

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

March 2021

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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 *Outsourcing of parking fine internal reviews – a follow-up report*.



Deborah Glass OBE

Ombudsman

17 March 2021

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Foreword

“ Tens of thousands of people have been affected by this saga, and I am pleased that all agencies concerned have now agreed to set up refund schemes. ”

Every so often, I table a report suspecting what we discovered during our investigation is just the tip of the iceberg. This has again proven to be the case with the outsourcing of internal reviews of parking fines.

In February 2020 I tabled a report about parking fines internal reviews – when motorists challenged the fairness or legitimacy of a fine – in three Melbourne councils. I concluded then that a longstanding practice of outsourcing reviews appeared to be contrary to law. Before my investigation, two councils had acknowledged outsourcing their reviews and decided to refund affected motorists. Following my investigation another three councils agreed to set up refund schemes, although they did not agree the practice was unlawful.

I felt it was in the greater public interest to swiftly conclude my investigation into the three councils than to widen it, but said I would be following up with any other agencies we identified which might have similar practices.

This report reveals that of 19 agencies across Victoria we followed up with, seven had outsourced their internal reviews in ways similar to those discussed in my 2020 report. Four had already announced refund plans. One had previously invited motorists to contact it with any concerns and will make a further announcement. Two had not announced plans at the time we provided a draft of this report but have now agreed to, while one continues to assert their view that its practices were lawful.

Fines are part of life and if people do the wrong thing they should be fined – but it needs to be done properly, fairly and in accordance with legislation.

People also have the right to have their fines reviewed by the agency making the decision. What my investigation found in 2020 was that thousands of motorists had not been afforded the right decision-making in the appeal process – which had been contracted out in a manner that appeared to be contrary to law.

Whether or not they claim past practices were lawful, all agencies queried say they now make these decisions themselves. They should also, as I recommended in my last report, make clear in their letters to people seeking a review of their fine who the decision-maker is. Decisions should be transparent, as well as fair.

Tens of thousands of people have been affected by this saga, and I am pleased that all agencies concerned have now agreed to set up refund schemes. In some cases, better late than never.

Deborah Glass
Ombudsman

The purpose of this report

1. This report provides an update on the use of private contractors to review parking fines in Victoria.
2. In February 2020, the Ombudsman found that three local councils used a private contractor to decide parking fine reviews in a way that appeared to be contrary to law.¹ She found that over a period of around ten years, the councils allowed the contractor to decide many of their reviews, either by letting it make decisions or by ‘rubber-stamping’ its recommendations. Although the councils thought they were acting appropriately at the time, the Ombudsman found this was inconsistent with Victoria’s *Infringements Act 2006* (Vic) (see following page). The councils disagreed but, as a gesture of goodwill, agreed to set up schemes to refund affected motorists.
3. The Ombudsman was aware during the investigation that this practice may be more widespread. She decided to release her report in the interests of early exposure and resolution of the issues, but she noted evidence that other councils and State Government agencies also used contractors. She said it was in the interests of all parties that they resolve these matters themselves, to avoid public resources being spent on further investigations.
4. After the report was released, the Ombudsman sent a copy to the other councils and agencies mentioned in evidence to her investigation. Using the enquiries powers in section 13A of the *Ombudsman Act 1973* (Vic), she asked about their use of contractors and any action they planned to take in light of her report. She also made enquiries with agencies named in complaints from members of the public.
5. This report sets out the results of these enquiries.

¹ Victorian Ombudsman, *Investigation into three councils’ outsourcing of parking fine internal reviews* (February 2020).



Parking fines, internal reviews and private contractors

There are over 100 agencies in Victoria that can issue fines to motorists who break parking laws. Local councils issue most of these fines. Some State Government agencies can issue fines as well, including universities, TAFEs and public hospitals.

Internal review

The *Infringements Act 2006* (Vic) gives motorists the right to appeal parking fines by asking for an 'internal review'.

