

VICTORIAN **ombudsman**

**Conflict of interest, poor governance and
bullying at the City of Glen Eira Council**

March 2012

**Whistleblowers Protection
Act 2001**

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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 section 103 of the *Whistleblowers Protection Act 2001*, I present to Parliament my report of an investigation into conflict of interest, poor governance and bullying at the City of Glen Eira Council.



G E Brouwer

OMBUDSMAN

27 March 2012

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Section 22A statement

1. This report is made pursuant to section 103 of the *Whistleblowers Protection Act 2001* and the name of a person against whom protected disclosures were made has been included.
2. Section 22A of the *Whistleblowers Protection Act* provides I may disclose, in a report referred to in section 103 of that Act, particulars likely to lead to the identification of a person against whom a protected disclosure has been made if I determine it is in the public interest to do so and if I set out in the report the reasons why I have reached that determination.
3. Having considered the four matters referred to in section 22A(2), I have determined it is in the public interest to identify the subject of the public interest disclosures in this matter by disclosing the following particulars: the subject's name, occupation and personal details. I have made this determination for a number of reasons.
4. I consider that it is in the public interest for the subjects of a public interest disclosure to be identified in a report to Parliament when the report and the disclosure concern allegations of improper conduct by persons holding public offices of certain significance, such as the office of Councillor. This is particularly so when the report indicates that there is merit in the allegations against the public officer. This public interest is derived from the nature of such public offices. In this instance, the public interest arises from the role, duties and obligations of the office of councillor derived from:
 - the constitutional significance of the office of Councillor and of local government, as recognised by Part IIA of the *Constitution Act 1975* (Victoria)
 - the essential role that Councillors play in the good governance of local areas, as recognised by section 74A(1A)(b)(ii) of the *Constitution Act*
 - the conduct obligations imposed on Councillors by Division 1A, Part 4 of the *Local Government Act 1989*.
5. I do not believe that the public interest identified above can be satisfied by any means other than by identifying the subject of the disclosure. In this matter, I consider that confidentiality is not appropriate as it runs counter to the public interest.
6. This report concerns an investigation into public interest disclosures about a person who was a Councillor when the alleged misconduct occurred. That person remains a Councillor, and the report concludes that there is merit in those allegations. As such, I consider the public interest necessitates that the identity of that Councillor be disclosed in my report.

Executive summary

7. This report concerns a local Councillor, his disruption of the council in which he serves, the measures that the council has taken to attempt to deal with that disruption and the limited effect of those efforts.
8. The Councillor is Cr Frank Penhalluriack and the council is that of the City of Glen Eira.
9. His disruption of the council relates to his:
 - continuing refusal to appropriately acknowledge various conflicts of interest between his council role and his personal/ business interests
 - inappropriate approaches and discussions with council staff, attempting to use his official position to alter the course of action that the council officers were adopting in relation to an issue which directly related to the Councillor
 - apparent bullying of the council CEO
 - refusing to cooperate with investigative procedures instituted by the council.
10. This behaviour of Cr Penhalluriack is also of significance in that it appears to amount to misconduct and possibly gross misconduct.
11. Cr Penhalluriack's behaviour has caused the council to be significantly diverted over the last 12 months from the matters to which it should be attending, instead addressing Cr Penhalluriack and his behaviour, and determining appropriate methods of dealing with it.
12. As this report demonstrates, Cr Penhalluriack is very much an individual, but one whose services on the council have not been of assistance to the good government of the City of Glen Eira. He is a Councillor who has contested the rules governing his behaviour in a forceful and aggressive manner and in a way that, in my view, may constitute 'misconduct' and possibly gross 'misconduct'.
13. His behaviour has led the council to take various actions including:
 - seeking advice from an external investigator regarding bullying complaints, an investigation with which Cr Penhalluriack did not cooperate
 - seeking advice from a separate law firm
 - considering Cr Penhalluriack's behaviour on at least 10 separate occasions, passing lengthy and detailed resolutions. In relation to many of these resolutions, Cr Penhalluriack took part in the debate and/or vote, but should not have due to his conflict of interest. Those resolutions included:
 - a resolution that Cr Penhalluriack attend anti-bullying training, which Cr Penhalluriack refused to attend

- a resolution, passed unanimously, that the council seek an application to a Councillor Conduct Panel and seek a finding of misconduct against Cr Penhalluriack for alleged breaches of clauses 4.5, 5.2, 5.9 and 5.12 of the Councillors' Code of Conduct (the Code of Conduct).
14. I also consider that Cr Penhalluriack's behaviour may have breached other provisions of the Code of Conduct, being clauses 4.1.2, 4.2.5, 4.2.6, 5.2 and 5.8.1; and may also have constituted gross misconduct.
 15. Despite the amount of time that the council has devoted to Cr Penhalluriack and his behaviour, its efforts have not been sufficient, to date, to prevent the continuing unnecessary and unwarranted disruptions caused by Cr Penhalluriack. As a result, the council and its staff continue to be diverted from the tasks to which they should be attending. This report is largely uncritical of the council and its efforts, recognising the limited and time-consuming means available to the council to correct Councillor disruption.
 16. As such, an additional measure to assist councils in a similar situation has been suggested for the Premier's and the Minister's consideration.

Background

Public interest disclosures

17. In June 2011, I determined that a disclosure made to my office regarding Cr Penhalluriack amounted to a public interest disclosure under the *Whistleblowers Protection Act 2001*. The disclosure alleged that Cr Penhalluriack had misused his position as a Councillor for personal gain. The whistleblower stated that Cr Penhalluriack had acted improperly in advocating for the closure of Glen Eira's free mulch facility to obtain a financial benefit for his private business which sells mulch.
18. In September 2011, I determined that further disclosures regarding Cr Penhalluriack made to my office during the course of the investigation also amounted to public interest disclosures. The new disclosures alleged that Cr Penhalluriack:
 - harassed, humiliated and bullied the Chief Executive Officer (CEO) of the City of Glen Eira Council (Glen Eira), Mr Andrew Newton, thereby creating an unsafe working environment at Glen Eira.
 - misused his position as a Councillor in a private land dispute he was having with Glen Eira in relation to a laneway abutting a property occupied by his business.

Investigation methodology

19. In investigating this matter my officers:
 - interviewed council officers, Councillors and private individuals
 - reviewed council records, documents and policies
 - examined email records and correspondence
 - conducted site visits
 - reviewed relevant legislation and other publically available documents.
20. During the investigation, my officers conducted 19 formal interviews. All witnesses were interviewed voluntarily and were offered the opportunity to be legally represented or to be accompanied by a support person. They were also provided with written information regarding their obligations and entitlements under the *Whistleblowers Protection Act*. One witness requested and was permitted to be legally represented.

Glen Eira City Council

21. The municipality of Glen Eira covers approximately 39 square kilometres in inner south-east Melbourne. The council was formed in 1994 through an amalgamation of the former City of Caulfield and part of the former City of Moorabbin.

22. The current council was elected in 2008, with the next election scheduled for 2012. The Councillors are:

Camden Ward

- Cr Frank Penhalluriack
- Cr Michael Lipshutz
- Cr Cheryl Forge

Rosstown Ward

- Cr Margaret Esakoff
- Cr Steven Tang
- Cr Neil Pilling
- Tucker Ward
- Cr Jamie Hyams (currently the Mayor)
- Cr Jim Magee
- Cr Oscar C Lobo.

23. The current CEO of Glen Eira is Mr Andrew Newton. He was first appointed in 1999 and was reappointed in 2011 for a further two years.

The Councillor

24. Cr Frank Penhalluriack was elected to Glen Eira Council in December 2008. He has a background and qualifications in building and construction. Cr Penhalluriack has also been the proprietor of Penhalluriack's Building Supplies, a hardware and gardening supply shop located in Hawthorn Road, Caulfield, since 1975.
25. Both Cr Penhalluriack's biography on the Glen Eira website and the Penhalluriack's Building Supplies website note Cr Penhalluriack's involvement in campaigning for the deregulation of retail trading hours in Victoria in the 1980s and 1990s. The Glen Eira website states:

Frank's faith in free enterprise convinced him that the correct time (and the best time) to open a shop was when the customer and the shopkeeper wanted to do business together. After 19 days in Pentridge prison, over half a million dollars in personal fines and years of determination he was instrumental in bringing about the deregulation of trading hours.
26. The Penhalluriack's Building Supplies website refers to Cr Penhalluriack as a 'rebel trader'. Cr Penhalluriack considers that this and the previous paragraph are irrelevant to this report. However, I consider that both paragraphs are relevant to the investigation and explanation of this matter.
27. However Cr Penhalluriack is described, he has, during his term with the council engaged in troublesome and difficult conduct which has interfered with council processes and distracted both Councillors and council staff from their proper functions and roles. That conduct, which is detailed below, can be summarised as:
 - having conflicts of interest, which he has failed to properly acknowledge and deal with
 - making inappropriate approaches and requests of staff
 - bullying the council's CEO
 - failing to cooperate with the investigation that the council arranged in relation to those bullying allegations.

Conflict of interest and mulch

Glen Eira mulch facility

28. For almost two decades until 2011, Glen Eira operated a service providing free mulch to residents and also used it to supply council activities.
29. In 2008, the council resolved to move the mulch facility from its then location in Caulfield Park, to a new, purpose built storage facility (the mulch facility) in the Glenhuntly Reserve car park. Glen Eira states that the new facility cost \$160,000 to design and construct.
30. Glen Eira opened the new facility in July 2009 and estimates that its average weekly use until April 2011 was as follows:
 - 10 cubic metres by residents
 - 5-10 cubic metres delivered to residents through Glen Eira's Bundled Branch service (free service offered by Glen Eira involving collection of bundled branches from residents in exchange for delivery of mulch)
 - 30-40 cubic metres used by Glen Eira.

