a contractor denies liability or fails to respond to a complainant, the complainant can raise proceedings and claim damages against the contractor for the alleged negligence.



56. This appeared to suggest a complainant might ultimately need to take private legal action against a contractor to resolve a complaint.
57. In response to a draft version of this report, Council clarified its general position:
- A resident unable to resolve a dispute with a third-party contractor may complain to Council regarding the handling of their dispute by the third-party contractor.
- A resident may seek internal review if they are dissatisfied with the decision on, and Council's response to, their complaint.
- A resident may also be directed to address their complaint to a relevant external body.
58. The circumstances of Mr Wilson's case – including his preference to deal with the Council, not third parties – mean he did not currently have a dispute directly with the contractor as he had never interacted with them. He considered his dispute was with the Council.
59. During our enquiries, the Council in July 2022 began reviewing its *Complaints Handling Policy* to ensure it complies with the 2020 Act. The Council says officers will propose amendments for consideration at an Ordinary Council Meeting.
60. While the Council says it agrees that it has overall responsibility for managing complaints about contractors and contractor work, as this report shows, this may have little practical effect if the Council continues to ignore expressions of dissatisfaction.

## Complaint remains unresolved

61. The Council wrote to Mr Wilson in February 2023 to advise it had investigated the condition of the stormwater pipes:
- Council officers, following a detailed site investigation, and after considering all written material available, have formed the view that there is no evidence that the third-party contractor was responsible for the damage to your stormwater pipe.
- Notwithstanding Council's view on the liability of its third-party contractor, in line with its overall responsibility for managing complaints about contractors and contractor work, Council continues to engage with the third-party contractor to ensure that you can submit a claim to the third-party contractor's insurers.
- ...
- Council has received correspondence from the insurance broker for the third-party contractor advising that until you submit a letter of demand with supporting evidence to the insurer for the third-party contractor, the insurer ... cannot consider your claim.
62. The Council's site investigation was a useful step in considering Mr Wilson's complaint. However, the Council's outcome letter to Mr Wilson about its 'investigation' is vague. This, and the fact that the Council continues largely to treat the matter as a claim not as a complaint, means Mr Wilson's matter remains somewhat in limbo.

## Communicating outcomes effectively

63. Clearly communicating the complaint outcome and reasons for the decision is an important part of any complaint handling process. It demonstrates transparency and accountability, and shows the decision was not arbitrarily made. It allows the complainant to understand why the decision was made, and to be fully informed when deciding whether or not to seek a review. Ultimately, it will also aid the reviewer.

Clearly communicating the complaint outcome and reasons for the decision is an important part of any complaint handling process.

64. In line with the Ombudsman's good practice guide for council complaints, the Council ideally would have provided a written complaint outcome to Mr Wilson which:

- explained the steps the Council took to investigate or resolve the complaint
- gave details about the evidence it considered and the basis and reasons for the conclusions of its investigation
- included information about internal or external review options.

65. The Council's communication with Mr Wilson did not meaningfully show how it reached its position. It contained limited details about the steps taken to investigate, the evidence it considered and the reasons for the view that there was no evidence the third-party contractor was responsible for the alleged damage. It made no mention, for example, of whether the original plumber's camera footage which reportedly showed a pipe 'full of rock' was considered (though no longer available) and lacked detail on what further physical inspection and testing of the affected pipe was undertaken.

66. Importantly, the written outcome also did not include information about Mr Wilson's options for further review.

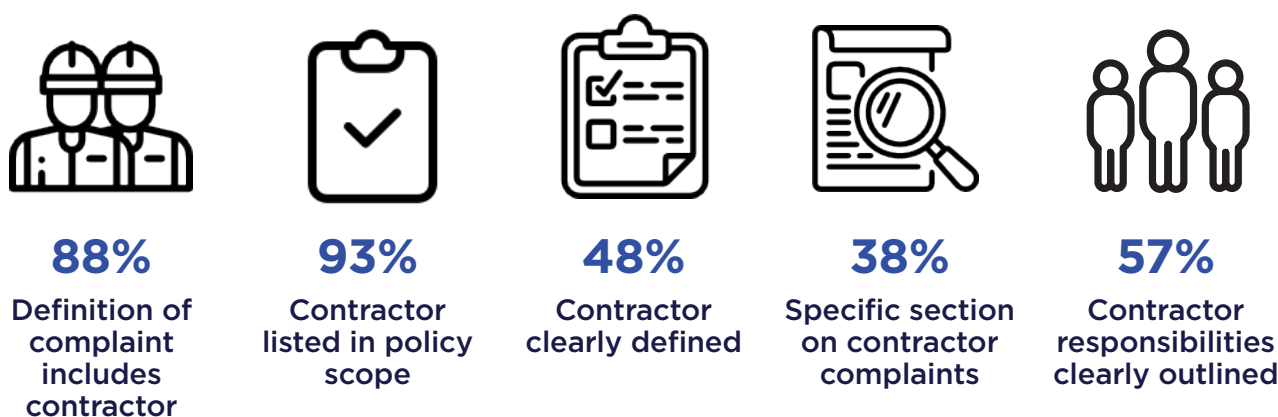
67. Because of the circumstances of Mr Wilson's case and because the Council has still not handled his matter as a complaint under the 2020 Act, Mr Wilson finds himself somewhat stuck. The pipes have not been fixed, he remains reluctant to deal with a third party – the contractor's insurer – and as things stand, he has no clear path for a Council review of whether his complaint was managed appropriately and whether the Council's decisions were sound.

# The bigger picture across all Victorian councils

- 68. Good complaint handling, as recognised in the 2020 Act, is important for all councils because of their role in delivering public services to local communities.
- 69. Adopting a positive culture towards complaints allows councils to collect feedback on their services and identify ways to improve. This applies whether work is performed by council staff or outsourced to a contractor.
- 70. Where a council outsources its work to a contractor, having proper complaint handling arrangements in place can also help the council to monitor service delivery performance and to manage the contract. The 2020 Act anticipates this. Clarity in the contract on complaint handling roles and responsibilities will also help service providers understand and meet their obligations.
- 71. Given the steady flow of complaints to the Ombudsman involving work by council contractors, the investigation reviewed the complaint policies of all 79 Victorian councils with a focus on complaint handling for services provided by contractors.
- 72. Our December 2022 review found councils are taking widely varying approaches to complaint handling for services provided by contractors. This can result in an inconsistent experience for citizens making complaints, depending on where they live across Victoria. While some councils specifically assume a level of responsibility for the services of their contractors, others do not.
- 73. Our review considered five indicators that a council's policy assists the public when making complaints about contractors. It found 14 per cent of councils met all five indicators. Sixteen per cent of councils did not meet three or more of the five indicators.