Internal review is a more accessible way to appeal a fine than the courts. Motorists can write to the council or agency that issued the fine and ask it to reconsider its decision. The council or agency can:

- replace the fine with an official warning
- withdraw the fine completely
- uphold the fine, if it believes the fine was correct
- refer the matter to court for decision.

Most councils and agencies conduct internal reviews themselves. However, some get help from private contractors.

Private contractors – what is and is not lawful?

The Infringements Act gives the power to conduct internal reviews to 'enforcement agencies'. The definition of 'enforcement agency' (section 3) is complex and, some suggest, is open to interpretation.

Department of Justice and Community Safety legal advice states that for the purpose of council parking fines, a private contractor cannot be an enforcement agency. In practical terms, this means:

- councils **can** use private contractors to provide administrative assistance with internal reviews. Administrative assistance includes accepting and registering review applications and preparing decision letters.
- councils **cannot** use private contractors to make internal review decisions.

The Ombudsman's February 2020 report recommended the Department of Justice and Community Safety seek amendments to the Infringements Act to clarify who can conduct internal reviews of parking infringements, for the avoidance of doubt.

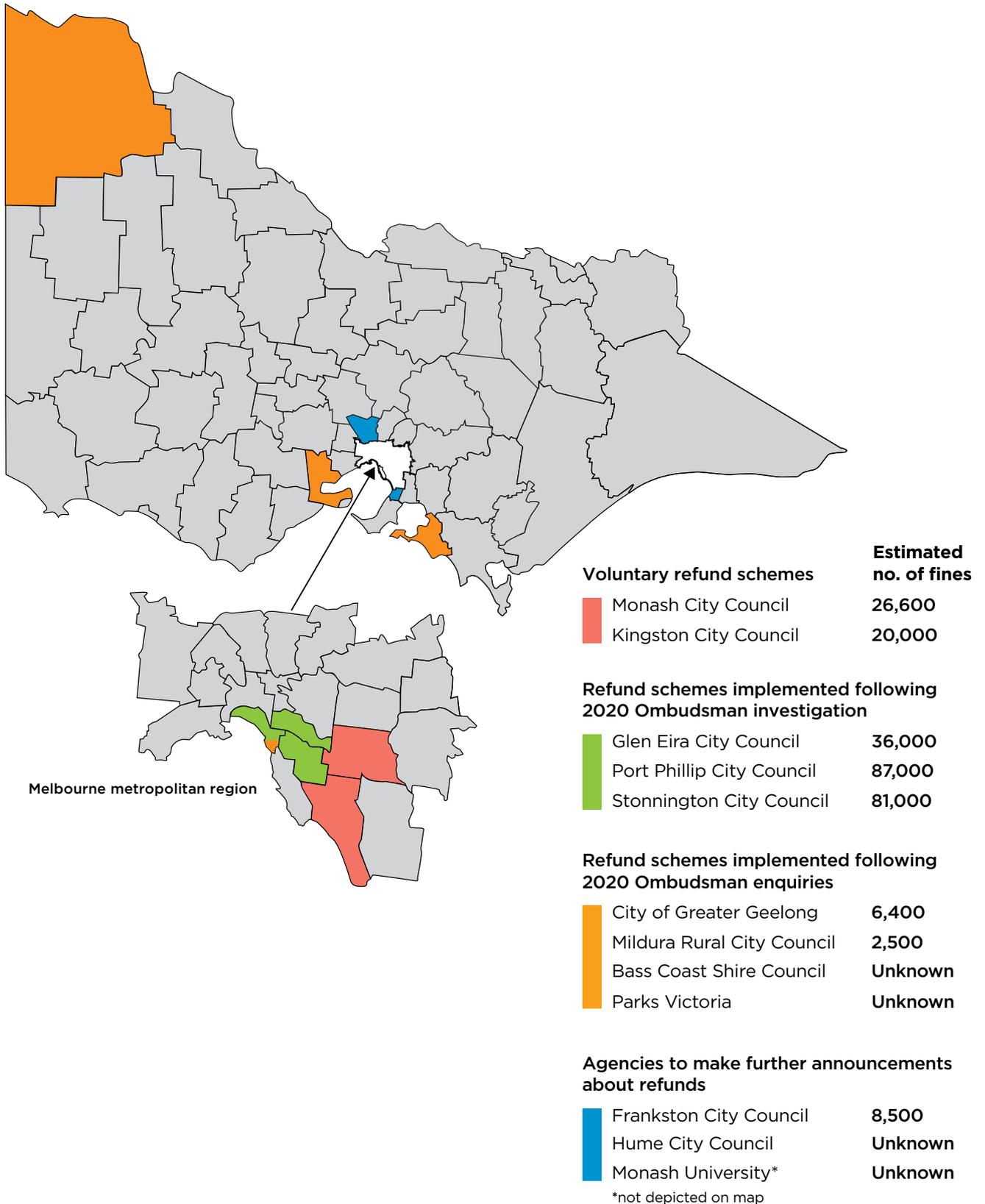
In the meantime, the Department has changed its guidelines for enforcement agencies. They now clearly state:

All enforcement agencies must make their own internal review decisions, and must not outsource this function to private contractors.

Who else is refunding fines?

6. When the Ombudsman tabled her February 2020 report, five local councils were known to have used private contractors to decide parking fine reviews in a way that appeared to be contrary to the Infringements Act. They included the three councils investigated by the Ombudsman – Glen Eira, Stonnington and Port Phillip. Two other councils – Monash and Kingston – had already announced plans in 2019 to voluntarily refund parking fines reviewed by their contractor.
7. The Ombudsman’s enquiries covered a further 19 councils and agencies.
8. Twelve of those councils and agencies said they had not used private contractors to assist with reviews or, if they had, they believed their officers made the review decisions. The Ombudsman has not verified this information, but has been liaising with the Department of Justice and Community Safety, which has commenced an audit as described in paragraph 44 below.
9. Seven councils and agencies acknowledged they had or may have used contractors to make internal review decisions in the past. All seven of them said they had since changed their practices since learning of legal doubts about the practice. All seven have agreed to set up refund schemes for motorists affected by their historical use of contractors.

Figure 1: Councils where refund schemes apply



City of Greater Geelong

10. On 26 February 2020, the day after the Ombudsman's report was tabled, City of Greater Geelong announced plans to refund around 6,400 parking fines.
11. The Council told the Ombudsman it used a private contractor to assist with parking fine internal reviews between 2009 and 2018 and that under the contract, Council officers were meant to make all internal review decisions. However, Council records showed that some decisions were made by the contractor.
12. The Council announced details of its refund scheme on 2 November 2020. It said it sent letters to all motorists who were eligible for a refund at the address listed on their review application. It also published information and a claims form on its website.
13. The Council estimated the value of the affected infringements at around \$600,000.
14. The Council told the Ombudsman it had since 'reviewed and strengthened' its internal review process and a council officer now makes all internal review decisions. It said a 2019 audit found its current process to be adequate.

