

INVESTIGATION SUMMARY

# **Outsourcing small claims handling**

How councils manage  
fairness and responsibility

March 2026

# Summary

In Victoria, people can claim compensation from local councils for injuries or property damage due to council negligence.

Councils have insurance to protect the community from the financial impact of larger claims. For each claim the insurer handles, the council must pay a contribution, known as an 'excess'.

The excess amount varies across councils, depending on the terms of the insurance policy and how much risk the council is willing to take on. The highest excess we saw during this investigation was \$50,000.

In many cases the amount of compensation sought is less than the excess the council would pay if it lodged an insurance claim. These relatively small claims are known as 'under-excess claims'.

While some of Victoria's 79 councils handle under-excess claims in-house, more than half seek help from external contractors. These third-party claims handlers administer and assess claims, and give advice and recommendations about liability, risk mitigation and other matters. Councils make the final call on whether to accept claims, and self-fund any resulting payments – which can range from relatively small sums to tens of thousands of dollars.

Councils outsource claims management for a variety of reasons. Small councils with few staff told us they lack necessary resources. Large councils may have more staff, but densely populated areas can result in high numbers of claims. Some councils want subject matter experts to handle the process and manage challenging communications. Others are seeking a cheaper alternative to legal advice.

This report looks at how councils and the external contractors performing a public function on their behalf are meeting their obligations in relation to under-excess claims.

The overarching governance principles in the *Local Government Act 2020* require that:

- priority is to be given to achieving the best outcomes for the municipal community ...
- the economic, social and environmental sustainability of the municipal district ... is to be promoted ...
- the ongoing financial viability of the Council is to be ensured ...
- the transparency of Council decisions, actions and information is to be ensured.

The Act also requires councils to make decisions 'fairly and on the merits'. When they make decisions, councils must ensure that anyone whose rights will be affected can have their say and have their interests considered. Councils must also have a fair and effective process for considering and responding to complaints.

When deciding whether to pay a claim, a council as a public body has a responsibility to be fair to the individual while considering the broader public interest.

While people making claims expect their council to fairly assess each claim on its individual merits, councils have many competing demands. They need to be able to fund services, show value for money in spending and meet community expectations. At the same time, their income sources are constrained, with costs increasing and council rates capped.

Councils should be exercising discretion within the bounds of their policies and budgets to ensure fair treatment. They should be communicating with people clearly and respectfully, and be open to complaints and reviewing decisions.

At the same time, councils have a right and an obligation to the community to responsibly defend allegations of negligence. They may also be limited by restrictions placed on them by their insurers, such as not admitting fault.

The Municipal Association of Victoria is the legislated peak body for local government in Victoria and provides services such as specialist policy advice and insurance. It said:

The claims process is, by its nature, adversarial with the burden of proof placed on the claimant. Council liability to claims of negligence are at times difficult to determine, as is the value of a claim.

Councils will often settle smaller claims using 'ex-gratia' payments, which are made without admitting any responsibility. Settling claims allows councils to resolve them without involving insurers or going to court. This is often an easier and cheaper option for all involved.

The under-excess claims handlers we spoke to told us they had extensive experience in the insurance industry, specifically in managing claims. Despite administering claims, under-excess claims handlers are not required to be registered insurance companies. This means they are not usually regulated by the Australian Securities and Investments Commission ('ASIC') and are not required to hold an Australian Financial Services Licence ('AFSL') unless they are part of an insurance business.

ASIC regulates insurance companies to ensure they act efficiently, honestly and fairly, employ qualified staff and use advertising to inform customers, rather than to mislead them. But under-excess claims handlers without an AFSL do not have these explicit obligations.

It is the role of councils to ensure their contractors, including under-excess claims handlers, meet the council's obligations under the Local Government Act and adhere to all council policies and procedures.

## Why we investigated

Councils use claims handlers to provide professional advice, to make the process more consistent and to ensure claims are managed in a financially responsible way.

