

**Investigation into three councils' outsourcing of parking fine
internal reviews**

February 2020

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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 my *Investigation into three councils' outsourcing of parking fine internal reviews*.



Deborah Glass OBE

Ombudsman

25 February 2020



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Foreword

Parking fines are a fact of life for many Victorians, and a frequent subject of complaint to the Ombudsman. So it was with some surprise that many people greeted the announcements last March that two Melbourne councils, Monash and Kingston, would refund more than 46,000 infringements incurred over a 10-year period. The councils said they did so because they had outsourced their reviews to a private contractor but had since learned they should have made decisions about internal reviews themselves.

The announcements prompted the inevitable question: What about other councils that had outsourced their reviews?

The commentary following these announcements suggested some councils were aware of doubts about the lawfulness of their outsourcing arrangements, and three councils, Glen Eira, Port Phillip and Stonnington, issued statements defending them. I therefore decided to look into these councils, to see if they were indeed different from those who had decided to pay up.

The issues in this investigation originate from changes to the law in 2006, when a new Infringements Act set out processes for issuing, appealing and enforcing parking fines. It also included a right for people to seek an internal review from the council or agency that issued the fine. When the two councils announced refund schemes in 2019, they acknowledged they had outsourced those reviews. The three other councils claimed their arrangements were different and/or lawful.

When we examined a sample of files, we found one of the councils had also outsourced its decision making. The other two councils had, in effect, rubber-stamped the contractor's recommendations. Council officers could, in principle, review the evidence. But in practice, the speed with which recommendations were accepted gave no hint of independent assessment. One file review showed a council officer taking one minute to approve recommendations for 107 applications, or about half a second per application.

The suggestion that council officers were making genuine decisions on the evidence was simply not credible.

It was also apparent that none of the three councils disclosed who was making internal review decisions, each of them providing a similar squiggle by an anonymous officer.

These matters first came to light in 2016 when a lawyer specialising in fines began writing to some councils questioning their internal review decisions. It is now clear that these questions triggered a string of legal advices, as a result of which councils began changing their practices. Monash also made a request to the Attorney-General for retrospective amendments to the Infringements Act. The Attorney refused this request in January 2019, noting the Government had not been aware of the use of outsourcing to determine internal reviews and did not tacitly approve of the practice.

It was following this advice that both Monash and Kingston publicly announced their plans to refund the affected infringements; Monash saying it had 'a moral and legal obligation' to refund. Other councils disagreed, in one case arguing it was legally impossible to withdraw the review decisions.

The legal issues have not been tested in court; and not being a court, the Ombudsman cannot definitively determine the lawfulness of the councils' actions. But I can express an opinion on whether an administrative action appears to be contrary to law.

The law strongly suggests that internal reviews must be decided by the agency issuing the infringement. The fact that councils changed their practices in 2016 suggests they were aware that the outsourcing of internal reviews was inappropriate. The evidence of the practices employed by the councils we investigated suggests that in all three councils the decisions were outsourced and therefore appear to be contrary to law.

While disagreeing with me that their decisions were in any way contrary to law, all three councils have agreed to set up refund schemes for affected motorists, which I welcome.

The councils in this report represent a fraction of the 79 councils and other agencies in Victoria that can issue fines. We know that others also engaged contractors to assist with internal reviews, but no definitive list exists. I decided it was in the greater public interest to conclude and table this investigation, than to expand it to other agencies and thus considerably delay its release. But I am writing to the agencies identified in the evidence asking them to review their past use of contractors in light of this report and will keep their responses under close review.

The investigation raises some fundamental issues about accountability and transparency. At least five councils outsourced internal reviews of parking fines to a private contractor over a period of 10 years. Two councils publicly acknowledged legal doubts about this arrangement and allocated millions of dollars to refund affected motorists. Three others asserted their practices were lawful, with a generic signature on review letters disguising the identity of their decision makers. While it was reasonable for these councils to seek legal advice, they failed to ensure transparency and accountability in their decision making.

I recognise that local councils' use of contractors, and refunds of public money, are vexed issues. I am pleased that all three councils have offered a resolution - and the tabling of this report puts any other agencies with similar arrangements on notice they should do the same.

Deborah Glass
Ombudsman

The investigation

Why we investigated

1. In early 2019, two Melbourne councils disclosed legal doubts about the way some councils had been reviewing parking infringements under the *Infringements Act 2006* (Vic).
2. Motorists have had a right to request an internal review of parking infringements since the *Infringements Act* commenced in 2006. Internal reviews give motorists a more accessible alternative to appealing infringements than the courts. They allow motorists to write to the council or agency that issued the infringement and ask it to reconsider its decision. Most councils and agencies handle internal reviews themselves but some outsourced their reviews to private companies, including a company called Tenix Solutions.
3. On 4 and 5 March 2019, two councils that used Tenix – Monash City Council and Kingston City Council – announced plans to refund more than 46,000 infringements reviewed and upheld by Tenix between 2006 and 2016, at an estimated cost of \$4.9 million. The councils said they believed their outsourcing arrangements were appropriate at the time and pointed to unclear wording in the Act. They said they had since learned they should have made final decisions about internal reviews themselves.
4. The announcements prompted the question: What about other councils and agencies that used private contractors?

Figure 1: Media articles following council announcements, March 2019



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5. Some councils and agencies told the media they were reviewing their situation. However, three councils issued statements defending their outsourcing arrangements with Tenix:
 - Glen Eira City Council said it had ‘unique arrangements’ and considered that its internal reviews were undertaken ‘in a manner that is consistent with our legislative obligations’.
 - Port Phillip City Council said ‘[w]e believe our Council’s infringements process is compliant with the legislation’ and ‘[w]e therefore do not propose to take any further action on this matter’.
 - Stonnington City Council said it was important to note that no two councils’ contracts with Tenix were identical. It said its process ‘has been, and remains, compliant’ with the law.
 6. The Ombudsman had received complaints about councils’ use of Tenix in 2016. The *Ombudsman Act 1973* (Vic) states that the Ombudsman must refuse to deal with a complaint if the person has or had a remedy in court, with some exceptions (section 15(6)). As the complaints raised matters of legal interpretation and the motorists had the option of challenging their infringements in court, Ombudsman officers decided not to investigate.
 7. The March 2019 announcements suggested some councils were aware of doubts about the lawfulness of their outsourcing arrangements. The Ombudsman decided to investigate. On 20 May 2019, she wrote to the Minister for Local Government and the mayors and chief executive officers of Glen Eira, Port Phillip and Stonnington councils to notify them of her intention to investigate. The Ombudsman said the investigation would consider allegations that councils may have unlawfully used a third-party contractor, Tenix, to conduct parking infringement reviews on their behalf.

Authority to investigate

8. The Ombudsman Act gives the Ombudsman jurisdiction to investigate administrative actions of public authorities. The definition of an ‘authority’ includes councils by virtue of section 2 and schedule 1, item 13 of the Ombudsman Act, and members of council staff by virtue of section 2 and schedule 1, item 15 of the Ombudsman Act.
9. This investigation was conducted as an ‘own motion’ investigation under section 16A of the Ombudsman Act. The Ombudsman often uses this power to investigate possible systemic problems in public authorities.

How we investigated

10. The Ombudsman’s investigation focused on the three councils that defended their outsourcing arrangements – Glen Eira, Port Phillip and Stonnington. When the Ombudsman publicly announced the investigation on 24 May 2019, she said she would decide on further action once she had received the councils’ responses, including whether to broaden the investigation.
11. The investigation involved:
 - researching the 2006 changes to the law, particularly the *Infringements Act 2006* (Vic)
 - reviewing complaints to the Ombudsman about internal reviews and private contractors
 - obtaining information, including a submission, from a lawyer who raised concerns about councils’ use of Tenix for internal reviews in 2016

-
- reviewing the 2009 report of the Victorian Auditor-General's Office titled *Withdrawal of infringement notices*, which looked at whether agencies were withdrawing infringement notices appropriately and in compliance with the Infringements Act
 - seeking information and documents from Glen Eira, Port Phillip and Stonnington including:
 - copies of their contracts with Tenix and information about their internal review practices
 - copies of legal advice about the lawfulness of internal reviews conducted by Tenix
 - records of council meetings and discussions with other councils about the issue
 - inspecting a sample of internal review files at Glen Eira, Port Phillip and Stonnington to identify how reviews were conducted in practice. Ombudsman officers reviewed eight files at each council, chosen at random from the year 2016.
 - seeking information and documents from the two councils that announced refunds, Monash and Kingston, so Ombudsman officers could compare their arrangements with Tenix to those of Glen Eira, Port Phillip and Stonnington
 - seeking information and documents from the Department of Justice and Community Safety, which administers the Infringements Act, including:
 - records of communications with councils about the issue
 - copies of the Department's legal advice.
12. Glen Eira, Port Phillip and Stonnington all declined to provide some information to the investigation on the grounds of legal professional privilege, which they are entitled to do under the Ombudsman Act.¹ This included copies of legal advice about the lawfulness of their practices. Stonnington also declined to provide other information on the grounds of legal professional privilege, including records of council meetings about the issue and records of discussions between councils.
 13. After considering this evidence, the Ombudsman decided to finalise her investigation into the three councils, without broadening the investigation, to ensure early exposure and resolution of the issues.
 14. The Ombudsman has been guided by the civil standard of proof, the balance of probabilities, in determining the facts of this investigation, taking into consideration the nature and seriousness of the matters examined and the gravity of the consequences that may result from any adverse opinion.

¹ Legal professional privilege protects communications between lawyers and their clients that are for the dominant purpose of seeking or providing legal advice, or for existing or anticipated litigation. It ensures clients can communicate freely with lawyers without fear that the information will be disclosed and used against them. The Crown cannot refuse to provide information to Ombudsman investigations on the basis of legal professional privilege: *Ombudsman Act 1973* (Vic) s 18K(2), (3). Councils in Victoria are not considered to form part of 'the Crown'.