Penhalluriack's Building Supplies

31. Cr Penhalluriack is the owner of Penhalluriack's Building Supplies, a hardware and gardening supply shop located in Hawthorn Road, Caulfield. The properties on which this business operates are owned by either relatives of the Councillor or an entity owned by the Councillor and his wife. Penhalluriack's Building Supplies sells mulch in bags. It also advertises that it sells and delivers mulch in bulk quantities to the public, as the sign at his business premises illustrates (see figure 1), although Cr Penhalluriack advises that the business does not sell bulk mulch. However he also says that the business takes orders, on behalf of a third party, for bulk mulch and receives a 10 per cent commission on those sales.

Figure 1 – Sign at Penhalluriack’s Building Supplies



32. An inspection of Penhalluriack’s Building Supplies found that it sells eleven types of mulch. Six types of mulch are sold in bulk at prices ranging between \$62.49 per square metre and \$77.99 per square metre. It also sells five varieties of mulch in bags, ranging between approximately \$10.00 and \$13.00 per bag.

Concerns raised by Cr Penhalluriack

33. At interview, Cr Penhalluriack said that he began to have concerns about the health risk posed by the mulch facility in August 2010. He stated that his concerns about the mulch facility were triggered by warning labels on the back of packets of mulch his business was selling. Cr Penhalluriack subsequently advised that his initial concern was raised by residents complaining that the mulch provided by the council was contaminated, that fermentation was occurring and could encourage the growth of bacteria and fungi which could be spread by the wind.
34. Cr Penhalluriack said, at interview, on the basis of these concerns that he started asking the CEO of Glen Eira questions regarding whether the mulch facility was safe. He also conducted internet research on the issue. In particular, Cr Penhalluriack said that he was concerned about links between mulch and Legionnaires’ disease. Cr Penhalluriack advised that he did this as he considered that as a Councillor he had a duty to understand those adverse health issues.

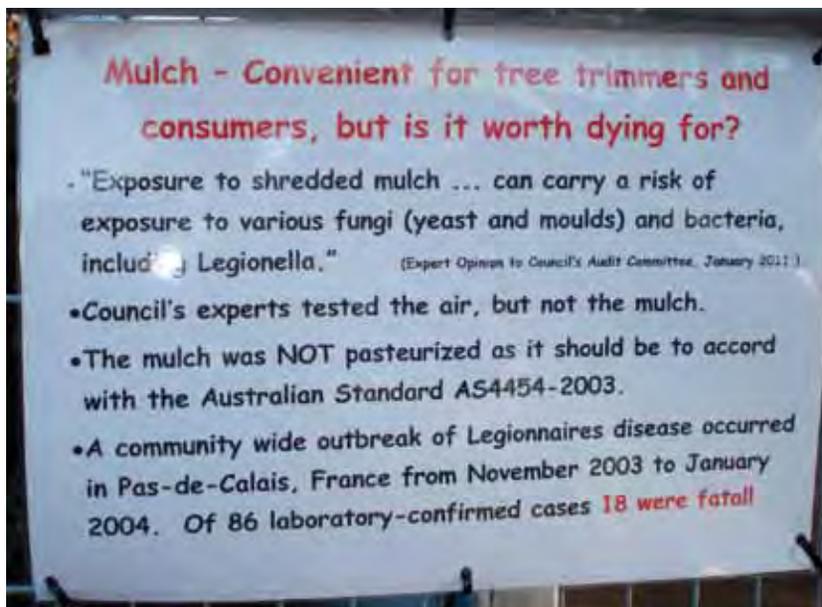
35. In response to Cr Penhalluriack's concerns, the council obtained contradictory advice from the Department of Health that:
- There is no evidence to suggest that woodchips have ever been the source of Legionnaires' disease
 - A person would be very unlikely to contract Legionnaires' disease by handling woodchip mulch.
36. Cr Penhalluriack, however, was not satisfied with that advice and at an Audit Committee meeting on 19 November 2010, he tabled his own report on the mulch facility. That report suggested that the advice Glen Eira previously obtained from the Department of Health was insufficient as it failed to address 'bioaerosol components generated in the compost'. Cr Penhalluriack has advised that he took that step as, in his view 'it would be irresponsible and negligent on my part not to take the matter further'. As a result council officers confirmed they would obtain an independent review on the issue and report back to the Audit Committee on the findings.
37. That report was provided in January 2011 by Noel Arnold & Associates which concluded that:
- A risk assessment was carried out and it is likely that workers and mulch users are potentially exposed to bacteria (eg. Legionella) and fungi, as a result of handling the mulch material. The risks of working with these products are well documented in literature and there are some simple controls which can be implemented to protect the people at risk.
38. The report states that the consultant tested the levels of bacteria and fungi in the air surrounding the mulch facility and found that they 'were of similar orders of magnitude when compared with the reference location' and were not elevated when compared to general environmental exposure. The report made six recommendations to minimise potential risks.
39. This report was tabled at the next Audit Committee meeting on 25 February 2011. The Chairman of the Audit Committee noted the report and concluded that no action was required by the Audit Committee. The minutes state that if 'Councillors had any issues, they could raise them with the Council'.
40. On 15 March 2011, at an Ordinary Meeting of council, Cr Penhalluriack addressed a number of questions regarding the mulch facility to the CEO, Mr Newton. These questions focused on the CEO's response to the concerns Cr Penhalluriack had raised in relation to the mulch facility; the advice obtained by Glen Eira about this issue and its dissemination amongst Councillors; and implementation of the recommendations contained in the Noel Arnold & Associates report.
41. Mr Newton responded by advising that all recommendations were being implemented and that the other questions raised by Cr Penhalluriack would be answered at a later date as they had been asked without notice.

42. In the interim, in a letter dated 23 March 2011, Cr Penhalluriack wrote to the other Councillors raising further concerns about the validity of the Noel Arnold & Associates report and Glen Eira's response to it. In this letter, Cr Penhalluriack gave notice that he would be moving a motion to remove the mulch facility at the Ordinary Meeting on 5 April 2011.
43. At the Ordinary Meeting on 5 April 2011, Mr Newton responded to the questions raised by Cr Penhalluriack on 15 March 2011. Cr Penhalluriack then moved a motion 'that council removes its facility at Glen Huntly Park and no longer provides this free service'. The motion was seconded by Cr Forge and carried seven votes to two, with Crs Lipshutz and Tang voting against the motion.

Effect of closure

44. On 7 April 2011 the Manager of Parks Services, Mr Laurie Unwin, advised the council that the mulch facility had been emptied of mulch and closed.
45. Council officers placed a sign stating the following outside the facility:
At a Council Meeting on 5th April Council resolved to close this facility and no longer provide this free service.
46. On 27 April 2010 the Manager of Parks Services advised that a further sign had been erected at the facility. This sign is pictured below.

Figure 2 – Sign erected at mulch facility



47. At interview, Cr Penhalluriack confirmed that he had placed the above sign on the closed mulch facility. When asked why he placed the sign on the facility, Cr Penhalluriack stated it was because he was concerned that Glen Eira's sign did not give any reason for the closure. He also stated that he was concerned that the council sign 'would create the false impression that the decision had been taken without consideration of the interests of taxpayers'. He stated that he believed that when members of the public contacted Glen Eira about the closure of the mulch facility, council officers would attribute it to him personally. He noted that Councillors rely on the public voting for them, and that if no reason was given for the closure, the public would say, 'bugger these guys, they're just, you know, closing things down which I've appreciated and used for the last 50 years, or five months, or whatever the time is ... We are political animals, the officers are not'.

Conflict of interest

48. Principle 4.2 of the City of Glen Eira Councillors' Code of Conduct (Integrity) states that Councillors must:
- 4.2.5 avoid conflicts between their public duties as a Councillor and their personal interests and obligations;
 - 4.2.6 declare any private interests or conflicts of interest as required by the Local Government Act relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest.
49. Section 79 of the Local Government Act also requires Councillors to declare a conflict of interest in any matter which is to be considered or discussed at a meeting of the council or a special committee in accordance with the process outlined in the Local Government Act. In addition, section 79(6) requires the Councillor to leave the room while the matter in which they have an interest is considered or voted on. A Councillor who fails to comply with the requirements of section 79 is guilty of an offence and liable to a fine not exceeding 120 penalty units (section 79(9)).
50. Section 77A of the Local Government Act provides that a person has a conflict of interest in respect of a matter if that person has a direct or an indirect interest in the matter. And section 77B(2) provides that a person has a 'direct interest' in a matter in a number of scenarios, including where:
- (a) there is a reasonable likelihood that the person will receive a direct benefit or loss that can be measured in financial terms if the matter is decided in a particular way;
 - (b) the person has, or the person together with a member or members of the person's family have, a controlling interest in a company or other body that has a direct interest in the matter.