Figure 2: City of Greater Geelong details of refund scheme

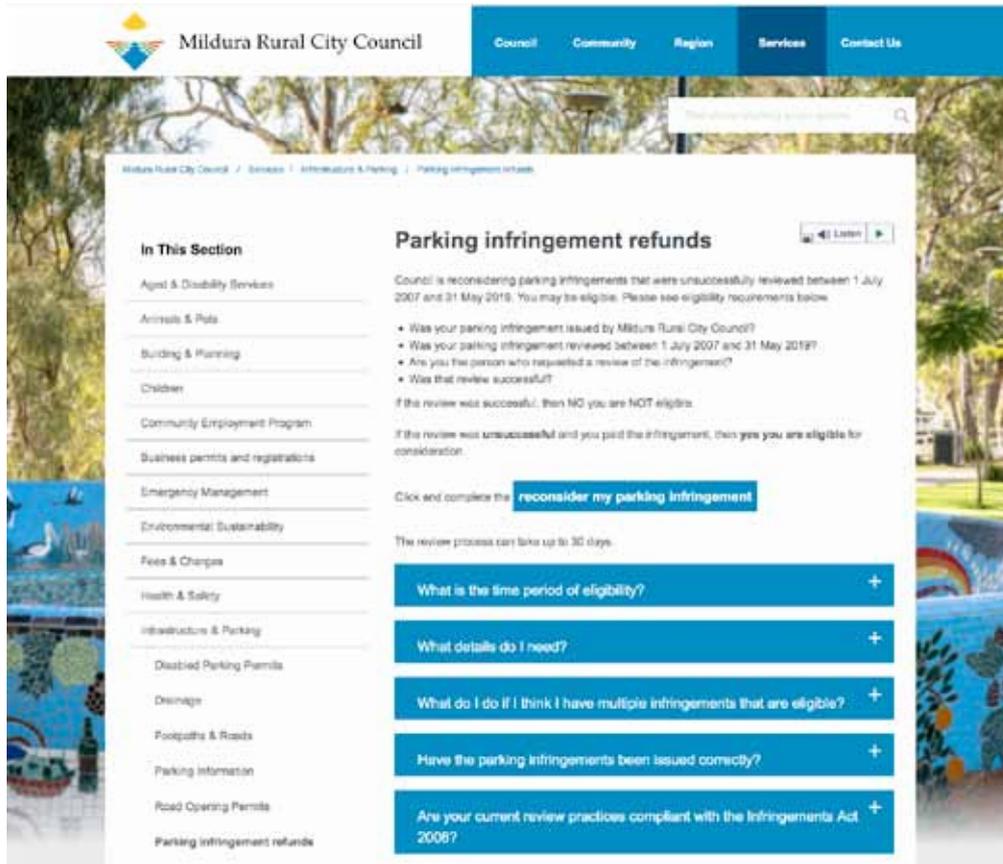
The screenshot shows the City of Greater Geelong website header with the logo and navigation links for 'CITY COUNCIL' and 'SERVICES (A-Z)'. Below the header, there is a light blue banner with an information icon and text: 'Please visit our [Coronavirus Support page](#) for information about impacts on City events, services' and a people icon with the text 'Translating and interpreting services'. Below the banner, the breadcrumb 'Services / Infringements /' is visible. The main heading is 'Parking fine appeal refund program' with a 'Listen' button. The main text reads: 'Did you unsuccessfully appeal a parking fine issued by the City of Greater Geelong between 2009-2018? If so, you may be entitled to a refund from the City.' This is followed by two paragraphs explaining the reason for the refunds (misinterpretation of processing requirements) and the council's decision to refund. A final paragraph states that the council resolved to refund community members impacted by this issue, supported by a recent report from the Victorian Ombudsman. A light blue box contains a note: 'It's important to note that any infringements appealed or issued outside of 2009-2018, are not impacted by this refund program.'

Source: City of Greater Geelong website

Mildura Rural City Council

15. Mildura Rural City Council also set up a refund scheme, after confirming its former private contractor decided a small number of internal reviews.
16. The Council told the Ombudsman it used a private contractor to provide processing services for parking fines between 2007 and 2019. It said the arrangements with the contractor changed over time. It described its system as a 'hybrid approach', where Council officers decided reviews sent to the Council's address and the contractor decided reviews sent direct to the contractor's address. The Council accepted its practices may not have been consistent with the Infringements Act.
17. The Council announced details of its refund process on 29 September 2020. It published information and a claims form on its website. Motorists can contact the Council to check their eligibility if they unsuccessfully sought a parking fine review between 1 July 2007 and 31 May 2019.
18. The Council issues a small number of parking fines compared with city councils. It estimated the number of affected infringements could be just over 2,500, but not all would be eligible for a refund.
19. The Council says it changed its review practices in 2019. Since 31 May 2019, all parking fine internal reviews have been decided by Council officers.