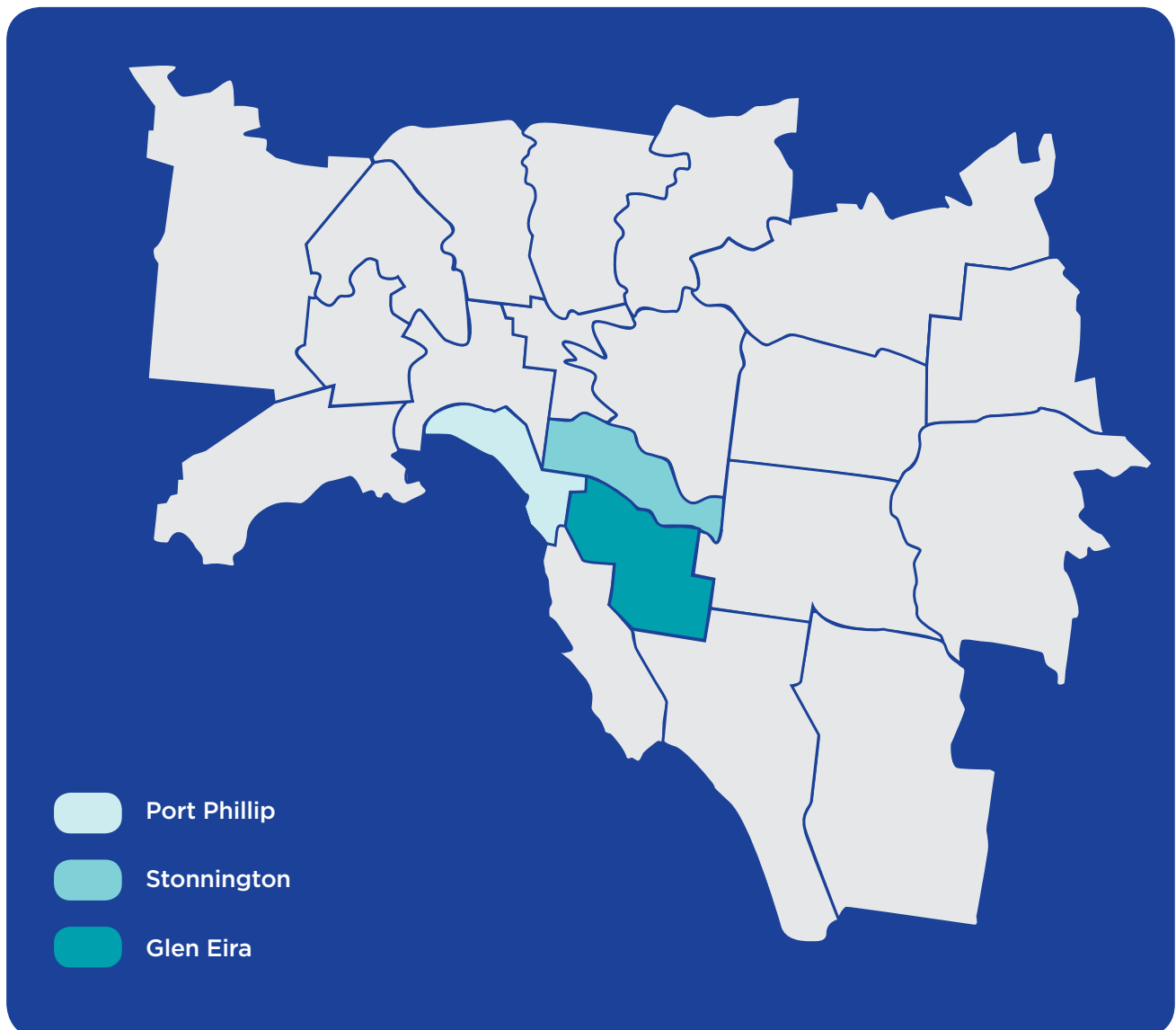
Procedural fairness

15. This report includes adverse comments about Glen Eira, Port Phillip, and Stonnington councils and the Department of Justice and Community Safety. In accordance with section 25A(2) of the Ombudsman Act, the investigation gave the three councils and the Department a reasonable opportunity to respond to the material in the report. This report fairly sets out their responses.
16. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are named or identified in the report as the Ombudsman is satisfied that:
 - it is necessary or desirable to do so in the public interest, and
 - identifying those persons will not cause unreasonable damage to those persons' reputation, safety or well-being.
17. This includes Tenix, the private company engaged by the three councils. Tenix and its decisions or recommendations were not the subject of this investigation, and this report makes no criticism of them. The report is concerned with the actions and decisions of the three councils.

The three councils

18. Glen Eira, Port Phillip and Stonnington councils are located in Melbourne's inner south and south-east. All three councils have residential, commercial and retail areas where there is high demand for parking.
19. Glen Eira is home to more than 150,000 residents and includes the suburbs of Elsternwick, Caulfield, Glenhuntly, Carnegie, Murrumbeena, McKinnon and Bentleigh. In 2017-18, it issued over 68,000 parking infringements.
20. Port Phillip is home to more than 110,000 residents and covers beachside suburbs such as Port Melbourne and St Kilda, as well as the inner-city suburbs of Southbank, South Melbourne, Albert Park, Windsor and Elwood. In 2017-18, it issued over 166,000 parking infringements.
21. Stonnington is home to more than 114,000 residents and covers inner-city areas such as Prahran and South Yarra, as well as suburban areas such as Malvern, Glen Iris and Chadstone. In 2017-18, it issued over 173,000 parking infringements.

Figure 2: Map of Melbourne metropolitan councils



The legal framework for internal reviews

22. The issues in this investigation originate from changes to the law in 2006, when the Victorian Parliament passed a new Infringements Act.
 - the person was experiencing ‘special circumstances’ at the time of the infringement (eg the person had a disability or serious addiction, or was experiencing homelessness or family violence, and could not control the conduct that constituted the offence)
 - the conduct should be excused having regard to ‘exceptional circumstances’ (eg a vehicle breakdown or an acute illness).
23. Before that time, the processes for issuing, appealing and enforcing infringements were set out in more than 50 different Acts of Parliament. Some councils and agencies reviewed their decisions to issue infringements when asked, but not all. For many motorists, the only option to appeal an infringement was to go to court.
24. The 2006 Infringements Act was intended to create ‘overarching legislation to cover infringements law and process’ and ‘improve the community’s rights and options’ in the process.² It set out consistent processes for issuing, appealing and enforcing parking infringements.
25. The new processes included a right for people to seek an internal review from the council or agency that issued the infringement.

Internal review requirements

26. The process for internal reviews is set out in Part 2 Division 3 of the Infringements Act.
27. The Act gives people with infringement notices a right to ask the ‘enforcement agency’ that issued the infringement to review its decision to serve the infringement notice (section 22). The Act lists several grounds for review including:
 - the decision to serve the notice was contrary to law (eg the person got a parking infringement even though they complied with the law)
 - there was a mistake of identity
28. If a person asks for an internal review, the Act states that the enforcement agency must ‘review the decision to serve an infringement notice on the person’ (section 24).
29. The enforcement agency has a number of options following its internal review (section 25). For example, it can:
 - confirm the decision to serve the infringement notice
 - replace the infringement notice with an official warning
 - refer the matter to court
 - withdraw the infringement notice entirely.
30. People who are dissatisfied with the outcome of an internal review may pursue other legal options, such as appealing the infringement in court.

² Victoria, *Parliamentary Debates*, Legislative Assembly, 16 November 2005, 2186-90 (Rob Hulls, Attorney-General).

31. The Act's internal review provisions confer the power to conduct reviews on enforcement agencies. The Act's definition of 'enforcement agency' (section 3) is complex and open to interpretation:

- (a) a person or body authorised by or under an Act to take proceedings for the infringement offence in respect of which the infringement notice or official warning was issued or served; or
- (b) a person by whom, or body by which, a person or body referred to in paragraph (a) is employed or engaged to provide services if the taking of the proceedings referred to in that paragraph would occur in the course of that employment or in the course of providing those services; or
- (c) a prescribed person or body or person or body which is a member of a prescribed class of person or body.

32. The Act makes no clear, express reference to private contractors such as Tenix. The Department of Justice and Community Safety states that the Victorian Government's intention in 2006 was that internal review decisions would only be made by enforcement agencies.

Departmental advice

33. When the new Infringements Act was passed in 2006, the Victorian Government also created a new unit in the now Department of Justice and Community Safety to monitor the infringements system.

34. The Department's powers regarding internal reviews were initially limited to preparing Attorney-General's guidelines for councils and other enforcement agencies. Those powers were strengthened in 2017 following amendments to the Act, which also created a new agency in the Department called Fines Victoria. The Director of Fines Victoria (who is also an Executive Director of the Department) can now:

- make guidelines setting out the obligations of enforcement agencies (section 53A)
- request information regarding internal reviews, including 'the policies, processes and guidelines' used by enforcement agencies to determine applications (section 53B)
- make recommendations to enforcement agencies in relation to 'internal review processes and compliance with [the Infringements Act] generally' (section 53C).

35. The guidelines initially gazetted by the Attorney-General in 2006 said each enforcement agency must develop procedures for the conduct of internal reviews. They were silent about whether agencies could outsource internal review functions to private contractors.

36. Fines Victoria issued new internal review guidelines in 2017. They were also silent on the issue of outsourcing to private contractors.

37. However, the Department told Ombudsman officers in correspondence that:

the department's communications, provided over many years, have consistently advised that an enforcement agency must determine internal reviews internally, although contractors can provide administrative assistance as part of this process.

38. The Department said it published an information paper on internal reviews in 2008 and conducted 'roadshows', workshops and meetings with enforcement agencies. The Department said its approach was:

consistently, albeit indirectly, communicated to enforcement agencies through advice about internal reviews being conducted 'by the agency' and 'someone in the organisation'.

39. In response to a draft of this report, Glen Eira advised it had searched its records of the Department's consultation and communication before and after the passage of the Act. It said nothing in the material communicated that message. Port Phillip also noted 'no evidence is provided about the content of any communications' from the Department.