51. However, section 77A(4) provides that a person:
- does not have a conflict of interest in a matter if the direct interest or indirect interest of the relevant person is so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of the relevant person in relation to the matter.
52. Cr Penhalluriack was aware of the possible relevance of the concerns regarding conflict of interest but considered that section 77A(4) was applicable to him. This is reflected in his report to the Audit Committee meeting on 19 November 2010 which contained the following statement:
- As you may be aware my hardware shop sells a similar range of products – potting mixes, mulches, wood chips etc. However the sale of these products is widespread in garden centres, supermarkets, service stations and hardware stores etc.
- When considering whether I have a conflict of interest I am mindful of a ruling made by the Municipal Inspectors in relation to the use of cranes on streets, where the Inspectorate concluded that ‘my personal interest was so remote that it could not be reasonably regarded as influencing decisions.’ I believe that this situation is similar and therefore a conflict does not exist.
53. At interview, Cr Penhalluriack also stated that he didn’t have ‘a clue’ how much money his business made from the sale of bulk mulch, but considered it was ‘absolutely bummer all of [his] business’. He has since provided details of the sale of bagged and bulk mulch through his business which identified that for the year ending 30 June 2011 the sale of packaged mulch products totalled \$12,324.
54. As a result, Cr Penhalluriack advised that he did not consider that he had a conflict of interest and did not raise the issue of his possible conflict of interest formally again at any stage prior to the closure of the mulch facility.
55. However, the Local Government Inspectorate investigation to which Cr Penhalluriack referred in his submission to the Audit Committee considered a situation which was obviously dissimilar to Mr Penhalluriack’s interest in mulch. That investigation concerned Cr Penhalluriack’s proposed amendment to Local Law 307 at an Assembly of Councillors which sought to expand the class of machinery which would require a permit in order to be operated on council land to ‘any mobile crane, scissor lift, fork lift, boom, concrete line pump and tackle or hoist’.
56. During this Assembly, Cr Penhalluriack raised concerns about the impact the law would have on deliveries made to local businesses, using his own business as an example, and did not declare a conflict of interest. The Local Government Inspectorate considered that Cr Penhalluriack’s ‘personal interest in the matter is so remote that it could not reasonably be regarded as influencing decisions in relation to this matter and that the interest is held in common with other ratepayers who would be affected by the change to the local law’.

57. When interviewed by my officers regarding the closure of the mulch facility, Cr Penhalluriack was asked:
- Interviewer: In relation to conflict of interest, do you think you've done anything wrong?
- Cr Penhalluriack: No.
- Interviewer: Do you think there might be a public perception that you have?
- Cr Penhalluriack: Yes.
58. In relation to this he stated, 'the perception is something which is quite different from the actuality'. Cr Penhalluriack also stated that he did not believe he had breached the Code of Conduct and that his conscience was 'very clear'.
59. All Councillors stated that they were aware that Cr Penhalluriack sold bags of mulch and other garden products at his business but that at the time the matter was considered by the council, they were not aware that this included bulk mulch.
60. At interview, Cr Magee stated that when a Councillor votes on an issue where there is a conflict of interest:
- ... it totally goes against everything council stands for...it's a despicable act. To knowingly have a conflict of interest and to deliberately not declare it and vote in a way that can benefit, it has to be a benefit to somebody...it undermines everything we do in council. It really makes all voting irrelevant.
61. Cr Magee stated that if he had been aware that Cr Penhalluriack's business sold bulk mulch at the time the matter was before the council, he would have been 'strongly advocating' to Cr Penhalluriack, the CEO and the Mayor that there was an issue of conflict. However, Cr Magee stated that he believed it would be 'inappropriate' for him to stand up in a public meeting and say 'I believe Cr Penhalluriack's got a conflict of interest because he sells mulch'.

Conclusions

62. Cr Penhalluriack promoted and was the driving force behind the actions and decisions of the council which ultimately led to the closure of the mulch facility.
63. Cr Penhalluriack's actions in campaigning to have the facility closed appear to have directly benefited his personal interests as a mulch retailer and may constitute a conflict of interest. I note that at the interview Cr Penhalluriack said that he had 'no clue' as to what benefit he would gain from the closure but has subsequently advised the *Saturday Age*, as reported on 15 October 2011, that 'mulch sales ... are 0.2% of total sales' and that this percentage had not increased since the free service had been closed. He has since provided specific details.

64. His lawyer has argued that Cr Penhalluriack did not have a conflict of interest in that it was not 'reasonably likely that Cr Penhalluriack would receive a measurable benefit following the closure of the mulch facility' although he conceded that 'there is at least a possibility that some people who would otherwise have obtained free mulch would then purchase mulch ... and that [Cr Penhalluriack's business] would potentially experience an increase in sales ...'.
65. The lawyer, however, submitted that:
- there are no reliable figures for the volumes of mulch collected from the mulch facility
 - there is no way of determining how much mulch is now being purchased as free council mulch is not available.
66. On that basis he argued that the benefit to Cr Penhalluriack could not be 'measured in financial terms'. Why he considered that such certainty was required is not apparent. It is clear, as he conceded, that Cr Penhalluriack's business 'would, potentially' benefit from increased sales and orders. Those orders and sales, not to mention the attraction of new mulch clients to Cr Penhalluriack's business who may not have been there before, would generate increased revenue and that revenue would be capable of being 'measured in financial terms'.
67. The lawyer also proposed that, if there was a benefit, it did not amount to a conflict of interest due to section 77A(4) of the Local Government Act. That is, the lawyer stated that 'it may be argued that' Cr Penhalluriack's interest in mulch sales was 'so remote or insignificant that the direct interest or indirect interest could not reasonably be regarded as capable of influencing any actions or decisions of' Cr Penhalluriack. He based this argument on Cr Penhalluriack's claim that mulch sales form a very small part of the sales and profits of his business. Cr Penhalluriack has advised that his business's profit for the year 2010/2011 relating to mulch sales is estimated to be \$2,500.
68. Whether Cr Penhalluriack's interest in mulch sales was insignificant or not, I consider Cr Penhalluriack's approach to a possible conflict of interest has been at best incautious, and is not consistent with his obligation to comply with Councillor Conduct Principles under the Local Government Act and the Glen Eira Councillor Code of Conduct. In that regard, both section 76BA(a) Local Government Act and clause 4.2.5 of the Glen Eira Code require Councillors to
- avoid conflicts between their public duties as a Councillor and their personal interests and obligations.
69. This incautious approach can be seen from Cr Penhalluriack's failure to make any assessment of the dimension of his mulch interests or of any conflict before he initiated, as well as during, his campaign to remove the council mulch facility. This failure to make any assessment extended to August 2011, when he was interviewed by my investigators. This approach is also demonstrated by his reliance on a plainly unconnected

and irrelevant investigation to justify his view that there was no conflict - instead of adopting the process prescribed by the Glen Eira Code of Conduct. Neither Cr Penhalluriack nor his lawyer made any response to the observations in this paragraph in their responses to the draft copy of my report.

70. Paragraph 5.5 of the Code of Conduct requires Councillors who 'are unsure about the ethical issues involving an action or decision', to consider a number of factors, including 'Do these outcomes raise a Conflict of Interest or lead to private gain or loss at public expense?'. The paragraph goes on to state that:

Should there be any uncertainty about the ethical nature of any action or decision, Councillors should seek advice from appropriate people which may include the Chief Executive Officer, the independent members of the Audit Committee, the Municipal Association of Victoria, or the Department for Victorian Communities.

There is no evidence that Cr Penhalluriack sought such advice.

71. As a result, I consider that Mr Penhalluriack may have been guilty of misconduct and, possibly, gross misconduct.

72. 'Misconduct' is defined by section 81A of the Local Government Act to mean:

conduct by a Councillor that is in breach of the Councillor Code of Conduct

and the breaches in this instance appear to arise under paragraphs 4.2.5 and 4.2.6 of the Code of Conduct.

73. 'Gross misconduct' is also defined by section 81A of the Local Government Act and means behaviour that contravenes:

- (i) the Councillor conduct principles; and
- (ii) a section of this Act, the contravention of which has a penalty of at least 60 penalty units.

The provision that may have been breached by failing to declare a conflict of interest is section 79(9).

Conflict of interest and the laneway

74. During interviews conducted by my officers, witnesses provided evidence in relation to an ongoing dispute between Glen Eira and Cr Penhalluriack in relation to ownership and use of a right of way (the laneway) abutting the property occupied by Penhalluriack's Building Supplies. Witnesses alleged that Cr Penhalluriack had improperly approached the CEO in relation to this matter and attempted to use his position as a Councillor to influence the outcome of the dispute.
75. Cr Penhalluriack does not agree that he has, or has attempted to, misuse his position as a Councillor in relation to this matter.

Background

76. In March 2005, council officers conducted a site inspection at Penhalluriack's Building Supplies and identified several breaches of the planning scheme. These included unlawful advertising signage, unlawful timber storage racks and unlawful structures in the laneway abutting the property.
77. The land which Penhalluriack's Building Supplies occupies is, in part, owned by Cr Penhalluriack's mother. Cr Penhalluriack states that his mother made an adverse possession claim to the Land Titles Office for the laneway in early 2005. That claim was rejected by the Land Titles Office.
78. Cr Penhalluriack was elected in December 2008. Council enforcement action in relation to storage arrangements in the Penhalluriack's Building Supplies car park and its use of the laneway continued until at least December 2009.

Improper use of position and conflict of interest

79. Section 76D(1)(a) of the Local Government Act provides that:

A person who is, or has been, a Councillor or member of a special committee must not misuse his or her position—

 - (a) to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person.

Penalty: 600 penalty units or imprisonment for 5 years or both.

And section 76D(2) defines circumstances involving the misuse of a position to include:

 - directing or improperly influencing, or seeking to direct or improperly influence, a member of Council staff in contravention of section 76E.
80. Section 76E of the Local Government Act states:
 - (1) A Councillor must not improperly direct or improperly influence, or seek to improperly direct or improperly influence, a member of Council staff in the exercise of any power or in the performance of any duty or function by the member.