## Review of council complaint policies

Figure 3: Percentage of all Victorian council complaint handling policies which meet selected key indicators of good practice



Source: Victorian Ombudsman

## Benefit of a specific section on contractor complaints

74. Our review found that 30 of Victoria's 79 councils included a dedicated section in their policy on how complaints about contractors are managed.
75. It is evident from the 30 policies that did include separate sections detailing the handling of contractor complaints that councils are taking many different approaches.
76. Although not specifically required under the 2020 Act, explicitly providing this information is helpful and makes the complaint process easier to follow. This is especially important in cases where the contractor handles the complaint in the first instance, so that complainants clearly understand what will happen and their review rights if they are not satisfied with the initial outcome.

## Spelling things out clearly

An example of a policy which more closely aligns with the intent of the 2020 Act is Boroondara City Council's December 2021 *Complaints Policy*. It reads, in part:

### 1.4 Complaints about contractors

Council retains a level of responsibility for services carried out by contractors on its behalf.

This policy applies to all contractors carrying out services or works on Council's behalf to the extent provided under their contractual obligations with Council.

Officers responsible for the oversight of contractors will ensure the contractors are made aware of their obligations under this policy, and where required, review any complaint handling during status update meetings.

Where a complaint is made in relation to services or works carried out by a contractor, the complaint will go straight to the **investigation stage** and be assigned to an appropriate officer to examine the complaint and liaise with both the customer and the contractor.

The outcome of the initial investigation will be provided in writing to the customer and include the name and contact details of a council officer who the customer may escalate their complaint to for an **internal review**, should they not be satisfied with the initial outcome.

If the customer believes the complaint remains unresolved, they can escalate the matter for **external review** as outlined in this policy.

## Further action required

77. Our review found many councils have more work to do to in developing and adequately explaining the process for contractor complaints in their complaint policies.

Many councils have more work to do to in developing and adequately explaining the process for contractor complaints ...

78. Given the 2020 Act came into operation relatively recently and its effects continue to unfold, the Ombudsman will continue to monitor trends and issues in this area.
79. Further, as our knowledge and views evolve, we will also update our good practice guide to ensure it is more nuanced and helpful.

# Conclusions

80. As public authorities, councils have an enduring obligation and interest to handle complaints about the delivery of their services. This is perhaps even more so where the services are contracted out. It is surely in councils' best interests to be alert to service delivery performance.
81. The 2020 Act outlines that councils are responsible for dealing with complaints about contractors. A council cannot exclude itself from the complaint process. Councils should always assess whether a complaint process is required and, if so, ensure that an internal review pathway is provided.
82. In the case of Mr Wilson, even though his initial email to the Council requesting payment for plumbing repairs appeared on its face a claim for damages, it also represented an expression of dissatisfaction with the quality of the footpath work.
- A council cannot  
exclude itself from the  
complaint process.
83. Regardless of potential liability, his communication fell under the definition of a 'complaint' in the 2020 Act and Council's 2021 Policy. Rather than solely treating it as a claim, the Council should have recognised the complaint element.
84. Sometimes a council's complaint process will identify a solution that leaves the person satisfied and avoids the need for a subsequent claim. If not, a council may refer the person to an appropriate claim pathway after finalisation of the complaint process (including internal review).
85. The Council treated the matter as a 'claim', with a primary focus on matters of negligence, liability and financial responsibility to its other constituents. If the Council had taken a more constructive approach from the outset and handled Mr Wilson's communication as a complaint in line with its Policy at the time, the matter may well have been resolved – at least more speedily.
86. Mr Wilson's preference throughout was to deal directly with the Council rather than the third-party contractor, which introduced some complexity to this case. This would likely have been less of a sticking point if his issue was handled as a complaint, as the Council would have been able to exercise more discretion as his primary contact.
87. The Council suggested Mr Wilson could submit a fresh complaint, about its handling of his matter. This should not have been necessary as Mr Wilson had already expressed his dissatisfaction during his contact with the Council, which the Council should have accepted as a complaint.
88. As the investigation progressed, the Council did engage more with Mr Wilson and made some efforts to liaise with the contractor and its insurer.
89. The Council informed the investigation in February 2023 that it had investigated and decided the third-party contractor was not liable for the damaged pipes. However, the outcome letter did not provide Mr Wilson with detailed reasons or any internal review options. This did not align with the Council's Policy.

# Opinions

90. The Council at one point appeared to suggest that residents unable to resolve a matter with a council contractor could initiate legal proceedings, though it later clarified this. It is unfair that any council, as a public authority, would require a complainant to take legal action to address a complaint about a service delivered by its contractor, without first having considered the circumstances of the complaint and the complainant.
91. The investigation's review of the complaint policies of all 79 Victorian councils found widely varying approaches to complaints relating to contractors. This can result in an inconsistent experience for citizens making complaints, depending on where they live.

This can result in an  
inconsistent experience  
for citizens making  
complaints, depending  
on where they live.
92. Ultimately, many Victorian councils have work to do in developing and adequately explaining the process for contractor complaints in their complaint policies.
93. All councils should, if they do not already, include a specific section within their complaint handling policy on contractor complaints, which clearly details how these complaints should be managed.
94. Comprehensive policies which reference clear procedures for contractor complaints will be useful for councils and citizens alike – if they are practically adhered to.
95. In light of this investigation and in accordance with section 23 of the Ombudsman Act:
  1. The Council was wrong within the meaning of section 23(1)(g) of the Ombudsman Act insofar as its handling of Mr Wilson's complaint was contrary to the spirit and intent of Council's *Complaints Handling Policy* and section 107 of the Local Government Act.
  2. The Council's decision to require Mr Wilson to deal directly with the contractor in relation to his complaint at the outset was wrong within the meaning of section 23(1)(g) of the Ombudsman Act.

# Recommendations

While this investigation was in progress, the Ombudsman made a draft recommendation that the Council arrange an investigation of whether its contractor's work damaged Mr Wilson's stormwater plumbing, and that it liaise directly with the contractor to arrange rectification if appropriate.

The Council accepted this draft recommendation. It reported it had completed an investigation and asked the contractor to carry out its own investigation into the alleged pipe damage. The Council subsequently advised Mr Wilson it had formed the view there was no evidence the third-party contractor was responsible for the damage. While this was helpful to some degree, in line with good complaint handling practice, the Council should have informed Mr Wilson of the evidence it relied on and given detailed reasons for its view.

**In light of this and the investigation's conclusions above, pursuant to section 23(2) of the Ombudsman Act, it is recommended that:**

## Recommendation 1

Glen Eira City Council provide Mr Wilson with a detailed written outcome letter that:

- fully explains the steps the Council took to investigate
- states the relevant evidence considered and conclusions reached, and fully sets out the reasons for its view that there is no evidence that the third-party contractor was responsible for the stormwater pipe damage
- includes information about review options.

**Council response:**

*Accepted*

## Recommendation 2

By 30 September 2023, in consultation with the Ombudsman and Victorian councils, Local Government Victoria develop a Guideline in accordance with the findings of this report and section 107 of the *Local Government Act 2020* (Vic).