The councils' outsourcing arrangements

40. When Monash and Kingston announced refund schemes in March 2019, they acknowledged they had allowed their private contractor, Tenix, to make final decisions about internal reviews. The evidence shows the two councils had issued guidelines to assist Tenix's decision making and Monash required Tenix to refer any withdrawals of infringements to the council. Tenix was otherwise allowed to make decisions on the councils' behalf.
41. The public announcements from Glen Eira, Port Phillip and Stonnington claimed their arrangements with Tenix were different and/or lawful. However, they provided little detail about their processes. To find out more about the three councils' outsourcing arrangements with Tenix, the investigation asked the three councils about their internal review processes, looked at their contracts with Tenix, and reviewed a sample of internal review files.
42. The council told the investigation that if people were dissatisfied with the review outcome, the council conducted a second review, even though it is not required to do so by the Infringements Act. These second reviews were conducted by council officers.
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Port Phillip

The councils' use of a private contractor

Glen Eira

42. Glen Eira told Ombudsman investigators in correspondence that it first engaged Tenix to conduct internal reviews in 2003, before the 2006 Infringements Act commenced.
43. Glen Eira's contracts with Tenix state that Tenix's responsibilities include responding to what the contracts call 'first appeals' in accordance with council guidelines.
44. When Ombudsman investigators reviewed a sample of internal review files from 2016, they showed Tenix:
 - received and logged internal review applications in its database
 - considered the reasons and evidence provided by motorists
 - decided the outcome of reviews in accordance with the decision making guidelines supplied by the council
 - served decisions on motorists.
45. The council told the investigation that if people were dissatisfied with the review outcome, the council conducted a second review, even though it is not required to do so by the Infringements Act. These second reviews were conducted by council officers.
46. Port Phillip's outsourcing arrangements with Tenix also predated the 2006 Infringements Act.
47. The council's contracts with Tenix contain limited detail about Tenix's role regarding internal reviews. The council told investigators in correspondence that, in practice, Tenix:
 - received and logged internal review applications in its database
 - read the applications and evidence
 - assessed the applications against decision making guidelines supplied by the council. The council said it trained Tenix staff on the guidelines and council officers were available to discuss applications.
 - referred applications to council officers when required by the guidelines. For example, the council's guidelines required Tenix to refer applications where a parking inspector appeared to have made an error.
 - in other cases, recorded its recommendations regarding the application and sent them to the council in a daily report.
48. Port Phillip told Ombudsman investigators that council officers made the final decisions about reviews. The council said a council officer holding the appropriate delegations would 'review the recommendations within the Tenix report, make a decision on the applications, and provide authorisation for the communication of decisions via email to Tenix'.

49. When investigators reviewed a sample of 2016 council files, the evidence showed the council's decision making role largely involved simply accepting Tenix's recommendations. Tenix's daily reports did not summarise motorists' applications or evidence. Council officers could access Tenix's database to review this information. However, the speed with which the council accepted Tenix's recommendations suggests this did not occur. For example, the file reviews showed:

- On 18 March 2016, Tenix emailed the council a report listing recommendations for 107 applications at 10.16 am. The council emailed its approval of all 107 recommendations at 10.17 am, one minute later.
- On 9 September 2016, Tenix emailed the council a report listing recommendations for 92 applications at 10:50am. The council emailed its approval at 10.52 am, two minutes later.
- On 28 October 2016, Tenix emailed the council a report listing recommendations for 166 applications at 9.51 am. The council emailed its approval at 9.54 am, three minutes later.

50. Amongst the sample of files, the longest time taken by the council to consider Tenix's recommendations was on 23 August 2016, when the council took 17 minutes to approve Tenix's recommendations for 100 applications. This was an average of 10.2 seconds per recommendation.

Figure 3: Extracts from Port Phillip internal review files, March 2016

Tenix email to the council

From: [redacted]@TenixSolutions.com]
 Sent: Friday, 18 March 2016 10:16 AM
 To: [redacted]
 Subject: Appeals Processed 16032016


Good morning,

The attached application for internal review of infringement notices have been received and reviewed in accordance with Council's guidelines.
 Tenix's recommendations are contained in the report. Decisions on the applications are required.

Kind regards,

[redacted]
 Local Government
 TENIX SOLUTIONS

Extracts from attached Tenix report

Appeals Processed Report										
		Client Name: City of Port Phillip								
		Date Range: 16-Mar-16 to 16-Mar-16								
Total Number of Processed Appealed Tickets:		107								
Total Appealed Fine Amount:		\$9,252.00								
Total Appealed Courtesy Amount:		\$0.00								
Details of Appeals Processed within Date Range										
Appeal Processed	Appeal Received	Days Aged	Ticket No	Issued Date	Result	Reason	Offence Code	Offence Description	Fine Amount	Courtesy Amount
Processed by - v07b4d (Total - 14)										
Accepted (Total - 4)										
16-Mar-16	12-Feb-16	33	PP100883974	19-Dec-15	Standard Accept		728	IN A PERMIT ZONE	\$91.00	\$0.00
16-Mar-16	16-Mar-16	0	PP100944815	22-Feb-16	Standard Accept	PP Acptl- Ticket machine faulty	702	FAIL TO PAY FEE	\$76.00	\$0.00
16-Mar-16	7-Mar-16	9	PP101154152	28-Feb-16	Standard Accept		728	IN A PERMIT ZONE	\$91.00	\$0.00
16-Mar-16	7-Mar-16	9	PP101186223	28-Feb-16	Standard Accept		702	FAIL TO PAY FEE	\$76.00	\$0.00
Cautioned (Total - 4)										
16-Mar-16	21-Jan-16	55	PP100613785	4-Nov-15	Disabled - Official Warning		701	PERIOD LONGER INDI	\$76.00	\$0.00
16-Mar-16	7-Mar-16	9	PP101005870	20-Feb-16	Permit - Permit Not Displayed - Official Warning	PP Permit - Not dispayed - Official Warning	728	IN A PERMIT ZONE	\$91.00	\$0.00
16-Mar-16	16-Mar-16	0	PP101108346	9-Feb-16	Permit Expired - Official Warning		728	IN A PERMIT ZONE	\$91.00	\$0.00
16-Mar-16	7-Mar-16	9	PP101178184	26-Feb-16	Disabled - Official Warning		803	PARKING AREA DISAE	\$152.00	\$0.00
Rejected (Total - 6)										
16-Mar-16	9-Dec-15	98	PP100738142	18-Nov-15	Standard Denied		701	PERIOD LONGER INDI	\$76.00	\$0.00
16-Mar-16	9-Dec-15	98	PP100774553	25-Nov-15	Standard Denied		701	PERIOD LONGER INDI	\$76.00	\$0.00
16-Mar-16	16-Mar-16	0	PP100785484	3-Dec-15	Within 10 Metres of an Intersection - Denied		804	WITHIN 10M INTERSEI	\$152.00	\$0.00
16-Mar-16	1-Mar-16	15	PP101010921	26-Jan-16	Pay and Display - Denied		702	FAIL TO PAY FEE	\$76.00	\$0.00
16-Mar-16	16-Mar-16	0	PP101037845	28-Feb-16	Loading Zone - Denied	PP Loading Zone	720	IN A LOADING ZONE	\$152.00	\$0.00
16-Mar-16	7-Mar-16	9	PP101195430	2-Mar-16	Standard Denied		711	NOT COMPLETELY WI	\$76.00	\$0.00

Council response to Tenix

From: [redacted]
 Sent: Friday, 18 March 2016 10:17 AM
 To: [redacted]@TenixSolutions.com
 Subject: FW: Appeals Processed 16032016
 Attachments: 16032016.pdf

Hi [redacted]

Pursuant to the powers conferred in Section 77 (2) (b) of the Road Safety Act 1986 to take proceedings, authorisation is provided to process the attached infringement reviews.

Authorised by:

[redacted]

[redacted] Office of the CEO
 T: [redacted] M: [redacted] | W: www.portphillip.vic.gov.au
 Private Bag 3, St Kilda, VIC 3182

51. In response to a draft of this report, the council said:

more complex applications for internal review were 'triaged' such that straightforward applications could be dealt with quickly while more complex applications (raising serious issues as to whether 'exceptional circumstances' existed) were separated and given more considered attention by Council staff.

52. When Ombudsman investigators reviewed the sample of 2016 files, they did not see evidence of this practice.

Stonnington

53. Stonnington's outsourcing arrangements with Tenix also predated the 2006 Infringements Act.

54. For most of the period covered by this investigation, Stonnington's contracts with Tenix provided for Tenix to 'consider and determine internal reviews' in accordance with council guidelines.

55. The council told investigators in correspondence that the arrangements differed from the contract in practice. It said Tenix:

- collated and considered internal review applications in accordance with decision making guidelines supplied by the council
- referred some applications to the council for further consideration. These included internal review applications from council staff and contractors. These applications were handled by an internal council Infringements Review Committee.
- in other cases, collated its recommendation for each application into a report, which it emailed to the council.

56. Like Port Phillip, Stonnington said delegated council officers reviewed the recommendations and notified Tenix of their decisions by return email.

57. When investigators reviewed a sample of internal review files, they found that, as with Port Phillip, the council did not routinely look at individual applications and evidence.

58. Furthermore, Tenix's reports for Stonnington followed the same format as its reports for Port Phillip (see Figure 3). They did not summarise motorists' applications or evidence. Stonnington could access Tenix's database to review individual cases. It was not as quick as Port Phillip to approve recommendations. However, the evidence still suggests Stonnington routinely accepted recommendations. For example, the file reviews showed:

- On 3 March 2016, Tenix emailed the council a report listing recommendations for 34 applications at 9.38 am. The council emailed its approval to proceed at 10.16 am, 38 minutes later.
- On 1 April 2016, Tenix emailed the council a report listing recommendations for 58 applications at 8.43 am. The council emailed its approval at 9.11 am, 28 minutes later.
- On 31 August 2016, Tenix emailed the council a report listing recommendations for 74 applications at 11.01 am. The council emailed its approval at 11.49 am, 48 minutes later.

59. Amongst the sample files, the longest time spent considering Tenix recommendations was on 26 May 2016, when the council responded to a report setting out 66 recommendations in just under three hours and 28 minutes. This is an average of just over three minutes per application.