81. Clause 5.8.1 of the Code of Conduct also states that:
- Councillors must not misuse their position:
5.8.1 to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person.
82. In a memorandum to Councillors dated 26 February 2009 titled 'Transparency', the CEO advised that Glen Eira had received a letter from a firm of solicitors 'acting on behalf of a person who is currently a Councillor of this City' in an issue relating to land. In order to ensure transparency, the CEO proposed that the matter be dealt with in a Statutory Council Meeting.
83. On 2 March 2009, in response to this memorandum, Cr Penhalluriack sent an email to all other Councillors stating the following:
- Dear Councillors,
- I would like to clarify the paper Andrew distributed headed 'Transparent' [*sic*] – see my attachment.
- I am happy to answer any question you may have, but please ask when not in the presence of Council Officers and on an individual basis. This is my understanding of how I can best avoid any question of a conflict of interest arising.
- See you Tuesday,
- Frank.
84. Cr Penhalluriack advised that his reference to having a meeting without council officers present 'was an attempt on my part to avoid being seen to gain some advantage by having officers attend such a meeting. I saw this as a way of putting myself in the same position as an ordinary citizen.'
85. In this document, headed 'Even more Transparent', Cr Penhalluriack indicated his understanding of the constraints placed on him in relation to his dealing with the council over this issue. He stated that the CEO had advised him that he could continue to have private dealings with the council 'so long as [*he*] acted as a private citizen and not as a councillor'. He further stated:
- As a Councillor I must be careful not to interfere with such matters, and to avoid conflict of interest situations. Obviously it was preferable, wearing my "citizens hat", to resolve the dispute as quickly as possible to avoid any on-going danger of a conflict of interest.

Approaches to the CEO

86. In 2009, Cr Penhalluriack approached the CEO on three occasions and asked him to agree to an appointment of a mediator to help resolve the laneway ownership issue. These approaches occurred during the period in which the council were conducting meetings to determine whether or not to reappoint the CEO.

87. Cr Penhalluriack states in his response to this report that the CEO agreed in principle to discuss the matter with a particular mediator. The CEO, however, does not agree with that account, advising that he did not in any way agree with Cr Penhalluriack's proposal for a mediator. The CEO declared a conflict of interest in relation to the laneway issue by writing to the Mayor and raising it in Item 8.11 at a council meeting on 4 November 2009. This item stated:

I have declared a conflict of interest. The nature of the conflict is that ... Cr Penhalluriack is taking part in deliberations concerning my employment.

88. The item states that correspondence to Glen Eira in relation to the laneway matter 'will be dealt with by other staff who already have the necessary authority'.

Dealings with other council officers

89. In 2009, it has been alleged that Cr Penhalluriack also made approaches to other council officers which indicated his willingness to use his official role to influence his position. Cr Penhalluriack denies this allegation.

90. In an email to Mr John Bordignon, Glen Eira Manager Civic Compliance, dated 16 July 2009, Mr Doug Taylor, Glen Eira Coordinator Planning and Building Enforcement described the following conversation he had with Cr Penhalluriack during a site inspection at Cr Penhalluriack's business:

Frank then said that he was beginning to feel as though he was being harassed, and that you were instigating targeted enforcement action upon him for no reason. I emphatically denied this.

He also said that he was reticent to use his political position to resolve the matter in 'leaving him alone' as there may be a conflict of interest in this issue. He further advised the situation presently dictates he may have no option, and that his political colleagues would support him as they will be his 'mates for the next four years'. The prime focus of this would be to highlight 'how the Council is wasting rate-payers money on legal expenses for no good reason'.

91. Cr Penhalluriack denies 'emphatically that I made any threat to use my political position or that I expected my political colleagues would support me'.

92. Cr Penhalluriack also states that his conversation with Mr Taylor also involved one of Cr Penhalluriack's employees, Mr M Bourke. Mr Taylor, however, having checked his notes of the conversation, denies that Mr Bourke was present during his conversation with Cr Penhalluriack.

93. On 27 August 2009 a council officer, Mr Paul Burke, reported the following taking place:

This afternoon Cr Penhalluriack arrived at City Management. The Mayor and Margaret McShane were also present.

Cr Penhalluriack asked me for a copy of a letter about himself that the CEO had sent to Councillors in the previous Council concerning his dispute with Council in relation to a laneway.

I declined to look for such a letter or provide him with a copy.

I suggested to Cr Penhalluriak that he needed to think carefully before using his position as a Councillor to seek documents from Council that relate to his disputes with Council.

Cr Penhalluriack said that he is entitled to Council documents.

I again suggested that he needed to think carefully about using his position as a Councillor.

I told him that if he wanted access to documents he should put his request in writing.

94. Cr Penhalluriack advises that he has no recollection of this conversation or having been warned by Mr Burke about using his position to obtain a copy of this document. He said that he did seek this document and, as it concerned his private interests and concerned Councillors, he considered it was relevant to his role as Councillor and credibility as a Councillor. It should, however, be recalled that the document that Cr Penhalluriack was seeking was created before Cr Penhalluriack became a Councillor and was created for the purposes of advising former Councillors of Mr Penhalluriack's various disputes with the council. It is therefore difficult to see what entitlement Cr Penhalluriack had to obtain that document and why he should use his position as a Councillor to seek to obtain it.
95. On 7 October 2009 Mr Bordignon had a conversation with Cr Penhalluriack regarding the ongoing enforcement action being taken against the Councillor. This conversation was related to the CEO in an email of that day. Mr Bordignon advised that during that conversation:
- Frank asked for a copy of our file as he needs to brief his solicitors as his paperwork is all over the place. He mentioned that his office is worse than Paul's. I declined but instead stated that he can put it in writing and may be subject to FOI (not sure) should he wish to obtain this information.
- ...
- I again reiterated to him that should he want my information then he would need to put that in writing and not just rely on a phone call. He scoffed at this and alluded that this is how I am asking for it to be done because it is him. I replied that this is how it is to be done for anyone else.
96. Cr Penhalluriack said that he recalls this conversation but advises that he was not asking for special treatment, but merely seeking the material to assist him to complete a complete record.

Conclusions

97. Cr Penhalluriack acknowledged the potential for conflict of interest and 'interference' in his correspondence to Councillors dated 2 March 2009. However, his comments in relation to how he proposed to manage this demonstrate a poor understanding of the ethical considerations involved.

98. While I do not consider that Cr Penhalluriack's position as a Councillor precludes him from attempting to resolve his dispute in relation to the laneway with Glen Eira during his term, it was clearly evident to him that a high level of caution was required if he intended to pursue that course. However, that level of caution was not exercised by Councillor Penhalluriack.
99. I consider that in each of the conversations with the CEO and the council officers referred to earlier, Cr Penhalluriack was attempting to use his official position to alter the course of action that the council officers were adopting in relation to an issue which directly related to the Councillor. Although he was not successful in each instance, this behaviour indicates that the Councillor has a willingness to behave in a manner contrary to sections 76D, 76E of the Local Government Act and clause 5.8.1 of the Code of Conduct as well as clauses 4.1.2 and 4.2.5 in that the conversations indicate that he:
- was misusing his position to gain or attempt to gain, directly or indirectly, an advantage for himself or another person
 - was seeking to direct or improperly influence, a member of council staff in contravention of section 76E
 - was acting in order to gain benefits for himself, his family, friends, outside interests or business interests
 - did not avoid conflicts between his public duties as a Councillor and his personal interests and obligations.
100. I therefore consider that his approaches amount to misconduct and may constitute gross misconduct on the part of Cr Penhalluriack.
101. Cr Penhalluriack rejects these conclusions as he considers that they are based on set of facts which he regards as incomplete and in many cases incorrect.
102. Cr Penhalluriack has also provided a letter from his solicitors which also rejects these conclusions as, according to those lawyers, 'no indication has been given as to what Cr Penhalluriack is alleged to have done'. This observation ignores the details in paragraphs 86-96. The solicitors, also go on to reject those conclusions. However, those arguments are only based on Cr Penhalluriack's account of the events.

Conflict of interest and bullying

Allegations

103. During my investigation, a whistleblower alleged that Cr Penhalluriack had engaged in improper conduct by harassing, humiliating and bullying the CEO of Glen Eira, Mr Newton, and that in failing to appropriately address this issue, the council had breached its duty to provide a safe working environment for its employees. It was alleged that Cr Penhalluriack's bullying conduct continued both during and after an investigation into the allegations of bullying commissioned by the council in 2011 and that the council failed to respond appropriately.
104. Cr Penhalluriack rejects this allegation and states that he has never been accused of bullying before, despite having employed staff for many years.

Relevant legislation and policy

105. The Local Government Act provides that the council is responsible for employing a CEO to run Glen Eira.¹ The CEO is then responsible for appointing all other council staff.² As an employer, the council has obligations under the Occupational *Health and Safety Act 2004* to provide a safe working environment. In particular, section 21 of the Occupational Health and Safety Act provides that:
- (1) An employer must, so far as is reasonably practicable, provide and maintain for employees of the employer a working environment that is safe and without risks to health.
106. WorkSafe defines bullying as 'repeated unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety'. It also states that bullying:
- in most cases, is persistent and happens over a period of time
 - can take many forms such as publicly humiliating someone; interfering with someone's personal property or work equipment; verbal abuse; and spreading malicious rumours, innuendo or gossip
 - should be assessed by considering whether an impartial observer would think the behaviour was acceptable.
107. In addition to the collective responsibility to provide a safe workplace imposed on the council as an employer, individual Councillors also have a duty not to engage in bullying and other inappropriate behaviour and to discourage others from doing so. These duties are contained in the Code of Conduct. Paragraph 5.2 states that Councillors:
- ... must not harass, bully, vilify, or discriminate against colleagues, staff members or members of the public. They must discourage others if they do so.³

¹ *Local Government Act 1989*, section 94.