**Local Government Victoria response:**

*Accepted*



### Recommendation 3

By 31 December 2023, Glen Eira City Council amend its *Complaints Handling Policy* to reflect the spirit and intent of section 107 of the *Local Government Act 2020* (Vic) by clarifying that Glen Eira City Council:

- accepts and assumes a level of responsibility for managing complaints about contractors and contractor work
- will take a flexible approach and consider the circumstances of the complaint and the complainant when managing complaints about contractors and contractor work.

#### **Council response:**

*Accepted in principle\**

Council accepts in principle the recommendation and welcomes the intent to continue to improve its Complaint Handling Policy and complaint-handling practice. It will address all elements of this recommendation as a priority.

In July 2022, Council began reviewing its Complaint Handling Policy process to ensure it complies with section 107 of the *Local Government Act 2020* (Vic) and is client-focused. Council officers will propose amendments to Council's Complaint Handling Policy to align with the policy intent discussed in ... your second draft report. There will be an opportunity for Council, at an Ordinary Council Meeting, to consider the proposed amendment to its Complaint Handling Policy.

Council agrees that it has overall responsibility for managing complaints about contractors and contractor work under its Complaints Handling Policy.

It is Council's current practice to engage and liaise with both the complainant and the contractor when and to the extent permitted by a complainant to handle a complaint.

Council welcomes the Ombudsman's suggestions for continuous improvement of its Complaint Handling Policy and complaint-handling practice.

# Appendix 1: Excerpt from *Local Government Act 2020* (Vic)

## 107 Complaints policy

- (1) A Council must develop and maintain a complaints policy that includes—
- (a) a process for dealing with complaints made to the Council; and
  - (b) a process for reviewing any action, decision or service in respect of which the complaint is made; and
  - (c) a discretion for the Council to refuse to deal with a complaint which is otherwise subject to statutory review; and
  - (d) the prescribed processes for dealing with complaints about the Council; and
  - (e) the prescribed processes for internal review of complaints made to a Council; and
  - (f) the prescribed processes for exercising the discretion referred to in paragraph (c); and
  - (g) any other matter prescribed by the regulations.
- (2) A review process must provide for a review that is independent of—
- (a) the person who took the action; and
  - (b) the person who made the decision; and
  - (c) the person who provided the service.
- (3) For the purposes of the complaints policy, **complaint** includes the communication, whether orally or in writing, to the Council by a person of their dissatisfaction with—
- (a) the quality of an action taken, decision made or service provided by a member of Council staff or a contractor engaged by the Council; or
  - (b) the delay by a member of Council staff or a contractor engaged by the Council in taking an action, making a decision or providing a service; or
  - (c) a policy or decision made by a Council or a member of Council staff or a contractor.
- (4) A Council must develop the first complaints policy under this section within 6 months of the commencement of this section.

# Appendix 2: Glen Eira City Council's *Complaints Handling Policy*

## Complaints Handling Policy

<b>Date first adopted:</b>	<b>30 June 2015</b>
<b>Dates amended:</b>	14 December 2021
<b>Next review date:</b>	December 2026
<b>Position title of responsible Manager:</b>	Director, Corporate Services
<b>Approved by:</b>	Council

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## **1. Title**

Complaints Handling Policy

## **2. Preamble**

Council delivers a large and diverse range of services and strives to ensure its decision-making processes result in fair and reasonable outcomes for the community. We understand that in some circumstances our services or actions may not meet the expectations of all community members and are committed to ensuring that there are appropriate mechanisms in place for complaints to be raised. Complaints provide important insights about Council services and a valuable opportunity to identify areas that may need improvement.

This Complaint Handling Policy aims to ensure that community members can feel confident to raise complaints with Council easily with an understanding that Council will listen, be respectful and responsive and handle their complaints fairly and objectively.

## **3. Objective**

The objectives of this Policy are to:

- 3.1 assist Council to comply with the requirements of s107 of the *Local Government Act*;
- 3.2 assist Council staff to identify and manage Complaints appropriately and consistently and establish processes for handling Complaints concerning actions taken, decisions made, and services provided by Council, Council staff and Contractors fairly and objectively;
- 3.3 ensure that members of the public understand how to make Complaints and how Council will respond to their Complaints; and
- 3.4 set out Council's approach to managing Unreasonable Complainants and assist Council staff to identify Unreasonable Complainant Conduct and to apply strategies to manage such behaviour in a way that is reasonable and proportionate.

## **4. Scope**

This Policy applies to all employees, Contractors, agents, volunteers and customers of Council.

## **5. Definitions**

In this Policy, the following words and phrases have the following meaning:

- 5.1 "Act" means the *Local Government Act 2020*;
- 5.2 "CEO" means the Chief Executive Officer of Council and includes a person acting in that position;
- 5.3 "Complainant" means a person who makes a Complaint;
- 5.4 "Complaint" includes the communication, whether orally or in writing, to Council by a person of their dissatisfaction with:
  - 5.4.1 the quality of an action taken, decision made or service provided by a member of Council staff or a Contractor engaged by Council;
  - 5.4.2 the delay by a member of Council staff or a Contractor in taking an action, making a decision or providing a service; or
  - 5.4.3 a policy or decision made by Council or a member of Council staff or a Contractor;
- 5.5 "Complaints Officer" means the officer appointed as the Complaints Officer by the CEO for the purposes of this Policy;
- 5.6 "Contractor" means a third party engaged by Council to carry out services, supply goods or perform works or functions on behalf of Council;
- 5.7 "FOI" means Freedom of Information;
- 5.8 "Outcome" means the action to be taken to resolve the issues identified in a Complaint;

- 5.9 “Request for Service” means a request by a customer seeking assistance, access to a new service or advice, or to inform Council of, or make a report about something for which Council has responsibility, but does not include a Complaint;
- 5.10 “Unreasonable Complainant” means a Complainant whose conduct is considered to be Unreasonable Complainant Conduct;
- 5.11 “Unreasonable Complainant Conduct” means conduct by a Complainant which, because of its nature or frequency, raises health, safety, resource or equity issues for Council, Council staff, Councillors and other people who use Council services.

**6. What constitutes a Complaint?**

- 6.1 This Policy is only concerned with Complaints, as defined in clause 5.4 above. In simple terms, a Complaint is any communication which:
- 6.1.1 is an expression of dissatisfaction;
  - 6.1.2 is about an action, decision, policy or service; and
  - 6.1.3 relates to the conduct of Council staff, including the CEO, a Contractor, or the Council as a decision-making body (but not individual Councillors).
- 6.2 The following matters are not Complaints to which this Policy applies:
- 6.2.1 Requests for Service – while a Complaint may lead to a Request for Service,<sup>1</sup> Requests for Service are not handled under this Policy;
  - 6.2.2 Complaints regarding individual Councillors – Councillor conduct is dealt with under Part 6 of the *Act* and is outside the scope of this Policy; and
  - 6.2.3 subject to clause 9.5, Complaints regarding an action, decision or service that is otherwise subject to statutory review, for example:
    - (a) infringements issued by an authorised officer may be subject to review under the *Infringements Act 2006*; and
    - (b) planning decisions are subject to review under the *Planning and Environment Act 1987*.