-
60. Stonnington acknowledged in correspondence that, since Tenix followed council decision making guidelines when considering applications, it 'generally accepted' Tenix recommendations. When asked for data about rejections, the council could not provide it.
61. The council said motorists who were dissatisfied with the outcome of the internal review could make another application to the council. The second review was conducted by a delegated council officer.

The councils' due diligence

62. The three councils gave different accounts of the extent to which they checked the legality of their outsourcing arrangements when the Infringements Act was introduced in 2006.
63. Glen Eira told Ombudsman investigators in correspondence that it did not seek legal advice at the time. It said it was unaware of 'any proactive notification' by the Victorian Government that the new Infringements Act affected councils' ability to outsource internal reviews. It also noted that its contract with Tenix required Tenix to advise it of any changes to its powers as a result of legislative changes. It said it 'relied on Tenix to provide appropriate advice in accordance with its contractual obligations'.
64. In response to a draft of this report, Tenix's current owner said its responsibilities under its contract with Glen Eira included 'Recommend the need for legal advice on any matter regarding the delivery of the service'. It said '[i]n no way could it be reasonably be interpreted that the council would require that Tenix act as its legal advisor as regards whether or not the council had the authority to contract the services in the first instance.'
65. Port Phillip told investigators it did not become aware of legal questions until 2016.
66. By contrast, Stonnington said it obtained legal advice after the laws changed in 2006 and it put measures in place to ensure council officers made the final decisions on internal reviews.
67. Some councils indicated they took comfort from a 2009 Victorian Auditor-General's Office (VAGO) report on withdrawal of infringement notices.³ VAGO audited five agencies, including Stonnington and Port Phillip. It noted Stonnington and Port Phillip outsourced internal reviews. It did not discuss the lawfulness of this practice. However, some councils interpreted the report as accepting the practice. Glen Eira, for example, told Ombudsman investigators, 'Under such circumstances Council reasonably assumed that its procedures were consistent with its obligations under the [Infringements] Act.' In response to a draft of this report, Stonnington also said VAGO's report 'did not raise any concerns' with its practices.
68. All three councils continued renewing their outsourcing arrangements with Tenix. Glen Eira renewed its contract with Tenix in 2008 and 2014. Port Phillip renewed its contract in 2010 and 2015. Stonnington renewed its contract in 2007 and 2015.

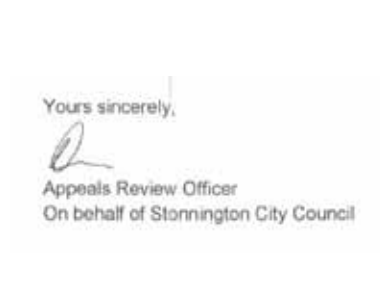
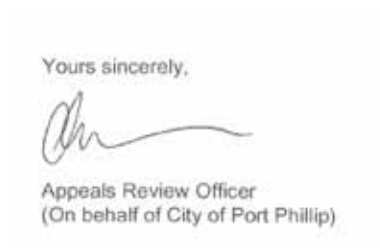
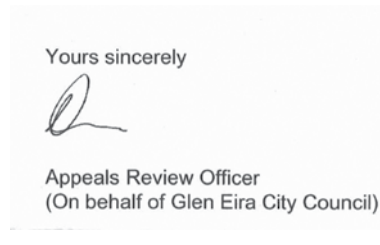
The councils' transparency

69. While the councils' internal review letters to motorists made some references to Tenix, they did not make Tenix's role clear. Glen Eira's decision letters contained a note at the bottom of the page reading 'Tenix Solutions Pty Ltd is the authorised contractor for Glen Eira City Council'. Port Phillip's and Stonnington's letters listed Tenix's street address in their contact details for motorists. However, Tenix's role was not explained.

³ Victorian Auditor-General's Office, *Withdrawal of infringement notices* (2009).

70. Complaints to the Ombudsman and the sample of internal review files obtained by the investigation show the three councils did not disclose who was making internal review decisions.
71. Across the three councils, the signature on review outcome letters was the same or similar. The letters show reviews being conducted on behalf of councils by an anonymous 'Appeals Review Officer' (see Figure 4).
72. When Ombudsman officers asked the councils why they did not identify decision makers in their letters to motorists, Glen Eira said 'Council is unaware of any requirement under legislation that the decision-maker is identified by name in the decision notice.'
73. Port Phillip and Stonnington both cited the need to protect officers involved in reviews. Port Phillip said:
- the name of the 'review officer' does not appear in correspondence ... for reasons of privacy ... to prevent the possibility of a member of council staff being 'singled out' or even harassed. A more generic signature block appears to have been included in correspondence advising of the outcome of applications for internal review. It is unclear to current members of Council staff why, historically, this occurred.
74. When Ombudsman investigators put the issue to Stonnington, the council said, 'Council deliberately does not identify the officer/s who made the decision to avoid those officers becoming the target of abuse from disgruntled applicants.'

Figure 4: Signatures on council internal review letters, 2016



Legal questions and councils' responses

75. In 2016, the lawyer behind a web-based business called Fine Defender began writing to some councils questioning their internal review decision letters and processes.
76. Glen Eira, Port Phillip and Stonnington were amongst the councils and agencies that received such letters. The following sections trace the councils' responses.

Responses to lawyer's questions

77. The evidence shows the Fine Defender lawyer asked councils a series of direct questions about who was making internal review decisions. He also raised concerns that Tenix employees had no authority to conduct reviews. The three councils subject to this investigation – Glen Eira, Port Phillip and Stonnington – did not fully explain Tenix's role in their internal review processes.
78. The actions of the three councils reveal a tension between how councils deal with legal issues and the need for transparency.
79. Section 3C(1) of the *Local Government Act 1989* (Vic) states:

The primary objective of Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.
80. In seeking to achieve this primary objective, a council 'must have regard to' the facilitating objective: 'to ensure transparency and accountability in Council decision making'.

Glen Eira

81. On 27 July and 10 August 2016, the Fine Defender lawyer lodged internal review applications with Glen Eira on behalf of two clients. The applications asked the council to confirm that the decision maker was properly authorised. The decision letters sent to the clients did not do so. Instead, they were signed by an anonymous 'Appeals Review Officer' (see Figure 4).
82. On 13 and 26 August 2016, the lawyer put to Glen Eira that the anonymity of the 'Appeals Review Officer' was suggestive of council not having conducted the parking infringement reviews. On 31 August 2016, Glen Eira responded to the first letter stating:

Council does not agree with your assertions ... A Council employee has conducted this internal review.
83. The council responded to the second letter on 24 September 2016, stating:

Your comments are noted in relation to this matter however, I advise that the Notice will not be withdrawn based on representations made. The only way Council's decision may be reversed is to have the matter dealt with by a Magistrates' Court to make a decision either in Council's favour or your favour.

I am satisfied that the Officer acted appropriately in this instance and the Notice was issued correctly.

I trust this explains Council's position in this matter and advise that your options now are to either pay the amount due not later than [date omitted], or complete the enclosed election to have the matter heard before a court.

Please be advised that should you elect to have the matter heard in the Magistrates' Court and if you are found guilty, the maximum penalty a court can impose is \$466.00. In addition Council will seek to claim costs against you.

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84. The lawyer wrote to the council and its Mayor questioning the lawfulness of the council's process six more times - on 24 September, 25 October and 21 and 30 November 2016, 14 January and 17 May 2019.
85. The council's responses continued to assert that decisions were made by a delegated council officer and were lawful. The last response dated 5 June 2019 said, 'Council maintains its view that the internal reviews have been carried out in accordance with the requirements of the Act'. The council's responses did not explain Tenix's role in the process.

Port Phillip

86. On 4 April 2016, the Fine Defender lawyer wrote to Port Phillip on behalf of one client, noting his client's infringement review letter did not 'identify the name, the title and authority of the review officer'.
87. On 26 April 2016, Port Phillip responded stating:

The name of the review officer/s will not be disclosed as the decision to uphold the infringement notice has been made in accordance with Council guidelines and is made for and on behalf of Council.

88. On 20 August 2016, the lawyer wrote to Port Phillip a second time, noting the use of the same signature by other councils raised questions about the validity of the internal review decision.
89. On 31 August 2016, Port Phillip told the lawyer:
- Please note that each infringement will be reviewed by Port Phillip Parking Services on the grounds provided and will be responded to as per Council's infringement review process.

90. On 5 October 2016, the lawyer lodged an internal review application on behalf of a second client. Despite the lawyer's statement that the decision letter should confirm the authority of the decision maker, the decision sent to the client was again signed by an anonymous 'Appeals Review Officer'.

91. On 14 October 2016, the lawyer wrote requesting proof of the decision maker's authority. The council sent a further letter signed by the 'Appeals Review Officer' confirming the decision to uphold the infringement, without addressing the lawyer's request.

92. The lawyer told Ombudsman investigators he wrote to the council three more times - on 9 November 2016, 14 January 2017 and 17 May 2019.

93. The council's responses said decisions were made by members of council staff and it had complied with its obligations under the Act. The council's responses did not explain Tenix's role in the process.

Stonnington

94. On 8 July 2016, the Fine Defender lawyer lodged an internal review application with Stonnington on behalf of one client who had received two infringements from the council. Again, the applications stated that any decision letter should confirm the decision maker was properly authorised. The council's responses were signed by the same anonymous 'Appeals Review Officer' as other councils (see Figure 4).

95. The lawyer provided a copy of another letter to the council dated 26 September 2016 in which he questioned whether the decision maker had authority to conduct the review. He noted the council's decision letters included the postal address for Tenix Solutions and contended that employees of Tenix Solutions have no power to conduct reviews. The council eventually withdrew one infringement but referred the other matter to court for determination. The investigation has no evidence showing Stonnington addressed the lawyer's questions about the council's internal review processes.