² *ibid* section 94A.

³ General Conduct Obligations 5.2, City of Glen Eira Councillors Code of Conduct, November 2009, page 10.

108. The Code of Conduct also imposes a number of other duties on Councillors which are relevant:

- to act with integrity, including, impartially exercising responsibilities in the interests of the Glen Eira community and not improperly seeking to confer disadvantage on any person⁴
- not to misuse their position to cause detriment to another person⁵
- to treat each other and all persons with respect and have due regard to the opinions, beliefs, rights and responsibilities of other Councillors, council officers and other persons.⁶

109. In relation to meetings, the Code of Conduct states:

During all Council-related meetings and assemblies (whether statutory or informal) Councillors must conduct themselves constructively in order to assist the Meeting to deal with its agenda and transact its business in an orderly way and behave consistently with the principles set out herein. Councillors must respect the chair, other Councillors, officers, other parties and any members of the public.⁷

110. Section 81A of the Local Government Act provides that conduct of a Councillor which breaches the Code of Conduct also amounts to 'misconduct by a Councillor' under that Act.

111. On 1 June 2010, all current Councillors (excluding Cr Forge, who was not a Councillor at the time) attended occupational health and safety training given by Mr Nick Ruskin of DLA Phillips Fox, which included a bullying and harassment component.

112. The allegations made regarding Cr Penhalluriack's behaviour towards Mr Newton suggest possible breaches of the above provisions of the Occupational Health and Safety Act and the Code of Conduct.

113. Council's and Cr Penhalluriack's responses to these allegations are discussed below.

4 Principles for Councillor Conduct 4.2, City of Glen Eira Councillors Code of Conduct, November 2009, page 7.

5 Principles for Councillor Conduct 5.8.2, City of Glen Eira Councillors Code of Conduct, November 2009, page 12.

6 Principle 4.1, Principles for Councillor Conduct, City of Glen Eira Councillors Code of Conduct, November 2009, page 8.

7 Principle 5.12, Principles for Councillor Conduct, City of Glen Eira Councillors Code of Conduct, November 2009, pages 13-14.

Council disruption

114. Cr Penhalluriack's activities have disrupted and interfered with the operations of the council in two ways.
115. Firstly, they have had direct impact on the staff involved, and secondly, they have necessitated the council initiating processes to deal with Cr Penhalluriack's behaviour.

Direct impact on staff and Councillors

116. The effect of Cr Penhalluriack's behaviour had a significant impact on the effectiveness of the council. This can be seen from the following statements made by Councillors at the council meeting of 20 September 2011. Cr Lipshutz told the meeting:

We have a situation where this Council is becoming dysfunctional. ... [I]nstead of doing things that we should be doing as Councillors we are fighting amongst ourselves and fighting with a Councillor with a conflict.

117. And Cr Tang added:

It has got in the way of Council governing ... and I think it shows that the Council needs to do something. ... I think that part of Council's dysfunction relates to the behaviour of Cr Penhalluriack insofar as he has not accepted some of the recommendations for breaking this cycle earlier.

118. The CEO told my investigators that:

A lot of the time of senior staff was taken up responding to accusations, justifying actions and similar activities. The time of senior staff ... should have been devoted to genuine community priorities. Ratepayers were poorly served by the amount of time and effort diverted away from their interests. By spending time on Cr Penhalluriack's agenda, senior staff were under more pressure meeting Council's expectations on other matters.

119. In addition, Cr Penhalluriack made a number of approaches to council staff which are discussed below which were inappropriate and concerning to the staff members concerned.

Council processes initiated to deal with Cr Penhalluriack's behaviour

120. The main council activity in dealing with Cr Penhalluriack's behaviour has concerned the bullying allegations.
121. Throughout 2010 and 2011, the CEO, Mr Newton, said that he expressed concerns to the respective Mayors, Cr Tang and Cr Esakoff, regarding Cr Penhalluriack's attitude and behaviour in relation the CEO and other council staff. The Mayors had had discussions with Cr Penhalluriack to resolve this issue with no apparent success.

122. After seeking advice from the Municipal Association of Victoria, at an Assembly of Councillors on 22 March 2011, the council discussed concerns which had been informally raised by the CEO about Cr Penhalluriack's behaviour. The following day, Mayor Esakoff sent an email to Mr Newton proposing mediation, and in the event that mediation failed, appointment of an independent expert to investigate the matter.
123. Mr Newton declined the offer of mediation and on 27 April 2011 the council resolved to appoint a consultant to investigate. Ms Tracey O'Neill of O'Neill Workplace Lawyers was engaged to conduct the investigation (the O'Neill investigation).

The O'Neill investigation report

124. The O'Neill investigation looked at a series of incidents involving Cr Penhalluriack, which took place between August 2009 and May 2011. The allegations investigated included that Cr Penhalluriack:
 - made an unreasonable request to the CEO in respect of resolving a personal adverse possession claim during the CEO's contract renewal negotiations, placing the CEO under unreasonable pressure to comply with the request⁸
 - made derogatory and offensive remarks and allegations about the CEO without any supporting evidence
 - was constantly trying to prove that council officers were wrong, incompetent or providing false or inaccurate information to the council
 - victimised the CEO for making a complaint against him
 - determined to terminate the CEO's employment based on personal feelings towards him as opposed to any objective criteria
 - breached the Code of Conduct by engaging in the above behaviours.
125. In his response to the adverse comments in this report, Cr Penhalluriack rejected each of these allegations.
126. Ms O'Neill provided her investigation report to the council on 20 June 2011. The report states that during the investigation, Cr Penhalluriack was, at times 'confrontational and aggressive'. In addition, he 'persistently challenged' her insistence that matters relating to the investigation remain confidential in accordance with a resolution passed by the council on 27 April 2011 - refusing to sign a confidentiality agreement.
127. In that regard I note that the resolution made on 27 April 2011 which sought Ms O'Neill to conduct the investigation does not include any requirement for confidentiality. Accordingly, Cr Penhalluriack's objections regarding confidentiality are understandable. It is also to be noted that Cr Penhalluriack states that he later signed a confidentiality undertaking when urged by the Mayor and other Councillors.

⁸ This allegation is discussed further in the section of this report titled 'Conflict of interest and the Laneway'.

128. Among other things, the investigation found that:

Cr Penhalluriack has subjected Officers and the CEO in particular, to unreasonable behaviour for a significant period of time. The behaviour is not constituted by the fact that he asks questions – that is his role as a Councillor. It is the manner in which he asks those questions. With respect to the CEO they are often not questions, but accusations in circumstances where there is no evidence to substantiate his accusation.

129. The investigation also found that:

- It was ‘very clear’ that council officers felt they were ‘under attack’ from Cr Penhalluriack and that this is a ‘very stressful situation’ which ‘cannot constitute a safe system of work’.
- While there was insufficient evidence to show that Cr Penhalluriack’s behaviour was deliberately intended to injure the CEO, it is unacceptable in the workplace and creates a risk to health and safety.

130. In his submission to Ms O’Neill, Cr Penhalluriack is quoted as stating:

I was elected as a Councillor to do a task. The electorate understood the sort of person I am and they nominated me, with an overwhelming primary vote, as the best person for the job. I am trying, sometimes under very difficult circumstances to do my level best for the community. If the CEO has difficulty accepting the type of Councillors that a democracy throws up, and it has happened several times before, then just perhaps he is in the wrong job.

131. Ms O’Neill, who sought the views of Councillors, was critical of some of their views:

I consider the suggestion made by one Councillor that if the CEO cannot take the heat, he should resign as a completely unacceptable approach to issues of bullying. This is even more of concern when he [*sic*] comes from one of the CEO’s employers. Likewise suggestions that if the CEO would stand up to Cr Penhalluriack the matter would be resolve [*sic*] are not acceptable resolutions of the issue.

132. In relation to whether the conduct of Cr Penhalluriack amounted to bullying, Ms O’Neill clearly considered that clause 5.2 of the Code of Conduct had been breached. That clause provides that:

Councillors must not harass, bully, vilify or discriminate against colleagues, staff members or members of the public.

133. In her view:

The current situation is that there is a personality clash, but that the issues are much deeper than a mere personality clash. I consider that Cr Penhalluriack has bullied the CEO.

134. The report made the following recommendations:

- (a) That there is a process whereby Cr Penhalluriack has limited access to the CEO and other Officers. That where possible questions to be put to Officers (including the CEO) are in writing and submitted to the Mayor.

- (b) That Cr Penhalluriack is directed by Confidential Council Resolution not to make any accusations to Officers unless he has supporting evidence (that must be produced at the time of making the accusation).
- (c) That the Mayor strictly enforce all points of order at Council Meetings concerning accusations made by any Councillor without any supporting evidence and that immediate action is taken.
- (d) That all Councillors take responsibility for the occupational health and safety of the CEO and take steps to prevent bullying by acting on any incidents that they may witness and making points of order when accusations without evidence are made.
- (e) That Cr Penhalluriack is referred to a Councillor Conduct Panel to review his behaviour towards the CEO (in accordance with the allegations made) and Officers, his conduct during the investigation with respect to confidentiality and his compliance with clauses 4.5, 5.2, 5.9 and 5.11 of the Councillor's Code of Conduct.
- (f) That Cr Penhalluriack is required to undergo training on bullying and the appropriate way to phrase questions at meetings.
- (g) That the CEO and Cr Penhalluriack are both offered EAP type support. Both appear to be very stressed by the investigation process.