**7. How to make a Complaint**

- 7.1 Any member of the public can make a Complaint. Complaints can be made by:

Phone	9524 3333
Online	<a href="https://www.gleneira.vic.gov.au/contact-us/lodge-a-complaint">https://www.gleneira.vic.gov.au/contact-us/lodge-a-complaint</a>
Email	Mail@gleneira.vic.gov.au
In person	Glen Eira City Council Town Hall, Corner Glen Eira and Hawthorn Roads, Caulfield
Post	PO Box 42, Caulfield South 3162

- 7.2 Council will handle any communication that constitutes a Complaint in accordance with this Policy, regardless of the way it is made. To ensure Complaints are identified and handled quickly, it is recommended written Complaints should be addressed to the Complaints Officer and are clearly identified as a Complaint (e.g. by including ‘Complaint’ in the subject line).
- 7.3 To facilitate the efficient handling of a Complaint, Complainants are encouraged to include the following details when submitting a Complaint:

<sup>1</sup> For example, a Complaint about a missed bin might result in a request for the bin to be collected (i.e. a Request for Service).

- 7.3.1 name and contact details (Complaints may be made anonymously);
  - 7.3.2 a brief description of the action, decision, service, delay or policy that is the subject of the Complaint;
  - 7.3.3 any relevant details that support the Complaint (e.g. dates, times, location, reference numbers and documents);
  - 7.3.4 the reason(s) why the Complainant is dissatisfied;
  - 7.3.5 the desired Outcome; and
  - 7.3.6 any accessibility or other communication needs, including if the Complainant wishes to be represented by another person.
- 7.4 Council is committed to ensuring its Complaints process is accessible to everyone. Complainants are encouraged to identify any specific communication needs they may have or barriers they may experience to help Council to meet their needs. The Complainant will be provided with the help they need to make and resolve the Complaint.
- 7.5 Complaints may be made anonymously. Anonymous Complaints will be accepted and dealt with if sufficient information is provided to do so. Anonymous Complainants will not be advised of the progress or outcome of their Complaint.
- 7.6 To enable easy access for complainants, Council will maintain a dedicated accessible webpage on its website where complaints may be lodged at any time.

## **8. Complaint handling process**

Council applies a four-tiered approach to managing Complaints. Where possible, Council will seek to resolve a Complaint at the time it is received. If that is not possible, the Complaint will be referred to the Complaints Officer and escalated, as appropriate.

### **8.1 First-contact complaint resolution**

- 8.1.1 The member of Council staff who receives a Complaint will, if they can easily and immediately take steps to resolve the Complaint, take responsibility for managing the Complaint and handle it as appropriate (e.g. by lodging a Request for Service then and there or advising the Complainant that no action will be taken by Council). This may be completed over the phone.
- 8.1.2 No acknowledgement of resolution will be sent to a complainant if a complaint is resolved at first point of contact.
- 8.1.3 If the member of Council staff who receives a Complaint cannot reasonably resolve it, or cannot refer it to the appropriate department or Manager to resolve it, the member of Council staff will refer the Complaint to the Complaints Officer.
- 8.1.4 If a Complaint is referred to the Complaints Officer, the Complaints Officer will issue an acknowledgement to the Complainant within 5 working days advising of the likely time frame and next steps and who the Complainant can contact about the handling of their Complaint.

### **8.2 Escalation to the Complaints Officer and investigation**

- 8.2.1 If a Complaint is referred to the Complaints Officer, the Complaints Officer will assess the Complaint and decide how it will be handled, including by:
  - (a) assigning it to the appropriate Council officer for investigation and resolution (which, depending on the nature of the Complaint, may be the Complaints Officer);
  - (b) deciding that no action is required and advising the Complainant accordingly; or
  - (c) if there is an alternative statutory pathway for the Complaint, referring the Complainant to the appropriate pathway.
- 8.2.2 If the Complaints Officer decides that the Complaint should be investigated by a Council officer, the investigation will be assigned to an officer:

- (a) with appropriate experience and seniority, having regard to the nature and subject of the Complaint and the Outcome sought; and
- (b) where possible, who is independent of the action, decision, service, delay or policy that is the subject of the Complaint.

**8.2.3** Council is committed to resolving all Complaints within 28 working days of receipt. Complainants will be advised if the investigation will take longer and will be updated about the progress of the investigation every 10 working days until the Complaint is resolved.

**8.2.4** As part of the investigation, the officer assigned to investigate the Complaint will:

- (a) impartially assess the content of the Complaint against any relevant legislation, guidelines, policies and procedures to determine whether Council acted lawfully, fairly and appropriately;
- (b) gather additional information, as required, which may include contacting the Complainant;
- (c) determine whether, on balance, the Complaint is reasonably substantiated;
- (d) determine an Outcome that is practical and proportionate; and
- (e) advise the Complainant in writing of the Outcome, the reasons and options for internal and external review.

### **8.3** Internal review

**8.3.1** If the Complainant is dissatisfied with the decision on, and Council's response to, their Complaint, the Complainant can request an internal review. A request for internal review should set out the reason(s) why the Complainant is dissatisfied with the way their Complaint was handled.

**8.3.2** A request for internal review will be acknowledged by the Complaints Officer within 5 working days of receipt and Council intends to complete internal reviews within 28 working days.

**8.3.3** Subject to clause 8.3.4, the Complaints Officer will refer requests for internal review to a senior Council officer who has not had any prior involvement with the Complaint (unless the complaint is related to a claim against Council).

**8.3.4** If the internal review relates to a decision in respect of a legal claim against Council which is not subject to statutory review in accordance with clause 9.5, the internal review will be undertaken by a qualified legal officer within the Corporate Counsel business unit.

**8.3.5** As part of the internal review, the senior Council officer will:

- (a) consider whether the Complaint was managed appropriately and whether the Outcome was sound; and
- (b) advise the Complainant in writing of the Outcome (i.e. whether the original decision is upheld, partially upheld or overturned) the reasons and options for external review.