The councils' legal advice

96. While the councils' responses to the lawyer did not acknowledge any doubts about their processes, the evidence shows they began conferring about the issues. In November 2016, a group of seven councils that outsourced their internal reviews to Tenix met and decided to seek joint legal advice from a senior barrister. The seven councils included Monash, Kingston, Glen Eira, Port Phillip and Stonnington and two other councils. The evidence shows this joint legal advice was received in December 2016.

97. Following receipt of the joint advice, Tenix and some councils began seeking further legal advice of their own. While Stonnington declined to confirm whether it obtained any advice on the grounds of legal professional privilege, Glen Eira confirmed the existence of several legal opinions. Port Phillip also confirmed that it got its own legal advice in February 2017.

98. Glen Eira and Port Phillip stressed that the legal advice contained conflicting legal views about whether Tenix could lawfully conduct internal reviews under the Infringements Act. Glen Eira told Ombudsman investigators in correspondence that legal advice provided 'inconsistent views', while Port Phillip referred to 'conflicting legal advice'.

99. The three councils declined to provide copies of their legal advice on the grounds of legal professional privilege. However, other evidence such as records of discussions between councils and agencies confirms the existence of different legal opinions about the Infringements Act.

100. The following summarises some of the legal issues raised by councils' outsourcing of internal review functions, based on Ombudsman investigators' analysis.

The legal issues – outsourcing internal reviews

Councils' decisions to outsource some or all of their internal review functions raise questions of administrative law – the area of law that deals with decision making by government agencies and officials.

It is a general principle of administrative law that statutory powers, such as those in the Infringements Act, can only be exercised by:

- the agency or officeholder named in the statute
- an agency or officeholder acting under a lawful delegation or authority from the named agency or officeholder.

Although the Department of Justice and Community Safety said the Victorian Government's intention in 2006 was that only enforcement agencies would decide internal reviews, the courts determine the meaning of Acts by looking at the language of the Act and applying rules of statutory interpretation. As Port Phillip noted in its response to a draft of this report, 'the intention of the Act is to be gleaned from the language of the Act itself (as distinct from the what the Department may say it intended the legislation to say)'.

Can a private contractor lawfully conduct internal reviews?

The Infringements Act confers the power to review infringement notices on an 'enforcement agency'.

Can a private contractor be an 'enforcement agency'?

The Infringements Act's definitions section (section 3) lists three categories of enforcement agencies:

(a) 'a person or body authorised by or under an Act to take proceedings for the infringement offence in respect of which the infringement notice or official warning was issued or served':

Paragraph (a) refers to people or bodies that can 'take proceedings' for the infringement offence. The Infringements Act does not define 'proceedings'. One argument is that 'proceedings' means court proceedings ie prosecutions.

The *Local Government Act 1989* (Vic) provides that a council or 'a person authorised by the Council' may institute proceedings in the council's name for 'the enforcement of any provision of any Act, regulation or local law for which the Council is responsible' (section 232). This suggests that councils may be able to authorise non-council parties, like private contractors, to prosecute infringement offences.

However, the Parliament has created separate, specific laws for prosecution of parking offences in the *Road Safety Act 1986* (Vic). This Act sets out the types of people and bodies authorised to prosecute parking infringement offences (section 77(2)(b)). They include councils and authorised members of council staff, but not private contractors. This Act suggests councils cannot authorise non-council parties like private contractors to prosecute parking infringement offences.

Under rules of statutory interpretation, specific provisions like those in the Road Safety Act are presumed to override more general provisions like those in the Local Government Act. This suggests private contractors such as Tenix cannot be an 'enforcement agency' under paragraph (a) of the definition, but this is open to legal argument.

(b) 'a person by whom, or body by which, a person or body referred to in paragraph (a) is employed or engaged to provide services if the taking of the proceedings referred to in that paragraph would occur in the course of that employment or in the course of providing those services':

A private contractor such as Tenix is not a body that engages people or bodies referred to in paragraph (a) ie it does not engage agencies or people that can prosecute infringement offences. This suggests Tenix cannot be an 'enforcement agency' under paragraph (b) of the definition.

(c) 'a prescribed person or body or person or body which is a member of a prescribed class of person or body':

The *Infringements Regulations 2016* (Vic) prescribe 27 categories of people and agencies as enforcement agencies (Schedule 2). They include councils, universities, TAFEs and certain hospitals. They do not include Tenix or other private contractors. Therefore, Tenix cannot be an enforcement agency under paragraph (c) of the definition.

Did the councils lawfully delegate their powers to a private contractor, or authorise a private contractor to exercise powers on their behalf?

The law does not allow decision makers to delegate their statutory powers unless there is an express or implied power of delegation.

In this case, councils have no express statutory power to delegate or authorise a private contractor such as Tenix to conduct internal reviews:

- The Infringements Act does not give enforcement agencies the power to delegate internal review functions to anyone else.
- The Local Government Act allows councils to delegate their powers to members of their own staff, but not to private contractors (section 98).

The courts have sometimes been willing to accept that decision makers have implied powers to delegate or authorise other public officers to exercise powers. For example, the law recognises that senior decision makers such as ministers cannot always make every statutory decision personally, and junior officers sometimes make decisions on their behalf. However, private contractors and their employees are not public officers.

Can a private contractor assist councils with internal reviews?

Agencies and officeholders with statutory decision making powers can engage administrative help with their functions eg preparing reports and recommendations and drafting decisions and reasons. However, the decision still needs to be made by the agency or officeholder with the statutory decision making power.

It would be necessary to look at the evidence from each council, particularly those that appeared to be tacitly accepting private contractor recommendations apparently without question, to determine whether the contractor was assisting with or, in fact, deciding internal reviews.

Changes to internal review processes

101. After councils received legal advice about the Infringements Act in 2016 and 2017, they began changing their internal review practices.
102. Monash and Kingston advised Ombudsman investigators that council officers began making internal review decisions in November and December 2016 respectively.
103. Glen Eira advised in correspondence that it changed its practices in December 2016 so that council officers undertook internal reviews. It said the change was 'for the avoidance of doubt and until absolute clarity of legal position was established'.
104. Port Phillip advised investigators that it changed its process in August 2017. It said Tenix still logs internal review applications in its database, but council officers now review each application, decide the outcome in accordance with council guidelines, and prepare written outcomes.
105. Stonnington provided evidence showing it also changed its internal review process. In February 2017, it introduced initial changes which meant Tenix still received internal review applications, but council officers reviewed the evidence and made decisions. The officers provided short reasons to Tenix, which then prepared and served the notices. In June 2018, the council changed its practices again and council officers now also serve decision notices.

Refund proposal

106. One council, Monash, continued seeking legal advice about its obligations. At a council meeting in October 2018, Monash determined it had an obligation to make a public disclosure about the issue, along with refunding money to affected motorists. The council's Chief Executive Officer notified the other councils that sought the joint legal advice in 2016.
107. The evidence shows councils began meeting about the issue again and discussed asking the Victorian Government to amend the Infringements Act to address the problem. In November 2018, Port Phillip wrote to Monash asking it to refrain from making any decision until enquiries with the Victorian Government were completed.
108. In the meantime, some councils began seeking their own legal advice about their obligations to refund money paid by motorists.
109. The evidence shows that, once again, the councils' legal advice was conflicting. Monash's public announcement said it believed it had a legal obligation to refund infringements. In correspondence with Ombudsman investigators, Stonnington said 'the question of whether the Council is required or should repay moneys raises a number of complex questions of law'. Glen Eira said that, assuming its reviews were invalid, it considered it did not have the ability to withdraw the review decisions.⁴ It said it was aware that people may bring claims to recover money paid to the council.

⁴ In response to a draft of this report, Glen Eira clarified that if its reviews were invalid, the effect would be that the reviews were not decided within the prescribed time and would be deemed to be withdrawn under section 24 of the Infringements Act. The council said it follows that it would be impossible to make a further withdrawal.

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110. The next section contains a summary of some of the legal issues raised by the refund proposal based on Ombudsman investigators' analysis.
111. All three councils estimated the cost of refunding infringements reviewed and upheld by Tenix since the 2006 changes to the law. The data shows:
- Glen Eira has more than 36,000 affected infringements valued at \$3.67 million.
 - Port Phillip has more than 87,000 affected infringements valued at \$8.8 million. Port Phillip noted that, when other administration costs were included, the total cost to the council would be \$10.83 million.
 - Stonnington has almost 81,000 affected infringements valued at around \$6.9 million, not including reviews involving Tenix in 2016-17.

The legal issues – refunding parking infringements

Are councils legally required to refund affected parking infringements?

The Infringements Act does not expressly state what agencies should do if one of their internal review decisions is made by someone without appropriate legal authority. As a result, the issue is open to interpretation.

The Infringements Act does state that if an enforcement agency does not conduct an internal review within the prescribed time (90 days), then the infringement notice is deemed to be withdrawn (section 24). When an infringement notice is withdrawn, the Act states that the infringement penalty must be refunded (section 18).

Do councils have a discretion to refund money?

Councils have a discretion to refund fines in the absence of a legal duty:

- The Infringements Act provides that enforcement agencies can withdraw infringement notices even after they have been paid. Where an infringement notice is withdrawn, the enforcement agency must repay the penalty amount and any penalty reminder fee (section 18).
- The Local Government Act states that councils may apply any money to repay a person any money overpaid or wrongly paid to a council (section 141).

Can motorists take legal action to recover paid monies?

Motorists who paid an infringement after a potentially invalid internal review have the option of taking legal proceedings against councils to recover their money by way of civil action for restitution. Motorists might argue they paid the infringement under the mistaken belief they had a legal obligation to do so.

Statute of limitations rules apply, however. The *Limitation of Actions Act 1958* (Vic) requires claimants to bring civil action within a certain period of time, in this case six years (sections 5 and 27).

There were conflicting views expressed during this investigation about when the six year period begins to run. One view is that the six year period runs from the time the council received the money from motorists. This would mean motorists who paid infringements before 2014 could no longer take legal action to recover their money. Another view is that the six year period begins to run from the time the motorist discovered the mistake.