135. Cr Penhalluriack:

- rejects the conclusions of the O'Neill report
- asserts that he is unable to properly address the matters in the report as he has been denied access to the report
- states that Ms O'Neill was 'aggressive', 'confrontational and unfair'.

136. He also rejects the view that the resolution of 27 April 2011 required that the O'Neill investigation be conducted on a confidential basis.

137. I note that Cr Penhalluriack was not provided with Ms O'Neill's report due to legal advice given to the council by DLA Piper. Instead he was given a 'summary report' which was designed to 'adequately record the investigation carried out, the key findings and recommendations'. I note that the summary report is an extensive document comprising eight pages and details the conclusions reached by the O'Neill report. Given the legal advice received by the council, I consider that the course adopted by the council was not unreasonable.

Implementation of recommendations

138. On 20 June 2011, the council obtained legal advice from DLA Piper regarding how the O'Neill investigation report should be used and handled once it was received. DLA Piper advised that Cr Penhalluriack has a conflict of interest in relation to the O'Neill investigation report and that if he chooses to attend any meetings where matters relating to the report are discussed and fails to disqualify himself or declare a conflict then 'the meeting would need to be stood down and adjourned and the Councillor persuaded not to attend'.

139. This advice was distributed and discussed at an Assembly of Councillors on 21 June 2011, along with the summary of the O'Neill investigation report. On the following day Cr Penhalluriack wrote to the Mayor declaring a conflict of interest in the matter, which was on the agenda for the next Ordinary Council Meeting on 28 June 2011. Cr Penhalluriack stated that he would not be at the meeting due to a 'leave of absence'. Cr Penhalluriack's legal representative also wrote to the Acting Mayor Hyams stating:
- My client has, under duress, admitted to a conflict of interest under the Local Government Act section 77B(1), thus excluding him from defending himself from the processes and conclusions of what he regards as a 'kangaroo court'.
140. On 23 August 2011, the council discussed the O'Neill investigation report at an Assembly of Councillors. Evidence obtained by my investigation indicates that Councillors were not supportive of implementing recommendation (e) of the report, which was to refer Cr Penhalluriack to a Councillor Conduct Panel.
141. However, it took until the council meeting of 30 August 2011, approximately 10 weeks after the council received the O'Neill investigation report, before the council passed its first resolution in relation to the recommendations. This delay was caused, according to the current Mayor, Cr Hyams, by :
- the need to follow the legal advice from DLA Piper to provide both Cr Penhalluriack and Mr Newton with three weeks to consider and respond to the summary O'Neill report
 - Cr Penhalluriack's leave of absence in July 2011
 - Cr Penhalluriack's refusal to leave an Assembly of Councillors at which Cr Penhalluriack issues were to be discussed - 'despite his obvious conflict of interest'.
142. The council was seeking to follow the advice from DLA Piper which was that the council should provide Cr Penhalluriack and Mr Newton with the opportunity to respond to the O'Neill report. For that purpose a summary of the O'Neill report was provided to both parties on 25 July. It was not possible, according to Cr Hyams, for this to occur earlier.
143. Despite the O'Neill report, Cr Penhalluriack was not prepared to accept that he was a bully or that he had bullied Mr Newton. Prior to the council voting on the O'Neill recommendations, Cr Penhalluriack presented a response strongly denying that he had bullied Mr Newton. However his letter indicated that his understanding of bullying was remarkably limited as he considered that the CEO needed to have medical evidence or 'signs of scars or bruises, either mental or physical' before it could be said that he had been bullied. In the absence of such evidence he considered that a bullying claim and investigation was 'a futile exercise in semantics'. He also stated that 'a Councillor Conduct Panel is a waste of resources. If this matter is pursued I will be seeking a full VCAT hearing where my legal team may question all involved in the O'Neill Report'. He also indicated that such process would be expensive 'wasting ratepayer's money'.

144. In his response to the draft copy of my report, Cr Penhalluriack did not comment on this issue, but instead made the following points:
- He denied the conclusions in the O'Neill summary report on the basis that he had not had access to the whole report and, accordingly, had been denied the opportunity to respond to the report.
 - The council made its decision based on the O'Neill summary report, but should have made its decision after considering the whole report.
145. The following motion was put and carried on 30 August 2011 with Cr Forge being the only Councillor who voted against it:

That Council:

Following consideration of the responses provided by the CEO and Cr. Penhalluriack in relation to the O'Neill report

1.
 - a Resolves that Cr Penhalluriack puts all questions to the CEO and/or Officers in writing and submits them to the Mayor except where questions arise during the course of a meeting.
 - b Directs Cr Penhalluriack not to make any accusations to the CEO and/or Officers unless he has supporting evidence (which must be produced at the time of making the accusations).
 - c Urges the Chair to strictly enforce points of order at Council meetings concerning accusations made by any Councillor without any supporting evidence.
 - d Encourages all Councillors to take responsibility for the occupational health and safety of the CEO and/or Officers by taking steps to prevent bullying by acting on any incidents that they may witness and making points of order when accusations without evidence are made.
 - e Requires Cr Penhalluriack to undergo training on bullying and the appropriate way to phrase questions at meetings and authorises the Mayor to appoint an appropriate expert to carry out such training to a maximum expenditure of \$2,500.
 - f Offers the CEO and Cr Penhalluriack Employee Assistance Support.
2. Notes Tracey O'Neill's recommendation to refer Cr Penhalluriack to a Councillor Conduct Panel and reserves the right to implement this recommendation should the above recommendations not be effective.
3. Appoints an independent arbiter, nominated by the MAV, to rule on issues relating to workplace safety identified in the O'Neill report and to ensure that recommendations are implemented and maintained to ensure a safe effective and productive workplace.
4. Strongly urges Cr Penhalluriack to exclude himself from all discussion in relation to the CEO contract and should he fail to do so, consider the formation of a special committee for CEO contract matters.
5. Notifies Cr Penhalluriack and the CEO of this resolution.

146. The council also considered Cr Penhalluriack's behaviour at the following meetings:

- 13 September 2011 (Assembly of Councillors)
- 20 September 2011, where four motions concerning Cr Penhalluriack's behaviour discussed below were debated
- 2 November 2011
- 13 December 2011
- 28 February 2012.

Each meeting, aside from the last, discussed Cr Penhalluriack's behaviour in camera.

147. The current Mayor, Cr Hyams, has since stated that the council had 'hoped that the threat of being referred to a Councillor Conduct Panel would cause Cr Penhalluriack to modify his behaviour, but, given this did not occur, Council voted at its next meeting, on September 20, to refer the matter to a Councillor Conduct panel'.

148. On 20 September 2011, the four motions concerning Cr Penhalluriack's behaviour discussed below (see paragraph 175) were debated and passed.

149. On 2 November 2011, the council resolved to make an application to a Conduct Panel under section 81B of the Local Government Act in respect of alleged breaches by Cr Penhalluriack of the council's Code of Conduct and the Local Government Act and seek a finding of misconduct. Cr Penhalluriack left the chamber while this motion was debated. It was carried unanimously.

150. Subsequently, at the council meeting on 13 December 2011 the council passed a motion regarding legal advice received by the council and actions the council should take concerning Cr Penhalluriack's access to staff work areas until he had taken bullying training.

151. And finally, on 28 February 2012, the council felt that it was necessary to make matters public by carrying the following motion concerning Cr Penhalluriack:

- As a result of concerns that some of Cr Penhalluriack's conduct towards council officers and staff may cause council to be in breach of its occupational health and safety obligations to provide a safe work place, council unanimously resolved to engage a solicitor with expertise in occupational health and safety to investigate these concerns.
- As a summary of the [O'Neill] investigation report records, some of Cr Penhalluriack's conduct towards council officers and staff was inappropriate. The summary recommended, among other things, that Cr Penhalluriack be referred to a Councillor Conduct Panel to review his behaviour towards officers, his conduct during the investigation with respect to confidentiality and his compliance with clauses 4.5, 5.2, 5.9 and 5.12 of the Councillors' Code of Conduct.

- Cr Penhalluriack participated in various council discussions and determinations in relation to the above matters. Councillors believed that this conduct breached the conflict of interest provisions of the Local Government Act.
- Those Councillors present therefore unanimously resolved, at the Ordinary Council Meeting of 2 November 2011, to make an application to a Councillor Conduct Panel and to seek a finding of misconduct against Cr Penhalluriack for these alleged breaches.
- Cr Penhalluriack denies these allegations and exercised his right to refer the matter to VCAT for determination.
- While Cr Esakoff, as then mayor, was appointed as council's representative for the purposes of the Councillor Conduct Panel and in accordance with the legislation that states that the applicant must be a Councillor or Councillors, once the matter was referred to VCAT, it was possible, and therefore appropriate, that Glen Eira City Council be named as the applicant.

Cr Penhalluriack's conduct

152. Despite these measures, it is apparent that the steps taken by the council have had little, if any effect on the behaviour of Cr Penhalluriack and he continues to be disruptive to the council and its staff.

Cr Penhalluriack's conduct – during the O'Neill investigation

153. During the course of the O'Neill investigation, no alteration in Cr Penhalluriack's behaviour in relation to the CEO and council staff was apparent.