**8.3.6** The Complaints Officer will not conduct an internal review.



#### 8.4 External review

**8.4.1** There are many external bodies to whom a Complaint may be referred. The appropriate body depends on the nature of the relevant Complaint. The following bodies are responsible for the following kinds of Complaints:

Complaint	Appropriate external body
Actions or decisions of Council, Council staff and Contractors, including the handling or review of a Complaint.  This includes failure to consider human rights or failure to act compatibly with a human right under the <i>Charter of Human Rights and Responsibilities Act 2006</i>	Victorian Ombudsman  <a href="https://www.ombudsman.vic.gov.au">https://www.ombudsman.vic.gov.au</a>
Breaches of the <i>Act</i> or the <i>Local Government Act 1989</i>	Local Government Inspectorate  <a href="http://www.lgi.vic.gov.au">www.lgi.vic.gov.au</a>
Breach of privacy or an FOI Complaint	Office of the Victorian Information Commission  <a href="http://www.ovic.vic.gov.au">www.ovic.vic.gov.au</a>
Corruption or public interest disclosure ('whistleblower') complaints	Independent Broad-based Anti-corruption Commission  <a href="http://www.ibac.vic.gov.au">www.ibac.vic.gov.au</a>
Discrimination	Victorian Human Rights and Equal Opportunity Commission  <a href="http://www.humanrights.vic.gov.au">www.humanrights.vic.gov.au</a>
Council elections	Victorian Electoral Commission  <a href="http://www.vec.vic.gov.au">www.vec.vic.gov.au</a>

#### 9. Handling of specific categories of Complaints

Certain kinds of Complaints are subject to different treatment than that outlined in clause 8 above.

##### 9.1 Complaints about Councillors

**9.1.1** Complaints about individual Councillors are not Complaints for the purposes of this Policy. Complaints about individual Councillors will be referred to:

- (a) the Mayor; or
- (b) if the Complaint is about the Mayor, to the Deputy Mayor.

**9.1.2** Councillor(s) who are the subject of a complaint will be notified of the Complaint by the Mayor or Deputy Mayor, as the case may be.

**9.2** Complaints received by Councillors

**9.2.1** Where a Councillor receives a Complaint directly, the Councillor will refer the Complaint to the Coordinator, Councillor Business for handling in accordance with this Policy.

**9.2.2** The Councillor may advise the Complainant that their Complaint has been referred to the appropriate person for handling in accordance with this Policy. Councillors will not otherwise be involved in the Complaint handling process, but will be involved in responses to non-operational Councillor Requests.

**9.2.3** Complaints received by Councillors and referred to Council staff will be handled in accordance with either clause 8 or clause 9.1 of this Policy, depending on its subject matter. The member of Council staff responsible for handling the Complaint will inform the relevant Councillor of the Outcome of the Complaint after it is resolved.

**9.3** Complaints about the CEO

**9.3.1** The CEO is employed by, and accountable to, Council and stands outside the usual oversight and reporting lines. Therefore, Complaints regarding the CEO must be subject to specific processes.

**9.3.2** Complaints about the CEO will be referred to the Mayor and notified to all Councillors. After the Mayor receives a referral, they must, as appropriate:

- (a) determine that the Complaint is to be managed internally and how it will be handled; or
- (b) refer the Complainant to the appropriate external body (e.g. the Victorian Ombudsman or the Independent Broad-based Anti-corruption Commission).

**9.3.3** If the complaint alleges serious misconduct, consideration should be given as to whether the CEO Employment Matters Committee should be convened to consider the matter.

**9.3.4** If a Complaint about the CEO is to be handled internally in accordance with clause 9.3.2(a), the CEO may, by giving written notice to the Mayor, request Council to appoint an external probity auditor in relation to a Complaint to:

- (a) assist Council to ensure probity in dealing with the Complaint; and
- (b) provide a written report to Council regarding the extent to which Council has observed due probity in dealing with the Complaint.

**9.3.5** If Council considers that the appointment of a probity auditor could assist in ensuring probity in dealing with the Complaint, Council may appoint a suitably qualified person to be a probity auditor in relation to the Complaint and to perform the duties described in clause 9.3.3, independently of a request made by the CEO. The Complainant will be advised, in writing, of the Outcome, the reasons and the relevant external options for review.

**9.4** Complaints about Council decisions

**9.4.1** Where a decision is made by Council Resolution at a Council meeting, it cannot be varied or overturned without a further Council Resolution.

**9.4.2** The merits or virtues of decisions made, or policies adopted, by Council Resolution cannot be revisited by an officer responsible for managing Complaints made in respect of them.

**9.4.3** Therefore, Complaints regarding decisions made, or policies adopted, by Council Resolution will be handled as follows:

- (a) Complaints that express disagreement with, or criticism of, a decision made, or policy adopted, by Council Resolution will be recorded as feedback but no substantive action will be taken in response; and

- (b) Complaints regarding the way a Council decision was made, including whether the decision was lawful, will be referred to Corporate Counsel for consideration as to whether the decision was made lawfully, having regard to the applicable laws, processes and procedures.

**9.5** Complaints otherwise subject to statutory review

**9.5.1** Council has the discretion to refuse to deal with Complaints regarding an action, decision or service that can otherwise go through a statutory review process.

**9.5.2** This includes, for example, Complaints where an Act or regulation provides for the relevant action, decision or service to be reviewed by the Victorian Civil and Administrative Tribunal or a court. Complaints of this type usually concern a particular subject matter, such as infringements, planning, or public health.

**9.5.3** Council will always refer Complaints that are otherwise subject to statutory review to the appropriate statutory process, unless the Complaints Officer reasonably considers that it is appropriate to manage the Complaint in accordance with this Policy, having regard to:

- (a) the time and cost required to resolve the matter through external review; and
- (b) the complexity of the Complaint and whether there is relevant and clear precedent for how it should be managed.

**9.5.4** In making a decision under clause 9.5.3 to accept and deal with something as a Complaint, even though a statutory right of review is available in respect of it, the Complaints Officer will also have regard to the following:

- (a) the subject matter of the Complaint;
- (b) the impact that the subject matter of the Complaint has on the Complainant;
- (c) Council's capacity to finally resolve the Complaint and the likelihood that the Complainant may nonetheless proceed with the statutory review process;
- (d) the volume of Complaints received about the same or similar subject matter; and
- (e) such other matters as the Complaints Officer considers relevant.

**10. Recording Complaints**

**10.1** Where practicable, Council will record all Complaints that it receives, including details with respect to how each Complaint was handled, the steps taken to resolve the Complaint and whether the Complainant was satisfied with the Outcome.

**10.2** Each year, Council will maintain the following data regarding the Complaints that it receives:

**10.2.1** the number of Complaints received;

**10.2.2** internal review Outcomes, including the number of Outcomes upheld, partially upheld or overturned; and

**10.2.3** the number of Complaints escalated to external review.

**11. Privacy and confidentiality**

**11.1** Council collects a range of personal information about Complainants for the purpose of administering its Complaints handling processes, including name, address, contact information and demographic data.

**11.2** Council uses the information submitted by Complainants to respond to their Complaints and may also analyse the information for the purpose of improving Council services.