However, in practice these objectives are not always being balanced. Sometimes council financial interests are taking priority over fairness and good customer service.

Because of this, some people are dissatisfied with their claim outcome, believing they are entitled to more compensation than offered. Some people are also dissatisfied with the process and the way they are treated.

Between January 2022 and June 2025, the Ombudsman received more than 650 complaints about local council financial compensation and damages matters. These were not just under excess claims. The claims handlers we investigated told us they handled about 8,000 council under-excess claims in this period.

Some of the most concerning themes from the complaints to our office emerged from cases involving under-excess claims handlers. These involved claims for damage worth thousands of dollars.

### Common reasons for claims:

- injuries from uneven and damaged footpaths
- damage to vehicles and bicycles caused by potholes
- damage to driveways and fences caused by council trees.

### Common complaints about claims handling:

- councils denying claims despite the people making them believing they have genuine case for compensation
- communication issues
- unclear decision making
- no or limited pathways for reviewing claim decisions.

**Figure 1: The councils and claims handlers discussed in this report**



Source: Victorian Ombudsman based on information from councils and claims handlers

## What we found

### Issue 1: Some councils are presenting under-excess claims handlers as independent

Some claims handlers and councils tell people that claims handlers are ‘independent’, when in fact they are contracted to, and overseen by, councils. Claims handlers’ contracts with councils explicitly oblige them to act to protect the commercial interests of councils, but this is supposed to be done in a fair and equitable manner by also considering the experience and rights of people making claims.

Presenting claims handlers as independent led some people to believe that the decision on their claim was impartial. They were not aware of the commercial relationship between the claims handler and the council.

### Issue 2: Under-excess claims handlers and councils sometimes make unreasonable decisions

Sometimes, claims handlers deny claims on a council’s behalf without considering the genuine merits of the claim or if a council might be partially responsible. This is not fair. Even worse, they sometimes deny claims, or advise councils to do so, even though they think the council would be found liable if the matter went to court.

These denials appear to be an effort to prevent people with claims from receiving what they may otherwise be legally entitled to.

Claims handlers sometimes use legal language in correspondence with people making claims. This can be confusing and intimidating for people.

### Issue 3: Councils are often failing to inform people of their right to have a decision reviewed

Councils and claims handlers often do not offer people a way to have their claim decision reviewed if they are unhappy with the outcome. Many people are unaware that they can challenge a claims handler’s decision, including by starting court action.

Councils are required to have a fair complaints process which should apply to complaints about claims. However, complaints about claims are often not recognised as complaints and are simply treated as part of the claims process. Councils’ customer service charters and complaints policies apply to the claims process, and claimants should be advised of this.

# Recommendations

All Victorian councils should consider how the following recommendations apply to their own practice, and take steps to ensure that claims management is fair, reasonable and compliant with the Local Government Act.

Pursuant to section 23(2) of *the Ombudsman Act 1973*, it is recommended that:

## Recommendation 1

To Councils A, B and C

Within 90 days, review relevant claims decisions highlighted in the case studies in this report.

## Recommendation 2

To Councils B, C and D

Within 90 days, update their approach to accurately inform people making under-excess claims about the role of under-excess claims handlers, including that they are not independent but are acting on the council's behalf.

## Recommendation 3

To Councils B, C and D

Within six months, review and enforce contracts that:

- clarify the role of claims handlers
- oblige claims handlers to better balance the councils' financial sustainability with fair and ethical outcomes for claimants, and good customer service
- require claims handlers to comply with relevant legislation, council policies and guidelines.

## Recommendation 4

To Councils A, B, C and D

Within 90 days, update their approach to apply their existing customer service standards and complaints policies to the under-excess claims process, including:

- ensuring people who are dissatisfied with an under-excess claim decision can access an appropriate internal review process which includes a final step that is handled by a suitably authorised council officer
- informing people of their other options, like making a claim for compensation in a court.



To download a copy of the full report go to  
[ombudsman.vic.gov.au](https://ombudsman.vic.gov.au)