154. That behaviour included, on 14 June 2011, shortly before the completion of the O'Neill investigation, Cr Penhalluriack sending an email from his personal email address to his Councillor email address and to private individuals known to operate the 'Glen Eira Debates' website. It states:

Nilimbuk [s/c] Shire, nr Eltham.

Andrew there 1996 and they had an investigation. Do you know anything. He then came to Caulfield.

However, Mr Newton has never worked for the Nillumbik Shire Council.

155. In his response to this issue Cr Penhalluriack:

- Stated that the email in question was, despite its assertive form, a 'query' received by him from an unnamed ratepayer who 'suspected' that Mr Newton had previously been employed by the City of Nillumbik. Cr Penhalluriack also stated that the email was sent to 'other ratepayers who likewise had concerns about the appointment process'.

- Asserted that his privacy had been invaded by council staff providing the email and suggested that ‘some might interpret it as an act of bullying’ of him.

156. On 28 May 2011, Cr Penhalluriack wrote to Mr David Gibbs, Chairman of the Glen Eira Audit Committee stating:

[I]f the [O’Neill] report finds fault such that there is an unsafe workplace there may be far reaching consequence including, but not limited to, the costs of changing the working environment, the cost of hiring a temporary CEO and significant insurance payouts.

In his response to the draft copy of my report Cr Penhalluriack asserts that ‘[a] fair reading of the complete letter makes it plain that I was simply flagging the possibility that the Council could be exposed to a financial risk’ and does not request any particular action be taken.

157. On 31 May 2011, after being informed of this letter, Ms O’Neill contacted the Mayor and discussed its inappropriateness. Ms O’Neill confirmed this advice in an email to the Mayor the same day, stating:

Given the allegations of inappropriate behaviour by Councillor Penhalluriack toward the CEO, the Investigator is concerned by the phrase ‘*hiring a temporary CEO*’ – whilst there is more than one meaning to the phrase, it could be interpreted as a threat to the CEO’s employment. Given the on-going investigation, the Councillors should direct Councillor Penhalluriack to desist in discussing this matter, limit his contact with the CEO and desist from making decisions which could affect the CEO’s future employment until the investigation is completed.

Cr Penhalluriack asserts that this passage indicates a preparedness on Ms O’Neill’s part to find fault with his actions without seeking his response and where no fault existed.

158. However, the suggestions made by Ms O’Neill to address Cr Penhalluriack’s behaviour were not actioned by the council.

Cr Penhalluriack’s conduct – otherwise

159. On 2 September 2011, Cr Penhalluriack lodged a Certificate of Capacity with the council stating he was unfit for duties between 2 and 16 September 2011, due to ‘stress’.

160. In his response to the draft copy of my report, Cr Penhalluriack asserted that his doctor’s belief was that he needed to cut back on council work, not that he was not to undertake any council work.

161. However, an examination of the certificates provided by Cr Penhalluriack’s doctor demonstrates that:

- on 2 September 2011 the doctor’s certificate stated that Cr Penhalluriack was ‘Unfit for any duties’ from 2 to 16 September; but
- on 9 September, the doctor then certified that Cr Penhalluriack could work on ‘modified duties’ from 10 September to 8 October 2011 and that Cr Penhalluriack was capable of discerning which activities he was able to handle.

162. Contrary to the council's resolution of 30 August 2011 and his own Certificate of Capacity of 2 September 2011, I am satisfied that on 7 September 2011, Cr Penhalluriack did the following:

- Entered the CEO's office and requested the CEO supply him with council minutes and architectural drawings for the Duncan McKinnon pavilion.

Cr Penhalluriack in his response to the draft copy of my report did not agree that he made this request. He stated that he requested the CEO for his council pack. He was aware that the resolution of 30 August prevented him asking Mr Newton about council business, but in his view (despite the clear wording of resolution 1(a), see paragraph 134) did not prevent him 'raising matters of a routine nature, or attending the offices in the Executive suite'.

- Requested council officers, Mr Peter Waite and Ms Lauren Hurle to supply him with a Victoria Police report, an arborist report and photographs regarding a tree vandalism incident.

- Emailed Ms Hurle requesting council minutes.

Cr Penhalluriack, in his response to the draft copy of my report, (despite the clear wording of resolution 1(a)) stated that he considered that the resolution of 30 August did not prevent him making 'routine requests'.

- Approached Ms Hurle with a request for information. Ms Hurle stated that she felt under pressure to comply with this request. Cr Penhalluriack, in his response, considered that this information was about the council pack and therefore, in his view, the request was not prevented by the resolution of 30 August 2012. He also stated that he did not believe that Ms Hurle 'showed any discomfort' or that she considered 'that I was excluded from council duties'.

- Requested Ms Hurle to copy the minutes from the 30 August council meeting. After this was refused, Cr Penhalluriack went to Ms Hurle's desk and read the minutes, which were yet to be distributed, and made notes in relation to them.

Cr Penhalluriack, in his response, stated that he did not 'direct' Ms Hurle and that he 'did not go to her desk or read the minutes at her desk'.

163. In addition, on the evening of 7 September 2011, Cr Penhalluriack was witnessed going through paperwork at the desk of a the CEO's executive assistant, Ms Margaret McShane. The Mayor, who was one of the witnesses to this incident, observed that some of this paperwork included minutes of council meetings which had not yet been distributed to Councillors.

164. On 8 September 2011 the Mayor sent an email to Cr Penhalluriack confirming that he was 'to cease all Councillor's duties' for the period of time for which his Certificate of Capacity applied.

165. Cr Penhalluriack in his response to the draft copy of this report denied that the Mayor had any authority to prevent him undertaking his role as a Councillor. He also stated that the only document that he saw on Ms McShane's desk was a copy of council minutes.
166. Cr Penhalluriack accessed the paperwork on Ms McShane's desk without the knowledge or consent of any council officer.
Cr Penhalluriack states that he does not need the knowledge or consent of a council officer to look at council minutes.
167. On 9 September 2011, the Mayor wrote a memorandum to Cr Penhalluriack regarding this incident, stating:

This behaviour was most inappropriate. To intrude on someone's personal work space in this way is an invasion of privacy and contravenes the principles expected in the role of a Councillor and in particular shows disrespect.

Cr Penhalluriack in his response to the draft copy of my report states that the Mayor was present while he was at Ms McShane's desk and made no comment at the time.

168. Also Cr Penhalluriack responded to the Mayor via a letter from his solicitor, dated 20 September 2011, which stated that Cr Penhalluriack 'did not go through papers on Ms McShane's desk, rather, seeing the minutes of the council meeting of 30 August 2011, he stood at the desk and perused them'.
169. On 12 September 2011 Cr Penhalluriack questioned a Glen Eira executive assistant about council documents in such a way as to cause the assistant to become distressed and cry.
Cr Penhalluriack said that he agreed that he had a short conversation with the executive assistant, but 'at no point did I observe [the executive assistant] ... distressed or crying'.
I note that two colleagues witnessed the executive assistant's distress.
170. On 13 September 2011, the Mayor wrote a further memorandum to Cr Penhalluriack regarding his breaches of the council's resolution of 30 August 2011, stating:

This behaviour is contrary to the resolution of Council referred to above and I advise you that the matter will now be brought back to the Councillor group to discuss what further action needs to be taken to ensure that these breaches do not continue.

Cr Penhalluriack, however, does not agree with the Mayor's characterisation of his actions as breaching council's resolution of 30 August 2011.

171. The O'Neill investigation report was further discussed at an Assembly of Councillors on 13 September 2011. However Cr Penhalluriack failed to declare a conflict of interest in relation to this agenda item. After a discussion of his need to declare a conflict lasting approximately 20 minutes, Cr Penhalluriack left the meeting room. When asked if he was declaring a conflict of interest, Cr Penhalluriack replied that he was not and was only leaving because he was stressed.

172. Cr Penhalluriack in his response to the draft copy of my report states that he took the view that the council was discussing a matter which affected his rights to perform his duties as a Councillor and that he was entitled, as matter of natural justice, to respond to the allegations being made against him.
173. On 14 September 2011, Mayor Esakoff emailed Cr Penhalluriack regarding the council's resolution that he undergo training on bullying and proposed a period during which that training could take place. Cr Penhalluriack did not reply and the Mayor re-sent the same email on 16 September 2011. In a letter dated 7 October 2011, Cr Penhalluriack's lawyer responded by advising that Cr Penhalluriack was only prepared to undergo this training if the other Councillors, Mr Newton and his managers were also required to attend it. In his response to the draft copy of this report, Cr Penhalluriack maintained his objection to being required to undertake training based on disputed findings arising out of what he described as a 'flawed process'.
174. At an Ordinary Meeting on 20 September 2011, Cr Penhalluriack presented a seven page submission from his lawyer denying any wrongdoing, challenging the validity of the resolution passed on 30 August and reserving his right to take legal action in relation to that resolution of the council. The Mayor distributed this submission to all Councillors in the assembly prior to the meeting.
175. While section 79C(1)(f) of the Local Government Act states that a Councillor is taken not to have a conflict of interest in relation to a matter if it relates to an application to a Councillor Conduct Panel, Cr Penhalluriack did not declare a conflict of interest in relation to any of the other items related to the O'Neill investigation report. He subsequently voted against all motions, as did Cr Forge.
176. The motions put in relation to the O'Neill investigation report on 20 September 2011 included the following:
- That the council disassociate itself from a comment made by Cr Penhalluriack in relation to a newspaper article, which he had refused to withdraw and which the council considered likely to mislead or deceive. This motion was passed, with Crs Penhalluriack, Forge and Magee against. The comment was as follows:

The article refers to a legal stoush, and claims that residents are saying that Council has sought legal advice concerning allegations that I have bullied our Chief Executive Officer, Mr Andrew Newton.