Request for legislative change

112. Monash agreed to other councils' requests to explore a possible legislative solution before pursuing its refund plans. It approached the Victorian Government in October 2018. The matter was referred to the Department of Justice and Community Safety.
113. The Department told the investigation it was 'not aware of the extent of the affected councils' outsourcing activities' until it was approached by Monash. The Department participated in the Victorian Auditor-General's Office's 2009 audit on withdrawal of infringement notices, which described outsourcing arrangements at Port Phillip and Stonnington. However, it told Ombudsman investigators it did not have a role in closely monitoring operational arrangements for internal reviews until 2017.
114. The Department's records show it held a series of meetings and teleconferences with six councils, including the five councils named in this report. Some of the councils suggested amendments to the Infringements Act to address the legal doubts about their outsourcing arrangements.
115. Monash wrote formally to the Attorney-General at the end of November 2018 asking if the Victorian Government would consider a retrospective amendment to the Infringements Act. It said it believed it may have been an 'unintended consequence' of the Act that only councils could conduct internal reviews.
116. The Department obtained its own advice about the legal issues. It met with the six councils in December 2018 to discuss its advice, and emailed its 'preliminary views' on 19 December 2018. Amongst other things, it said:
- Tenix is not an 'enforcement agency' for the purposes of the Infringements Act.
 - Tenix could perform 'administrative tasks and make recommendations but the ultimate decision [about internal reviews] needed to be made by the council'.
 - The question of whether councils' outsourcing arrangements were lawful depends on processes in place at individual councils.
 - Councils did not have a positive duty to refund revenue collected from motorists, but could be sued by motorists who could argue they paid parking infringements following an internal review under the mistaken belief the infringement notice was still valid.
117. On 25 January 2019, the Attorney-General formally rejected Monash's request for retrospective amendments to the Infringements Act. She said she had been advised that it was the Victorian Government's 'deliberate policy intention' that enforcement agencies would discharge the responsibility to conduct internal reviews. She said the Victorian Government had not been aware of the use of outsourcing to determine internal reviews and did not tacitly approve of the practice. In these circumstances, she advised that she was not persuaded to submit a proposed retrospective amendment to Parliament.

Conflicting positions

118. Following the Attorney-General's advice, Monash councillors met in a closed council meeting on 26 February 2019. They decided to proceed with their plans to publicly disclose the questions regarding the councils' use of its private contractor, Tenix, and to announce plans to refund the affected infringements.
119. Monash informed the other six councils who had been meeting about the issue. On 4 March 2019, Kingston discussed the matter at a closed council meeting and also voted to implement a refund scheme.
120. In its public announcement, Monash said it believed it had 'a moral and legal obligation' to refund the infringements. Kingston's announcement said it wanted to be 'fair and transparent'.
121. The three councils subject to this investigation also briefed their councillors. Stonnington briefed its councillors at a closed council meeting on 4 February 2019.⁵ Glen Eira briefed its councillors at an 'assembly of councillors' meeting on 12 February 2019.⁶ Port Phillip considered the matter at a closed council meeting on 20 February 2019. As this report noted earlier, the three councils all subsequently issued announcements defending the lawfulness of their internal review processes.
122. When Ombudsman investigators compared the legal positions adopted by the Department and the councils in this investigation, it was apparent they have different interpretations of the Infringements Act:
- The Department of Justice and Community Safety maintained that Tenix is not an enforcement agency. The announcements by Monash and Kingston also took this position, although both said the Victorian Government needed to make the Act clearer.
 - Stonnington said it was 'presently inclined' to think that Tenix was not an enforcement agency, although it noted paragraph (b) of the definition of enforcement agency was 'ambiguous and open to interpretation'. It said it considers enforcement agencies can 'obtain assistance' from Tenix.
 - Glen Eira said it has taken the view that 'although the legislation is unclear ... it is open to it to conclude that the contractual provisions between Council and Tenix are sufficient to give rise to an argument that Tenix was an enforcement agency'.
123. At the time this report was drafted, the legal issues had not been tested in court and remained unresolved.

⁵ Council meetings must ordinarily be open to members of the public, but a council can resolve that a meeting be closed in certain circumstances, including where the meeting is discussing contractual matters or legal advice: *Local Government Act 1989* (Vic) s 89.

⁶ An 'assembly of councillors' is a meeting of an advisory committee of councillors which considers matters that are intended or likely to be the subject of a future council decision, or a decision delegated by the council to a person or committee. Assemblies of councillors are not public meetings, but the Chief Executive Officer must ensure a written record of the assembly is reported at, and incorporated in the minutes of, a council meeting: *Local Government Act 1989* (Vic) s 3 and s 80A.

Other affected councils and agencies

124. The councils discussed in this report represent a small number of the councils and agencies in Victoria that can issue parking infringements and conduct internal reviews. All 79 local councils in Victoria can issue parking infringements along with many Victorian Government agencies, such as universities, TAFE institutes, alpine resorts and public hospitals.
125. In the course of investigating internal review practices at Glen Eira, Port Phillip and Stonnington, Ombudsman investigators identified evidence that some other councils and Victorian Government agencies also engaged private contractors to assist with parking services.
126. The investigation asked the Department of Justice and Community Safety which councils had outsourced internal review functions. The Department provided a list of 11 additional councils known to have some association with private contractors. However, it said it has:
- always considered the operational arrangements for issuing infringements and conducting internal reviews to be a matter for each enforcement agency and expected them to operate in accordance with the law ... Consistent with this, the department does not have visibility of the contractual arrangements councils or other enforcement agencies utilise for their activities.
127. The Department said it therefore 'remains unknown to the department' precisely what services were provided by those contractors, and the extent to which they may have contravened the Infringement Act's requirement for enforcement agencies to conduct reviews.
128. The Department said it had made enquiries with some Victorian Government agencies, which confirmed they were not affected by this issue. However, it said its enquiries had not extended to 'smaller public authorities'.
129. This report does not name other councils and agencies possibly outsourcing internal review decisions as the investigation has limited evidence about their practices.
130. The Department of Justice and Community Safety wrote to all councils and Victorian Government enforcement agencies on 25 March 2019, following Monash's and Kingston's announcements. It advised that:
- Enforcement agencies are permitted to engage third parties to provide services of an administrative nature in support of their functions under the Infringements Act. The Act does however require that an internal review be conducted by the enforcement agency. This restriction was a deliberate policy decision taken upon the creation of a statutory right to internal review in the Act, which reflects that these decisions relate to the prosecutorial functions of enforcement agencies.
131. At the time this report was drafted, the Department had not yet updated its internal review guidelines to include this information.
132. In response to the draft report, the Department said it has started consulting enforcement agencies and other stakeholders, and it is envisaged new guidelines will provide 'stronger guidance' on outsourcing practices. The Department said it is unlikely the new guidelines will provide conclusive legal advice about whether agencies can outsource internal reviews, and reiterated that councils and other agencies are responsible for ensuring they comply with the law. It said, while it believes only enforcement agencies can conduct internal reviews under the Act, the question of what constitutes an enforcement agency depends on the nature of the agency and the type of infringement offence. The Department said:
- Given the number of enforcement agencies within Victoria, and the range of offences in which those agencies may be enforcement agencies, it remains the department's view that it is the responsibility of enforcement agencies to determine whether they are lawfully issuing infringement notices, and lawfully conducting internal reviews.

Conclusions

Lawfulness

133. This investigation began after two councils publicly acknowledged legal doubts about their use of a private contractor to review parking infringements. The evidence shows the three councils subject to this investigation – Glen Eira, Port Phillip and Stonnington – also used the private contractor in a way that appears to be contrary to law.
134. The Infringements Act confines the power to conduct internal reviews to enforcement agencies. The Act's definition of 'enforcement agency' is complex and has generated conflicting legal views. Glen Eira, for example, argues that private contractors can be an enforcement agency. However, the Attorney-General and the Department of Justice and Community Safety, which administer the Act, take the position that private contractors do not fall within the definition. The investigation is persuaded by their position. It is supported by recent legal advice, which the Department provided to the investigation. It is also consistent with the investigation's own analysis of the Act.
135. In practical terms, this means councils can use private contractors like Tenix to provide administrative assistance with internal reviews. However, they cannot use private contractors to make the internal review decisions.
136. Evidence shows Glen Eira allowed Tenix to make internal review decisions on its behalf between 2006 and late 2016. This is clear from its contracts with Tenix and a sample of the council's internal review files.
137. In the case of Port Phillip and Stonnington, the evidence shows they had two different processes for handling internal reviews:
 - In certain cases, Tenix referred internal review applications to council officers for consideration and decision.
 - In other cases, Tenix considered the applications and purportedly made recommendations to council officers.
138. In the latter cases, the councils claim their officers made the final decisions and Tenix's role was limited to assistance. However, a sample of internal review files shows that, in practice, council officers 'rubber-stamped' Tenix's recommendations in such volumes, and with such speed, that they could not possibly have considered motorists' applications or evidence. In these circumstances, the councils' claims that council officers decided the internal reviews are not credible. In effect, the decisions were made by Tenix.
139. The investigation therefore concludes that all three councils used their private contractor, Tenix, in a way that appears to be contrary to law.
140. When the Ombudsman gave councils an opportunity to respond to these conclusions, their responses were as follows:

Glen Eira

Council welcomes the perspectives of the Victorian Ombudsman on this complex matter. We note that the Ombudsman's review did not concern itself with the merit of any infringement review, but rather, the legal administrative authority of Tenix to act on Council's behalf in dealing with such reviews, following amendments to the Infringements Act.

As has been highlighted throughout the report, the issue of the validity of Council's actions in managing internal reviews of parking infringements from 2006-2016 has been vexed by multiple and conflicting legal opinion, unclear communications from the Department of Justice and Community Safety, and a 2009 Victorian Auditor General report that in our view, by omission, validated the practice of outsourcing internal reviews. The administrative perspectives and opinions outlined in this 2019 report are therefore helpful in considering any future action that Council may take in responding to public concern on this matter.

In Council's opinion, at the core of this issue is whether the implications of the 2006 changes to the Infringements Act regarding the ability of agencies to outsource enforcement agency responses was intentional or unintentional. While we note the attestations of the Department of Justice and Community Safety reflected in the report, there is little on the record that transparently backs this up. We ... respectfully suggest that it may be appropriate for the Ombudsman to probe this issue further.