**11.3** Any Complaints data included in publicly accessible reports will be deidentified before publication.

**11.4** For further information, please refer to Council's Privacy Policy.

## **12. Managing Unreasonable Complainants**

- 12.1** Council expects its staff to treat people with courtesy and respect and that this courtesy will be returned by Complainants. Council will not tolerate behaviour that is offensive, abusive or threatening, or which consumes disproportionate resources.
- 12.2** Examples of Unreasonable Complainant Conduct include, without limitation:
- 12.2.1** persistent, unrelenting and incessant attempts to raise issues that have been comprehensively dealt with;
  - 12.2.2** making demands for unattainable or constantly changing Outcomes;
  - 12.2.3** a continual unwillingness to cooperate in the Complaints handling process;
  - 12.2.4** constant and repeated arguments that are not based on reason; and
  - 12.2.5** acts of aggression, threats, verbal abuse or derogatory, racist or defamatory remarks.
- 12.3** Council aims to prevent challenging behaviour and Unreasonable Complainant Conduct where possible by practising good complaint handling in accordance with this Policy and seeking to ensure that:
- 12.3.1** Complainants feel heard and understood;
  - 12.3.2** Complainant expectations are clear and realistic, particularly in relation to what Council can do and cannot do in relation to a Complaint; and
  - 12.3.3** Council staff communicate clearly, including providing reasons.
- 12.4** If a Complainant's behaviour escalates to Unreasonable Complainant Conduct, Council staff will apply appropriate and proportionate strategies for managing the behaviour. The strategies will depend on the nature of the Unreasonable Complainant Conduct and may involve limiting one or more of:
- 12.4.1** who the Unreasonable Complainant can contact, e.g. limiting contact to a named officer;
  - 12.4.2** what issues Council will respond to, e.g. not responding to issues that have already been the subject of an assessment and explanation, unless the Unreasonable Complainant raises new issues that warrant attention;
  - 12.4.3** when a person can contact Council or when a response will be provided, including time of day and frequency or duration of contact;
  - 12.4.4** access to Council facilities and staff, including restricting or prohibiting entry to Council premises or limiting access to or communication with Council staff; and
  - 12.4.5** the method of communication with Council, e.g. confining contact to writing where the person has been verbally abusive.
- 12.5** Nothing in this Policy limits the type of action Council may decide to take to manage Unreasonable Complainant Conduct, provided that the response is reasonable and proportionate.
- 12.6** Council will continue to handle an Unreasonable Complainant's Complaint in accordance with the relevant processes set out in this Policy, but such handling may be modified in accordance with this clause 12.
- 12.7** Decisions to limit an Unreasonable Complainant's access will only be made by the relevant Divisional Director, following consultation with Corporate Counsel.
- 12.8** Before approving any limits on an Unreasonable Complainant under clause 12.7, the Divisional Director must be satisfied that:
- 12.8.1** the behaviour constitutes Unreasonable Complainant Conduct;
  - 12.8.2** alternative strategies have been, or are likely to be, ineffective in managing the risk;

- 12.8.3 all relevant factors have been considered, including the Unreasonable Complainant's history, the nature of the conduct, their personal circumstances and the impact of limiting access on their welfare and that of their dependants;
  - 12.8.4 the limits are proportionate to the level of risk posed by the Unreasonable Complainant Conduct;
  - 12.8.5 the limits are consistent with the *Charter of Human Rights and Responsibilities Act 2006*; and
  - 12.8.6 if the Unreasonable Complainant Conduct may be a symptom or manifestation of a disability or other protected attribute, the limits are consistent with the *Equal Opportunity Act 2010*.
- 12.9** Warning and notification letters
- 12.9.1 In most cases, Council will send a warning letter to an Unreasonable Complainant, advising them:
    - (a) of the specific Unreasonable Complainant Conduct they have engaged in; and
    - (b) that, if their behaviour is not modified, Council may intervene to limit their access to Council and the proposed limitation (see clause 12.4).
  - 12.9.2 If the behaviour of an Unreasonable Complainant is not modified in response to a warning letter, or if the behaviour poses an imminent, ongoing or escalating risk to any person or property, Council will inform affected staff and send a notification letter to the Unreasonable Complainant advising:
    - (a) of the specific Unreasonable Complainant Conduct they have engaged in;
    - (b) the limitations imposed by Council, for how long they will be imposed and the details of how the Unreasonable Complainant is to engage with Council going forward; and
    - (c) that the Unreasonable Complainant may request a review of Council's decision to impose the limitation or complain to an external agency (e.g. the Victorian Equal Opportunity and Human Rights Commission or the Victorian Ombudsman).
  - 12.9.3 Warning and notification letters will be sent by ordinary post and/or email. A failure by the Unreasonable Complainant to receive or read the correspondence by their own action will not affect the application of this Policy or the validity of the actions taken under it.
- 12.10** Review of action taken against a Complainant
- 12.10.1 Council will review the limitations placed on the Complainant to determine if the limits are effective, proportionate and warranted:
    - (a) at the request of the Complainant, but no earlier than 3 months following the implementation of the action or a previous review; and
    - (b) once every 12 months thereafter.
  - 12.10.2 Council will document the review and inform affected staff and the Unreasonable Complainant of any decision to remove or vary the limits on access.

### 13. Roles and responsibilities

13.1 All Council staff, Councillors and Contractors are responsible for contributing to Council's Complaints processes.

CEO	<ul style="list-style-type: none"><li>• Promoting positive behaviours and practices relating to enabling, responding to and learning from Complaints.</li><li>• Supporting service improvements that arise from Complaints.</li><li>• Reviewing and publishing Complaint data.</li></ul>
Executive Leadership Team and senior officers	<ul style="list-style-type: none"><li>• Recruiting, training and empowering staff to resolve Complaints promptly and in accordance with Council's policies and procedures.</li><li>• Managing conflicts of interest in the Complaint process.</li><li>• Reporting on and identifying improvements from Complaint data.</li><li>• Supporting staff who deal with Complaints.</li><li>• Managing Unreasonable Complainant Conduct and ensuring that all staff who interact with Complainants receive relevant training, guidance and direction, including in security procedures.</li></ul>
Council staff	<ul style="list-style-type: none"><li>• Familiarising themselves with this Policy and Council's Complaint processes.</li><li>• Assisting in the consideration and resolution of Complaints when requested by the Complaints Officer.</li><li>• Assisting members of the public to make Complaints.</li><li>• Treating members of the public respectfully and professionally.</li><li>• Identifying challenging behaviour and reporting Unreasonable Complainant Conduct.</li></ul>
Councillors	<ul style="list-style-type: none"><li>• Familiarising themselves with this Policy and Council's Complaint processes.</li><li>• Referring Complaints that they receive directly to Council staff to be dealt with in accordance with Council's Complaint processes.</li></ul>
Contractors	<ul style="list-style-type: none"><li>• Familiarising themselves with this Policy and Council's Complaint processes.</li><li>• Assisting in the consideration and resolution of Complaints when requested by the Complaints Officer.</li><li>• Cooperating with Council's Complaint handling processes.</li></ul>

### 14. Human Rights Charter Compatibility

This Policy has been assessed as being compatible with the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

**15. Associated Internal Documents**

Privacy Policy

**16. External References/Resources**

*Local Government Act 2020 (Vic)*

Victorian Ombudsman's 'Councils and Complaints - a Good Practice Guide', 2<sup>nd</sup> Edition July 2020

# Appendix 3: Glen Eira City Council's additional comments

The Council provided the following further comments after reviewing drafts of this report. Please note references to specific paragraph numbers have been removed to avoid confusion as they do not align to the numbering in this final report.