I am embarrassed and demeaned by such an unfounded allegation reaching publication in such a widely circulated newspaper. And I can safely presume that our Chief Executive Officer will also suffer this embarrassment.

- That Cr Penhalluriack write to the persons to whom he wrote the email dated 14 June 2011 regarding Mr Newton's employment history and an investigation at Nillumbik Shire Council, stating that the information in it was incorrect, that he had apologised to Mr Newton and that he should never have contacted them about Mr Newton's employment history.⁹ The motion also required that if Cr Penhalluriack failed to carry out this action within five days, the Mayor would write to those persons on behalf of the council advising that the comments made by Cr Penhalluriack were wrong. This motion was passed with all Councillors, except Crs Penhalluriack and Forge, in favour.
- That Cr Penhalluriack be referred to a Councillor Conduct Panel to review his behaviour towards the CEO and council officers, his conduct during the investigation, his compliance with the Code of Conduct and failure to declare a conflict of interest. This motion was passed, with Crs Penhalluriack, Forge and Magee against.
- That in accordance with the O'Neill investigation report and to protect the health and safety of staff, Cr Penhalluriack's access to the City Management work area be suspended. This motion was defeated, with Crs Esakoff, Lipshutz, Tang and Hyams in favour and Crs Penhalluriack, Forge, Magee, Pilling and Lobo against.

Cr Penhalluriack stated that he believed that natural justice dictated that he should have the opportunity to respond to the allegations made against him.

177. On 2 November 2011, acting on legal advice, the council passed a further resolution to refer Cr Penhalluriack to a Councillor Conduct Panel. This resolution was passed unanimously.
178. Subsequently, at the council meeting on 13 December 2011, the council considered a motion regarding:
- Legal advice from DLA Piper concerning correspondence received from Mr Penhalluriack's solicitors regarding Cr Penhalluriack's dispute with the council regarding bullying allegations.
 - Actions that the council should take concerning Cr Penhalluriack's access to staff work areas until he had taken bullying training. That included a resolution passed unanimously, that Cr Penhalluriack's access to staff work areas be suspended until Cr Penhalluriack attended bullying training. This overcame the failure of the last motion moved at the meeting on 20 September 2011.
179. Cr Penhalluriack refused to declare a conflict of interest, despite a recommendation from the Mayor that he should, and spoke on the matter arguing that it should not be passed. He then left the chamber before the other Councillors voted. The motion was passed unanimously. This behaviour by Cr Penhalluriack appears to amount to a further act of misconduct.

⁹ Cr Penhalluriack subsequently refused to comply with this resolution. A letter from Cr Penhalluriack's solicitor, Mr Shaw, dated 7 October 2011 stated that Cr Penhalluriack's 'view is that writing in these terms achieves nothing' and that he does 'not accept that any negative imputation about Mr Newton can be drawn from an email which simply asks a question'. In accordance with the resolution, the Mayor wrote to the persons concerned on 28 September 2011.

Conclusions

180. It is apparent that Cr Penhalluriack's behaviour has been sufficient for senior council staff, an independent consultant and the majority of council to consider that he has bullied council staff. The evidence that I have seen in this investigation confirms that position.
181. Cr Penhalluriack's lawyer however, asserted that senior council staff could not 'approach the matter of the allegations of bullying with open minds' as they either made the allegations or 'have been "players" in dealing with the matters [related to bullying] and are directly employed by' the CEO.
182. It is also apparent that Cr Penhalluriack has taken no steps to alter his behaviour as a result of the O'Neill report.
183. The council has, as a result, adopted a number of recommendations of the independent consultant including:
 - referring Cr Penhalluriack to a Councillor Conduct Panel
 - anti-bullying training for Cr Penhalluriack, which Cr Penhalluriack has refused to undertake.
184. However, I consider the council's initial decision not to implement Ms O'Neill's recommendation to refer Cr Penhalluriack to the Councillor Conduct Panel to be unfortunate. There was mounting evidence available that Cr Penhalluriack refused to accept that he had engaged in inappropriate behaviour, did not intend to cease the conduct which had been found by the O'Neill investigation to amount to bullying and was not prepared to take training other than on his own terms.
185. That said, it also seems apparent that, even if that step had been taken, there would have been little improvement in Cr Penhalluriack's behaviour or reduction in distractions to the council; this is because the processes available to councils to deal with disruptive Councillors do not allow for prompt remedies.

New resolution model

186. The Mayor of Glen Eira has expressed concern regarding the means available by which councils can deal with disruptive or difficult Councillors stating:

There are powerful disincentives to councillors referring a colleague to a Councillor Conduct Panel. There is the concern that the expenses of the CCP and any subsequent VCAT hearing will be borne by the ratepayers. There is the concern that much time effort and resources that would be better expended by councillors and officers on the business of running the municipality for the benefit of its ratepayers and residents will instead be devoted to the hearings. There is also the desire to continue to work with the relevant councillor, and to maintain relationships which could be strained by acting against a colleague.

187. For that reason the Mayor recommended:

An external integrity agency to have the power to refer a matter to a CCP and to have the carriage of that matter, and also to make or apply for interim rulings or expedited orders, such as suspensions, or orders that for example, councillors refrain from specified behaviour or observe that they have a conflict of interest when specified matters are discussed, to prevent ongoing misbehaviour.

188. I agree that the means that are currently available to councils provide little real assistance in dealing with difficult Councillors, and the model suggested by the Mayor is one that the Premier and the Minister might consider exploring.

189. An alternative approach that the Premier and the Minister might consider is the introduction of an Integrity Commissioner based on the Commissioners established in Queensland and in the United Kingdom, but with particular application to local government.

190. Under the *Integrity Act 2009* (Qld) the Queensland Integrity Commissioner is an individual appointed to provide advice on integrity and ethics issues to Ministers, Members of Parliament, senior public servants and others about ethics and integrity issues, including conflicts of interest. In the United Kingdom, the Parliamentary Commissioner for Standards provides advice on a confidential basis to individual Members of the House of Commons about the interpretation of the House's Code of Conduct and Guide to the Rules relating to the conduct of Members. That advice, while provided confidentially, can be 'disclosed only in the event of its becoming relevant to one of [the Commissioner's] inquiries'.¹⁰

191. A Victorian Integrity Commissioner could be developed modelled on the arrangements for these two Commissioners, but with particular application to local government.

¹⁰ Parliamentary Commissioner for Standards, Annual Report 2010-11, House of Commons, 10.

192. The model would allow a council which is concerned about an ethical issue regarding a Councillor to resolve that the Councillor seek the advice of the Commissioner, and should the Councillor fail to do so, he or she would be suspended from being a Councillor until such time as the Councillor seeks the advice of the Commissioner.
193. The arrangements could also provide that, while the consultation is confidential, should the Councillor continue to act in a manner inconsistent with the advice of the Commissioner, that the Commissioner could report that fact to the council, such report entitling the council to make an application to a Panel.
194. The model would also allow Councillors who have concerns regarding ethical issues to approach the Integrity Commissioner on a confidential basis, to seek advice as to what steps, if any, the Councillor needs to take to ensure appropriate behaviour.
195. Such a model would provide councils and Councillors with an effective and prompt means by which ethical issues could be dealt with, enabling Councillors to make their elected role positive for councils and ratepayers.

Recommendations

I recommend that:

Recommendation 1

The Glen Eira Council amend its application made pursuant to section 81B Local Government Act or make a further application pursuant to that section for a Councillor Conduct Panel to make a finding of misconduct regarding Cr Penhalluriack as a result of breaches of the following clauses of the Councillors' Code of Conduct:

- 4.1.2 – to not act in order to gain benefits for themselves, their family, friends, outside interests or business interests
- 4.2.5 – to avoid conflicts between their public duties as a Councillor and their personal interests and obligations
- 4.2.6- to declare any private interests or conflicts of interest as required by the Act relating to their public duties and take steps to resolve any conflicts arising in such a way that protects the public interest
- 5.2 – to not harass, bully, vilify, or discriminate against colleagues, staff members or members of the public
- 5.8.1 – to not misuse their position to gain or attempt to gain, directly or indirectly, an advantage for themselves or for any other person.

Recommendation 2

The Secretary of the Department of Planning and Community Development consider making an application to VCAT, pursuant to section 81E, alleging gross misconduct by Cr Penhalluriack.

Recommendation 3

The Premier and the Minister give consideration to additional means to assist councils to deal with difficult Councillors, including the creation of an Integrity Commissioner with application to local government.

Ombudsman's Reports 2004-12

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Investigation into the storage and management of ward records by the Department of Human Services
March 2012

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Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
November 2011

Investigation into how universities deal with international students
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011

Investigation into the Office of Police Integrity's handling of a complaint
October 2011

SafeStreets Documents - Investigations into Victoria Police's Handling of Freedom of Information request
September 2011

Investigation into prisoner access to health care
August 2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation - Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood - Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
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Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
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Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) - Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection - out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations - Report on their implementation
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Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
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Own motion investigation into the Department of Human Services - Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate - Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
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An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

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Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
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Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
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Conflict of interest in the public sector
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Investigation into VicRoads' driver licensing arrangements
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Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
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Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract - CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the Freedom of Information Act 1982
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the Freedom of Information Act 1982
Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption - second interim report of Ombudsman Victoria
June 2004