Port Phillip

As the Draft Report recognises at various points, there are conflicting legal views about the meaning of the Act and its application to internal reviews. Like the other two councils which have been the subject of the investigation, Council has found itself constrained in making available legal advice that adopts a different view than that reached by your office (and, presumably, the Department). Arguably disclosure would waive the client legal (and legal professional) privilege that attaches to advice expressing these different views.

What Council can – and does – say is that it believes it has, at all times, acted lawfully. It takes the view that members of its staff with appropriate delegations made decisions on behalf of Council in its capacity as an enforcement agency. Tenix's role stopped at administrative assistance.

... In the end, as the Draft Report acknowledges, only a Court can provide authoritative guidance on the interpretation of the Act. In fairness to Council, however, any Report based on the Draft Report should attempt a deeper analysis and do far more to canvass the possibility that alternative approaches are credible and understandable.

... Council's position is that ... it acted lawfully, and in good faith.

Stonnington

The opinion that Council's use of Tenix is contrary to law appears to be largely based on the view that the arrangements between Council and Tenix practically meant that Council officers simply 'rubber-stamped' Tenix's recommendations. Council rejects this position entirely.

... The opinion does not seem to take into account the fact that Council provided Tenix with detailed guidelines (established by Council) and required Tenix to assist and provide recommendations based on those guidelines. The guidelines clearly set out the parameters within which Council required the infringements to be initially assessed and did not allow for discretion on Tenix's part in making its recommendations.

The purpose of this arrangement was to ensure that efficiency in this process was achieved. Council officers were still appropriately instructed to review Tenix's recommendations and were the ultimate and final decision makers in the process.

Whether or not Council's relationship with Tenix was 'contrary to law' turns on who actually held the decision making power. At no point in its relationship with Tenix did Council purport to delegate its decision making powers to Tenix. It was clear that Tenix simply provided Council with its recommendations, which were not intended to be binding.

Additionally, it is worth noting that Council has reviewed the statistics on the number of internal review decisions for infringements. Council has found that the percentage of applications for review where the infringement is upheld has remained relatively similar between the period where Tenix was providing recommendations ie up to February 2017 and where Tenix was taking a less active role. That is, there is nothing to suggest that the relationship between Tenix and Council resulted in a greater number of infringement reviews being overturned.

... The drafting of the [Infringement Act] is unclear and requires amendment, as previously sought by a number of councils. That much is clear, not only from the very existence of the Ombudsman's enquiry into this matter, but from the fact that numerous councils have acted on varying interpretations of the [Act] and the fact that the Victorian Auditor General's Office acknowledged councils' use of contractors in internal reviews in its report of June 2009 but did not raise any concerns with that practice.

The ambiguity of the [Act] is also reflected in the inconsistent messages Council has received from the Department of Justice, VAGO and (with respect) the Ombudsman in relation to the appropriateness of Council's arrangements with Tenix.

Fairness and transparency

141. Importantly, the evidence in this investigation raises questions about the broader obligations of public authorities, particularly their obligations to act accountably and transparently.
142. The evidence in this investigation shows that before 2016, the three councils believed their outsourcing arrangements were lawful. The Department of Justice and Community Safety says it communicated that enforcement agencies should decide internal reviews themselves but it did not have a role in closely monitoring arrangements until 2017. The evidence shows that the Department knew that Port Phillip and Stonnington were outsourcing internal reviews as a result of VAGO's audit in 2009. Its internal review guidelines for enforcement agencies remained silent on the issue. In hindsight, its communication needed to be clearer.
143. In response to a draft of this report, the Department said it 'accepts that its guidelines could have done more to draw attention to the legal complexity of this area, and intends to correct this gap.'
144. From 2016, the Fine Defender lawyer put the councils on notice that their use of Tenix might, in fact, be unlawful.
145. The evidence shows the three councils acted responsibly by seeking legal advice and changing their processes to bring internal review decisions in-house, consistent with the Infringements Act.
146. However, the evidence shows they withheld important information from affected motorists and the public.
147. Firstly, the councils used a generic signature and position title in their internal review decision letters, disguising the identity of their decision makers. When investigators questioned this practice, Glen Eira responded that there was no legislative requirement to identify the decision maker, while Port Phillip and Stonnington cited the need to protect employees. The three councils did not address their obligations to behave accountably and transparently. Their practices meant motorists had their legal rights and liabilities determined by anonymous individuals, with no way of telling whether those individuals held appropriate authority.
148. Secondly, the Fine Defender lawyer began asking reasonable questions about these issues in 2016, but the councils did not address them. In response to further questioning, Glen Eira and Port Phillip continued to assert council officers had made decisions and they had complied with the Act, without explaining Tenix's role.
149. Affected motorists and the public only learned of the nature of Tenix's role and legal doubts about the councils' actions, as a result of the announcements from Monash and Kingston in 2019.
150. Based on this evidence, the investigation is satisfied that the three councils failed to ensure transparency and accountability in their decision making.
151. When the Ombudsman gave councils an opportunity to respond to draft conclusions about this matter, the councils defended their positions:

Glen Eira

We are disappointed at the finding that Council did not act accountably and transparently in failing to disclose the name of the decision maker on our internal review decision letters. While we accept that disclosing the name of the decision maker would have demonstrated greater transparency, we still contend that we have always acted consistent with our legislative obligations in this regard.

Port Phillip

It is ... to be noted that Council explained that, quite deliberately, little information was given about the identity of the member of Council staff who made the decision for reasons of privacy

More fundamentally, there was, during the relevant period, *no* legislative obligation to disclose details of those who made internal review decisions ... Such criticism is inherently unfair in circumstances where Tenix was providing administrative assistance and Council wished to protect the privacy of its staff. Further, it is not as though any applicant for internal review had no means of following up a letter sent to them by the Appeals Review Officer.

The second of the alleged failures concerns responses to issues raised by [the Fine Defender lawyer]. Council invites your officers to again look at this correspondence. The correspondence often adopted something of a 'scattergun' approach, raising a number of issues and not presenting any compelling case for reconsideration of the practice being followed.

... Council's position, then, is that it did not embark upon any concealment of identity for improper purposes or fail to engage with any discrete issue of validity raised by [the lawyer].

... It rejects any suggestion that there was no transparency or fairness in its internal review processes merely because the extent of Tenix's involvement in the process was not apparent from communications with applicants.

Stonnington

Council strongly rejects the assertion that it has acted unreasonably or wrongly in signing the internal review notice 'Appeals Review Officer' with a generic signature. There is no requirement in the [Infringements Act] for the decision maker to be identified by name. Council understands that part of its objectives (as outlined in section 3C of the *Local Government Act 1989* (Vic)) is to 'ensure transparency and accountability in Council decision making'.

In keeping with this objective, Council infringements expressly set out the review process available to the recipient, and set out clearly the reasons for the results of the internal review. Section 3C of the [Local Government Act] does not require that Council specifically identify each individual person involved in making a decision, and Council queries the utility in such a practice.

Indeed, such a literal interpretation of the [Local Government Act] would be inconsistent with other obligations Council owes, such as the duty it owes to its council officers as an employer. Council's practice ... is based on a proper and reasonable consideration of the officers' wellbeing – that is, to avoid the officers becoming the target of abuse from disgruntled applicants.

... Council has not acted unreasonably or wrongly in electing not to provide [the Fine Defender lawyer] fulsome answers to his questions. There is no requirement on Council to respond to queries of this kind, and no link between a failure to do so and being unreasonable. A council is under no obligation to answer questions put by a lawyer in the absence of court proceedings.

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152. The investigation appreciates the councils' concerns for the safety of their employees. However, many other public authorities and officers deal with members of the public in difficult circumstances and face similar challenges. They manage these challenges without hiding their identities.
 153. One example is parking inspectors. The *Infringement Regulations 2016* (Vic) require councils to identify these officers on parking tickets either by name or an 'enforcement agency identifying reference' (regulation 14).
 154. The councils' statements that they currently have no express legal obligations to identify internal review decision makers or answer questions from lawyers overlooks their broader obligations as public authorities. Councils have been entrusted with a service to the public that affects people's rights and liabilities. With that trust comes a responsibility to behave accountably and transparently. The Infringements Act only permits certain persons to make internal review decisions. Affected motorists cannot tell whether their internal review decision was authorised and valid, unless they know the identity of their decision maker. This transparency builds public confidence in the system.
 155. The councils therefore need to consider alternative ways to balance their obligations to their employees with their obligations to act accountably and transparently.

The need for resolution

156. At the time this investigation concluded, the issues surrounding the use of contractors to review parking infringements remained unsatisfactory.
157. The investigation confirmed that at least five Melbourne councils outsourced internal reviews of parking infringements to a private contractor over a period of ten years. Two councils, Monash and Kingston, have publicly acknowledged legal doubts about this arrangement and have allocated \$4.9 million dollars to refund affected motorists. The three councils subject to this investigation estimate refunding affected motorists would cost their councils over \$19 million, not including administration costs. They continue to assert their practices were lawful.
158. At the time this report was drafted, some affected motorists were receiving refunds. Others were not.
159. While the Ombudsman has reached the opinion that the three councils subject to this investigation appear to have acted contrary to law, she is not a court and her opinions are not legal determinations. The Department and councils must take appropriate action to resolve the matter, otherwise motorists will have to consider their legal options.
160. When the Ombudsman gave the three councils an opportunity to respond to these conclusions, they offered to consider particular reimbursements as a 'goodwill gesture', as follows:

Glen Eira

In the case of Glen Eira, and as outlined in the report, the value of infringements collected and subject to internal review during 2006-2016 was \$3.67 million. This is not an inconsiderable amount of revenue that would normally be invested in community services and facilities to the benefit of the broad Glen Eira community. As the Report confirms, it is a matter of discretion and interpretation what action a Council should take in these circumstances. It would be irresponsible of Council to initiate any reimbursement of that money unless there were transparent and valid grounds to do so.