## **Additional Council response to the second draft report**

This case concerns recommendations relating to a claim notified to Council in 2022 arising from alleged damage to a resident's stormwater pipe by a third-party contractor in 2018. At the time of the referral to the Ombudsman, the complainant's engagement with Council had been limited.

The investigation has led to proposed improvements to Council's Complaint Handling Policy. Council appreciates and, for the most part, accepts these recommendations and has provided specific responses.

Council receives service requests, complaints, compliments, and compensation claims from community members in relation to services provided directly by Council and by third-party contractors engaged by Council. Council's priority is to ensure it has client-focused and legislative-compliant policies and procedures to respond to the requests, complaints and claims that it receives.

Whilst any allegation of damage to a resident's property by a Council contractor is regrettable, the mere allegation or occurrence of damage does not create a liability on Council. Council may be liable for damage to a resident's property where it has been negligent. Where there has been no negligence on the part of Council, it would not be responsible for Council to accept liability and place a financial burden on other ratepayers where liability does not exist.

If Council was required to arrange for rectification of alleged damage caused by third parties, the costs may be significant and would be paid for through rates that would impact the services provided to other ratepayers. Accordingly, Council takes the position in relation to claims that where it is not liable to pay, it does not pay. It is important that residents' funds are expended prudently and only where it is necessary to do so.

Council's focus is on assisting complainants and third-party contractors to understand Council's liability under legislation and common law and to direct claims to the party alleged to have caused the damage. This approach recognises Council's legal liability and that claims that are directed to third-party contractors are, in our experience, resolved by communication direct between the contractor and the complainant.

Directing complainants to engage directly with a contractor does not detract from Council's overall responsibility for, or commitment to, managing complaints about contractors and contractor work. Council's provision of guidance to complainants to direct their claim to the relevant party is a vital component in claims resolution.

During the period covered within the first draft report of the Ombudsman, Council could not liaise with the relevant third-party contractor until after the Ombudsman commenced its formal investigation under section 15B of the *Ombudsman Act 1973* (Vic) into Council's approach to handling a complaint about Council's contractor. Council could not liaise with its contractor for privacy reasons as the complainant did not consent to Council releasing details of his claim to the third-party contractor. The Ombudsman was advised of this issue before it commenced its formal investigation. Only after the Ombudsman commenced its formal investigation and intervention by the Ombudsman's office was consent provided by the complainant to allow Council to advise the third-party contractor that a claim had been received, and an investigation by the contractor into the complainant's allegations could commence.



The third-party contractor, following notification by Council, was requested by Council to investigate and ascertain its position concerning liability. The third-party contractor invited the complainant to discuss their claim with a view to reaching a resolution. The complainant declined to discuss their claim with the third-party contractor. The third-party contractor thereafter reported the claim to their insurance brokers. On 18 November 2022, the insurance brokers notified the third-party contractor's insurers of the claim. The third-party contractor's insurers have appointed a claims advisor to manage the claim. At the time of writing, the third-party contractor's insurers await receipt of a formal demand from the claimant.

... [T]he second draft report details that Mr [Wilson] stated that Council workers attended his property and requested the plumber's CCTV footage. By way of clarification, it was not the Council officers that attended at Mr [Wilson]'s property that requested the plumber's CCTV footage. Council officers, before Council's receipt of the Ombudsman's first draft report, inspected the stormwater drainage from the road adjacent to the complainant's property. For the purpose of the inspection, the Council officers did not attend on the complainant's property. During that inspection, the Council officers did not request the plumber's CCTV footage from the complainant. The request for CCTV footage was made in writing to the complainant on 8 September 2022.

The attendance of Council officers at the street adjacent to the complainant's property to investigate the complainant's allegations and the request for the CCTV footage are two distinct events.

... [T]he second draft report incorrectly states that at the time of this report's publication, the damage to the stormwater system at Mr [Wilson]'s property ... has not been investigated by the Council. Council officers, following a detailed site investigation carried out during the attendance referred to in ... your report, and after considering all written material available to Council, formed the view that there was no evidence that the third-party contractor was responsible for the damage to the claimant's stormwater pipe. Notwithstanding Council's view on liability, in line with its overall responsibility for managing complaints about contractors and contractor work, Council continues to engage with the claimant and the third-party contractor to ensure that the claimant can submit a claim to the third-party contractor's insurers.

In ... the second draft report, the Ombudsman states that a reasonable approach to addressing Council's obligations could have included Council conducting an assessment of the state of its infrastructure and making a commitment to repair any damage identified.

...[T]he second draft report incorrectly assumes that a stormwater drain to the point of connection is Council infrastructure. Council is not responsible for maintaining stormwater drainage on or from private properties to the point of connection with Council's pipes, pits or kerbs. Property owners are responsible for maintaining their private stormwater connections up to the point of connection. Part 2.2.3 of Council's Road Management Plan (2021) states that a number of private assets exist within or adjacent to roads in respect of which Council does not have an obligation... These assets include... stormwater drains or connections from private properties. Council provides a guide to residents' responsibility for stormwater drainage on its website.

Council's position is that it is only in specific circumstances reasonable for Council to make a commitment to repair any damage identified to third-party infrastructure. It would not be reasonable for Council to commit to repairing any damage identified in circumstances where Council is neither legally liable for the alleged negligence of third-party contractors nor where, after undertaking an investigation, there is no evidence that the third-party contractor was responsible for the alleged damage.

The response by Council referred to in ... the second draft report, was given at the stage when the third-party contractor had not been contacted by Council due to the complainant not consenting to the release of his personal information. The question asked by your office was, *“What role would council take if compliance action is required against the contractor given that a complainant may not have a direct relationship with a contractor?”* The response provided was general in nature and did not outline, as is characterised in your second draft report, the extent of Council’s role should there be a breakdown in communication between Mr [Wilson] and its contractor.