Figure 3: Mildura Rural City Council details of refund scheme



Source: Mildura Rural City Council website

Bass Coast Shire Council

20. On 1 May 2020, Bass Coast Shire Council, on Victoria's south east coast, announced it would consider refund requests from motorists who made internal review applications between 2007 and 2009.
21. The Council told the Ombudsman its private contractor made some internal review decisions during this period. Other reviews were referred to Council officers for decision.
22. The Council no longer holds records of parking fine reviews from this period, but it told the Ombudsman it would consider requests from motorists on a case by case basis. It asks motorists to provide an accurate record of their infringement with their request.
23. The Council said it has not used contractors to decide reviews since December 2009. It changed contractors at that time and said it limited their role to administrative assistance. In July 2018, the Council stopped using contractors for internal reviews altogether.

Figure 4: Bass Coast Shire Council details of refund scheme

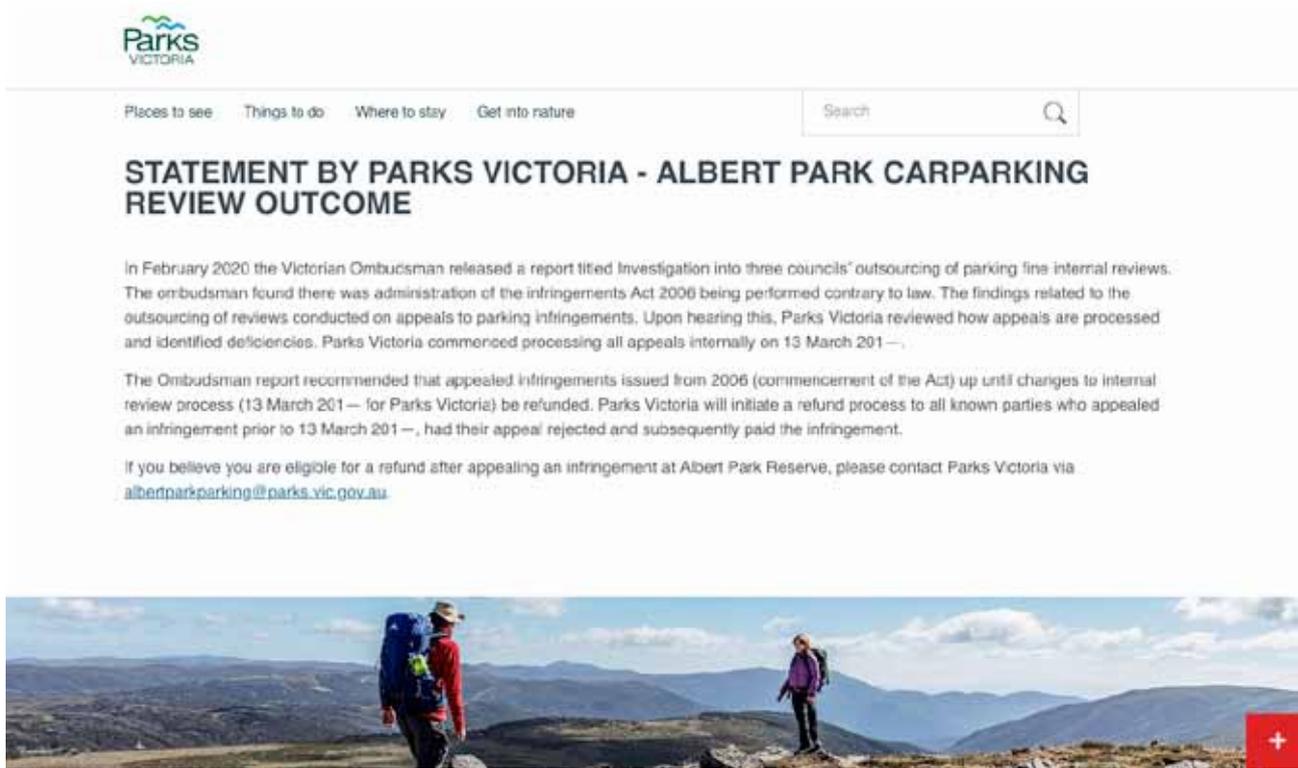
The screenshot shows the Bass Coast Shire Council website. The top navigation bar includes the logo, 'CONTACT US', and menu items: 'About Council', 'Building & Planning', 'Community Support' (which is highlighted), 'Explore', and 'Services'. Below the navigation is a search bar with the text 'Search this site...'. The main content area is titled 'Community Support' and features a section for 'Extension of time to pay requests'. The text in this section explains that if a user has received an infringement and will have trouble paying the penalty by the due date, they can apply for an extension of time. It states that the Council will grant extensions of time up to 12 weeks, provided the infringement is paid off in full at least one month prior to the date that is 12 months from the date the infringement was issued. It also provides instructions on how to apply for an extension of time, including completing an application form and sending it via email, in-person, or by post. The email address provided is local.laws@basscoast.vic.gov.au. The in-person locations are Customer Service Centres, and the postal address is PO Box 118, Wonthaggi VIC 3995. At the bottom of the section, it mentions that the Victorian Ombudsman has completed an investigation into the outsourcing of parking fine internal reviews, and that the Council will consider requests on a case by case basis, of parking infringements that were the subject of an internal review between 2007 and 2009. Any review request must be accompanied with an accurate record of the infringement.