Despite the lack of any legal determination regarding the reasonableness of Council's actions, we do take our responsibility to act ethically and with integrity seriously. Council will therefore reflect on the findings and recommendations of this report and give early consideration to what further action may be appropriate in the circumstances, including consideration of an in good faith reimbursement scheme.

Port Phillip

Council is mindful of its obligations under the Local Government Act to use public funds appropriately ... It is also mindful of the fact that refunding monies when there is no legal basis for doing so could be perceived as maladministration and/or a misuse of public funds (particularly when those funds could otherwise be used for much needed community services and projects).

Council is also mindful that, although it has acted lawfully, there is also a need for community confidence in its administrative decision making process and acknowledges the Ombudsman's view that it has not given adequate consideration to its decision making on some internal review applications.

Given the above and notwithstanding Council's objections to the Ombudsman's findings and its continuing belief that it has acted lawfully at all times, Council is willing to engage with any person who sought internal review and maintains that Council did not lawfully consider his or her application for internal review.

To this end, Council will set up a process aimed at refunding fees as a goodwill gesture, where applications for internal review for parking infringements were refused and where Council determines that inadequate consideration may have been given to the exercise of discretion to determine the application during the period July 2006 to August 2017.

Stonnington

While Council maintains it has no legal liability to take any action regarding its internal reviews of parking infringements, it is nevertheless willing, as a gesture of goodwill, to resolve the issues under investigation. Council proposes to:

1. Reconsider any submission made by a person aggrieved by Council's internal review of the person's parking infringement:
 - where the internal review took place between the commencement of the [Infringements Act] in 2006 and 9 February 2017; and
 - if in any instance there is no evidence that an appropriately authorised Council officer in fact exercised his or her own discretion on the review, refund the amount paid.
2. Make a statement on Council's website that Council has determined to reconsider internal reviews made between the commencement of the [Infringements Act] in 2006 and 9 February 2017.

Broader issues

161. In their responses to a draft of this report, Glen Eira and Port Phillip noted the evidence that some other councils and Victorian Government agencies also used contractors for parking infringement internal reviews.
162. In the interests of early exposure and resolution of the issues, the Ombudsman has decided to publish this report instead of expanding her investigation to other councils and agencies.
163. The Ombudsman agrees, however, that it is in the public interest for all councils and agencies to interpret their legal obligations regarding internal reviews in a way that is clear and consistent.
164. The Ombudsman will be writing to other councils and agencies named in the evidence and asking them to review their past use of contractors in light of this report. It is in the interests of all parties that councils and agencies resolve these matters themselves, to avoid public resources being consumed through further investigations.
165. The Department of Justice and Community Safety can also promote clarity and consistency in the future.

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166. The Director of Fines Victoria gained stronger powers in December 2017 to request information from, and make recommendations to, enforcement agencies about internal review practices. This report proposes that the Director use these powers to monitor enforcement agencies' use of contractors in future.
167. This report also proposes that the Department of Justice and Community Safety seek amendments to the Infringements Act to clarify who can conduct parking infringement internal reviews, to resolve the question of outsourcing once and for all.

Opinion

168. Pursuant to section 23(1)(a) of the Ombudsman Act and based on the evidence obtained in this investigation, the Ombudsman is of the opinion that Glen Eira's, Port Phillip's and Stonnington's use of a private contractor to decide parking infringement internal reviews during the following periods appears to have been contrary to law:
- in the case of Glen Eira, from July 2006 to December 2016
 - in the case of Port Phillip, from July 2006 to August 2017
 - in the case of Stonnington, from July 2006 to February 2017.
169. Pursuant to section 23(1)(g) of the Ombudsman Act and based on evidence obtained in this investigation, the Ombudsman is of the opinion that the following actions of Glen Eira, Port Phillip and Stonnington were wrong:
- the failure to appropriately identify decision makers in internal review decision notices
 - the failure to explain Tenix's role in their internal review processes when asked by the Fine Defender lawyer.

Recommendations

In light of the responses of the three councils and the Department of Justice and Community Safety to this report, the Ombudsman makes the following recommendations:

To Glen Eira, Port Phillip and Stonnington City Councils:

Recommendation 1

Establish an arrangement by April 2020 under which:

- a) motorists can contact the council if their parking infringement internal review application was rejected between the commencement of the Infringements Act and changes to council internal review practices in late 2016 and 2017
- b) refund the infringement where the council does not have evidence that an appropriately delegated council officer read the application and exercised their own discretion
- c) advertise the arrangement prominently on the council's website and social media accounts and via a media release.

Recommendation 2

Identify decision makers in internal review decision notices by name and title or, if preferred, by an anonymised but identifying reference.

Councils' responses:

Glen Eira:

Glen Eira accepted both recommendations. It said:

We accept that the community has a reasonable expectation that Councils, as public bodies, adopt the highest standards of transparency, integrity and accountability.

We take this responsibility seriously and therefore remain disappointed that the report has concluded with an opinion that we used Tenix in a manner that may be contrary to law and that we were not sufficiently transparent with regards to identifying the details of the appeals review officer. Like the other Councils subject to this review, we have been vexed by the lack of clarity in legislative interpretation, and have proactively sought resolution in a manner that was in the best interests of the community that we serve. We also note that the legal interpretation has not yet been tested in court and therefore remains unresolved.

That being said, and in the interests of maintaining public confidence in our institution and its civic governance, we accept the recommendations as outlined and will work towards their implementation in line with the suggested timelines.

Regarding recommendation 1, the council said this was:

an acceptable risk mitigation strategy for Council and will prevent those who feel aggrieved by Council's perceived process failings from needing to initiate costly legal action to seek redress.

Regarding recommendation 2, the council said it intends to implement this recommendation by providing decision makers with a unique authorisation number, which will be included in notification letters.

Port Phillip:

Port Phillip said it accepts 'the thrust' of both recommendations:

[a]though it continues to take issue with some of the observations in the Draft Report, it accepts that the speed of its decision-making in some instances has given rise to a view that it did not give adequate consideration to some internal review applications.

It said:

[it] will, as previously advised, set up a system under which motorists who have had their internal review applications rejected can seek refunds of parking infringement penalties that have been paid.

It said it was working through the details. It also said it will:

adopt a practice of communicating internal review decisions by use of an anonymised identifying reference.

It said this will reflect its desire:

to protect the privacy of those members of its staff who make decisions that can sometimes give rise to hostile reactions.

Stonnington:

Stonnington said it was willing to accept and implement the recommendations, while stating it:

maintains it has no legal liability to take any action regarding its internal reviews of parking infringements.

To the Director, Fines Victoria:**Recommendation 3**

Update the internal review guidelines for enforcement agencies by June 2020 to advise councils and relevant enforcement agencies:

- a) not to use contractors to decide parking infringement internal reviews
- b) to identify internal review decision makers in notices by name or, if preferred, by an anonymised but identifying reference.

Recommendation 4

By the end of 2020, request the following information under section 53B of the Infringements Act from enforcement agencies that use contractors for parking infringement internal reviews:

- a) information about their internal review practices
- b) copies of relevant contracts with the contractor
- c) a sample of the internal review records

and make recommendations under section 53C, as required, to ensure the councils and relevant enforcement agencies do not use contractors to decide parking infringement internal reviews.

Department's response:

The Secretary of the Department of Justice and Community Safety accepted both recommendations on behalf of the Director. She said the recommendations in relation to the Director's internal review oversight powers:

will be implemented as part of the program of internal review oversight activities currently underway.

**To the Secretary, Department of Justice
and Community Safety:**

Recommendation 5

Seek amendments to the Infringements Act to clarify who can conduct internal reviews of parking infringements, for the avoidance of doubt.

Department's response:

The Secretary of the Department accepted the recommendation and said the department will progress it, while noting 'ultimately any legislative amendments are a matter for the government and Parliament'.



Appendix 1: Council comparisons

	Glen Eira	Port Phillip
Did the council outsource internal review functions to Tenix?	Yes	Yes
What was Tenix's role?	Tenix conducted and decided reviews	In certain cases, Tenix referred reviews to the council for decision. In other cases, the council says Tenix assisted and made recommendations. The council says council staff still made decisions in these cases. The evidence suggests the council officers routinely approved recommendations without reviewing individual applications or evidence.
When did the council become aware of legal questions?	2016	2016
Has the council changed its internal review process?	Yes. The council says council officers have conducted and decided internal reviews since December 2016.	Yes. The council says council officers have conducted and decided internal reviews since August 2017.
Did the council refund infringements reviewed by Tenix?	No	No
Does the council believe Tenix is an enforcement agency under the Infringements Act?	The council says 'it is open to it to conclude' that Tenix was an enforcement agency	The council says there is 'conflicting legal advice' and its position is that it acted lawfully
What is the estimated cost of refunding infringements reviewed and upheld by Tenix?	\$3.69 million	\$8.8 million plus administration costs

Stonnington	Monash*	Kingston*
Yes	Yes	Yes
<p>In certain cases, Tenix referred reviews to the council for decision.</p> <p>In other cases, the council says Tenix assisted and made recommendations. The council says council staff still made decisions in these cases. The evidence suggests the council officers routinely approved recommendations without reviewing individual applications or evidence.</p>	Tenix conducted and decided reviews	Tenix conducted and decided reviews
2006	2016	2016
Yes. The council says council officers have conducted and decided internal reviews since February 2017.	Yes. The council says Tenix makes recommendations, but council officers have considered evidence and made decisions since November 2016.	Yes. The council says council officers have conducted and decided internal reviews since December 2016.
No	Yes	Yes
The council is 'presently inclined' to think that Tenix is not an enforcement agency but could make recommendations to council officers	The council says its investigations showed Tenix is not an enforcement agency	The council says legal advice has been 'mixed'
\$6.9 million (not including 2016-17 internal reviews)	\$2.6 million	\$2.3 million

* Monash and Kingston were not the subject of this investigation. This information has been included for the purposes of comparison.

Victorian Ombudsman's Parliamentary Reports tabled since April 2014

2019

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

2018

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

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

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

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

Victorian Ombudsman's Parliamentary Reports tabled since April 2014

2015

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

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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