In ... the second draft report, you state that Council shared the concerning view that the only option available to residents unable to resolve a matter with a council contractor is to initiate legal proceedings. Council has never shared such a view. Council advised your office, “If a contractor denies liability or fails to respond to a complainant, the complainant can raise proceedings and claim damages against the contractor for the alleged negligence.” That advice was part of a response to your question, *“What role would council take if compliance action is required against the contractor given that a complainant may not have a direct relationship with a contractor?”* Council, in line with overall responsibility for managing complaints about contractors and contractor work, provides various avenues for residents to seek to resolve issues about third-party contractors. A resident unable to resolve a dispute with a third-party contractor may complain to Council regarding the handling of their dispute by the third-party contractor. A resident may seek internal review if they are dissatisfied with the decision on, and Council’s response to, their complaint. A resident may also be directed to address their complaint to a relevant external body.

...

### **Council’s Further Response to the third draft report**

In the section of the Timeline titled “Early 2022” and in [a part] of your third draft report, you state that Mr [Wilson]’s plumber was of the opinion that footpath works likely damaged Mr [Wilson]’s stormwater pipes. In the written documentation provided to Council in March 2022, the plumber stated, in the context of quoting for repair work, that the *“footing of the fence believed to be deleted when new footpath was done”* and *“existing pipework to pit that has being (sic) damaged when new footpath was installed.”* The commentary provided by a plumber was neither an independent nor expert opinion on the cause of the damage to Mr [Wilson]’s stormwater pipes.

In ... the third draft report, you indicate that Council maintained that it had a limited role to play in resolving the matter. This characterisation of Council’s approach is not reflected in the correspondence between our offices nor our communication with Mr [Wilson]. In correspondence with your office, dated 6 July 2022, Council advised that once the claim has been forwarded to the contractor, Council would request the contractor contact Mr [Wilson] to investigate and resolve his claim. Council would continue to monitor the progress of the contractor’s investigation and ensure that Mr [Wilson] is regularly updated by the contractor on the status of his claim. Council’s Corporate Counsel provided, through your office, his direct mobile telephone number to Mr [Wilson] to provide any further assistance or answer any questions that he may have in relation to his complaint.

In ... your third draft report, you incorrectly state that a claim is neither assessed by Council, nor subject to internal review. Council assesses all claims. Claims, which are also complaints, are subject to internal review. There is a distinct process for internal review, set out in Council’s Complaints Handling Policy, for a complaint related to a claim against Council. This distinct process is in parts 8.3.3 and 8.3.4 of Council’s Complaints Handling Policy which provides that:

8.3.3 Subject to clause 8.3.4, *the Complaints Officer will refer requests for internal review to a senior Council officer who has not had any prior involvement with the Complaint (unless the complaint is related to a claim against Council).*

*8.3.4 If the internal review relates to a decision in respect of a legal claim against Council which is not subject to statutory review in accordance with clause 9.5, the internal review will be undertaken by a qualified legal officer within the Corporate Counsel business unit.*

In ... the third draft report, you advise that complaints may be most easily resolved by direct communication between a third-party contractor and a complainant, although there may be times when a complainant is unwilling or unable to deal with a third-party contractor. You indicate that Mr [Wilson] fell into the latter category. Mr [Wilson] did not advise Council that he fell into the latter category before he submitted his complaint to your office. Council, therefore, did not have the opportunity to consider alternative approaches before the involvement of your office.

# Victorian Ombudsman's Parliamentary Reports tabled since April 2014

## 2022

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Ombudsman's recommendations - fourth report

September 2022

Investigation into a former youth worker's unauthorised access to private information about children

September 2022

Investigation of a matter referred from the Legislative Council on 9 February 2022 Part 1

July 2022

Joint investigation with IBAC  
Operation Watts, a joint investigation into allegations of serious corrupt conduct involving Victorian public officers, including Members of Parliament

July 2022

Investigation into complaint handling in the Victorian social housing sector

July 2022

Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison

June 2022

Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal

May 2022

## 2021

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Investigation into decision-making under the Victorian Border Crossing Permit Directions

December 2021

Investigation into allegations of collusion with property developers at Kingston City Council

October 2021

The Ombudsman for Human Rights: A Casebook

August 2021

Councils and complaints - A good practice guide 2nd edition

July 2021

Investigation into good practice when conducting prison disciplinary hearing

July 2021

Investigation into Melton City Council's engagement of IT company, MK Datanet Pty Ltd

June 2021

Investigation into how local councils respond to ratepayers in financial hardship

May 2021

Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund

April 2021

Outsourcing of parking fine internal reviews - a follow-up report

March 2021

Investigation of protected disclosure complaints regarding the former Principal of a Victorian public school

February 2021

## 2020

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Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020

December 2020

Investigation into complaints about assaults of five children living in Child Protection residential care units.

October 2020

Investigation into corporate credit card misuse at Warrnambool City Council

October 2020

Investigation into review of parking fines by the City of Melbourne.

September 2020

Investigation into the planning and delivery of the Western Highway duplication project

July 2020

Ombudsman's recommendations - third report

June 2020

Investigations into allegations of nepotism in government schools

May 2020

Investigation of alleged improper conduct by Executive Officers at Ballarat City Council

May 2020

Investigation into three councils' outsourcing of parking fine internal reviews

February 2020

## 2019

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Investigation of matters referred from the Legislative Assembly on 8 August 2018

December 2019

WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims

December 2019

Investigation into improper conduct by a Council employee at the Mildura Cemetery Trust

November 2019

Revisiting councils and complaints

October 2019

OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people

September 2019

Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions

August 2019

Investigation into State Trustees

June 2019

Investigation of a complaint about Ambulance Victoria

May 2019

Fines Victoria complaints

April 2019

VicRoads complaints

February 2019

# Victorian Ombudsman's Parliamentary Reports tabled since April 2014

## 2018

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Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018

Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria

September 2018

Complaints to the Ombudsman: resolving them early

July 2018

Ombudsman's recommendations – second report

July 2018

Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies

June 2018

Investigation into the administration of the Fairness Fund for taxi and hire car licence holders

June 2018

Investigation into Maribyrnong City Council's internal review practices for disability parking infringements

April 2018

Investigation into Wodonga City Council's overcharging of a waste management levy

April 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015

March 2018

## 2017

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Investigation into the financial support provided to kinship carers

December 2017

Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre

November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus

September 2017

Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system

September 2017

Investigation into Victorian government school expulsions

August 2017

Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board

June 2017

Apologies

April 2017

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Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board

March 2017

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville

February 2017

Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

January 2017

## 2016

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Investigation into the transparency of local government decision making

December 2016

Ombudsman enquiries: Resolving complaints informally

October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight

September 2016

Report on recommendations

June 2016

Investigation into Casey City Council's Special Charge Scheme for Market Lane

June 2016

Investigation into the misuse of council resources

June 2016

Investigation into public transport fare evasion enforcement

May 2016

## 2015

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Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting

December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations

November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training

September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight

June 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service

April 2015

Councils and complaints – A report on current practice and issues

February 2015

Investigation into an incident of alleged excessive force used by authorised officers

February 2015

## 2014

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Investigation following concerns raised by Community Visitors about a mental health facility

October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria

August 2014





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