Source: Bass Coast Shire Council website

Parks Victoria

24. On 1 October 2020, the agency that manages Victoria's land and marine parks, Parks Victoria, announced it would also consider refunding some parking fines. Its refund scheme is limited to motorists who unsuccessfully applied for review of parking fines issued at Melbourne's Albert Park Reserve between 2006 and 13 March 2019.
25. Parks Victoria told the Ombudsman it had used three different contractors to assist with parking fines at the Reserve since 2008. It reviewed its records following the Ombudsman's report, and it published a statement on its website saying it had 'identified deficiencies' and invited affected motorists to contact it to check their eligibility for a refund.
26. In February 2021, Parks Victoria said it had so far refunded 221 fines in response to applications.
27. Parks Victoria told the Ombudsman it changed its review practices in March 2019 and appropriately delegated Parks Victoria officers now make all review decisions, consistent with the Infringements Act.

Figure 5: Parks Victoria details of refund scheme



Source: Parks Victoria website

Frankston City Council

28. Frankston City Council announced it was reviewing its use of private contractors for parking fine internal reviews in 2019, before the Ombudsman tabled her 2020 investigation report.
29. In response to the Ombudsman's enquiries, the Council confirmed it had used a private contractor to assist with reviews between November 2008 and April 2014. It identified there were around 17,000 internal review applications during this period. Around 8,500 of those applications were rejected.
30. The Council said its review had not been able to confirm who made internal review decisions because of records problems. The contractor handed over electronic records at the end of the contract in a format that could not be read without specialist software. The Council said it had some records of its own, but it was taking officers around an hour to manually cross-check records for each internal review application. It had contacted its former contractor, which said it believed Council officers made review decisions.
31. The Council announced in 2019 that motorists could contact Council if they had concerns. In February 2021, it said it was preparing a further statement encouraging affected motorists to check their eligibility for a refund. It will review applications on a case by case basis.
32. The Council said it now conducts internal reviews 'in-house', consistent with the Infringements Act.

Figure 6: Frankston City Council



Source: Bayside News

Hume City Council

33. In February 2021, in response to the provision of an earlier draft of this report, Hume City Council advised the Ombudsman it would also be setting up a refund scheme for some motorists.
34. The Council said it used a private contractor to assist with parking services and internal reviews between 2009 and February 2020. It said it strengthened its review process from 20 December 2016, after legal doubts began to emerge about the use of contractors.
35. The Council asked an external auditor to review its historical use of the contractor in response to the Ombudsman's enquiries. The auditor sampled 30 internal reviews conducted between 2006 and 2016. It found the contractor had been assessing the internal review applications and sending recommendations to Council officers for decision. There were problems with just over half of the sampled reviews: either there was no evidence that a Council officer approved the recommendation, or Council officers appeared to have accepted the recommendation 'without evidence of practical review'.
36. In other words, the Council had sometimes engaged in the same outsourcing and rubber-stamping practices as the three councils involved in the Ombudsman's investigation.
37. The Council said it handled 25,666 reviews between July 2006 and December 2016, 18,775 of which were rejected. When this report was finalised, it was considering arrangements for its refund scheme.

Monash University

38. In February 2021, in response to the provision of an earlier draft of this report, Monash University said it would also set up a refund scheme, although it maintains its internal review practices have always been lawful.
39. The University told the Ombudsman it used a private contractor to decide some parking fine internal reviews between 2005 and 2019. It said University officers and the contractor split internal review decisions between them. The contractor historically decided reviews 'where the grounds for review were unmeritorious or did not require any factual input from the University under relevant University guidelines'. University officers decided reviews where University input was needed.
40. The University said the *Monash University Act 2009 (Vic)* gives it the powers of a body corporate and, as such, the power to authorise an 'agent' to act on its behalf. It noted the Infringement Act's definition of 'enforcement agency' includes a body corporate. It said it believed the Parliament intended that enforcement agencies who are body corporates could act through agents.
41. The University also noted that many of the powers given to enforcement agencies by the Infringements Act 'involve low level administrative tasks or require the making of a large number of decisions'. It said if it had to exercise all those powers itself, it would involve substantial administrative resources that would interfere with its primary role.
42. However, the University noted the Ombudsman's views on this matter. It said it would take the same approach as the councils and other agencies and set up a process to offer refunds to affected motorists.

What happens next?

43. There are now 12 councils and agencies in Victoria that have or are setting up refund schemes for motorists affected by historical outsourcing of parking fine reviews. Their approach is an appropriate one for their organisations and for motorists.
44. The Department of Justice and Community Safety has now taken up the task of checking outsourcing practices at other enforcement agencies. The Ombudsman's 2020 report recommended the Department use its statutory powers to monitor agencies' use of contractors. The Department has since written to 129 enforcement agencies and audited those using contractors to assist with internal reviews. It will finalise its recommendations shortly.
45. The Ombudsman will watch the Department's ongoing work with interest and continue to respond to complaints from individuals about these issues. Councils and agencies can help avoid complaints by:
 - communicating better about reviews. The Ombudsman's 2020 report recommended the three councils involved in that investigation identify their internal review decision makers more clearly in future by name and title or, if preferred, by an anonymised but identifying reference.
 - resolving concerns themselves, without waiting for investigations or audits or formal recommendations.
46. It is in the public interest for all councils and agencies to comply with the Department's recommendations, as the lead and oversight agency, and ensure that the problems created by unlawful use of contractors are finally resolved.

Figure 7: Estimated number of affected fines at councils and agencies

Council or agency	Estimated number of affected fines (approx)
Monash City Council	26,600
Kingston City Council	20,000
Glen Eira City Council	36,000
Port Phillip City Council	87,000
Stonnington City Council	81,000
City of Greater Geelong	6,400
Mildura Rural City Council	2,500
Bass Coast Shire Council	Unknown
Parks Victoria	Unknown
Frankston City Council	8,500
Monash University	Unknown
Hume City Council	Unknown

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Victorian Ombudsman
Level 2, 570 Bourke Street
Melbourne VIC 3000

Phone 03 9613 6222
Email complaints@ombudsman.vic.gov.au
www.ombudsman.vic.gov.au