

# **VICTORIAN** **ombudsman**

**Investigation into Latrobe City Council's  
failure to reinstate Summerfield Track  
following a landslip in June 2012**

**March 2014**

**Ombudsman Act 1973**

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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 sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report into an *Investigation into Latrobe City Council's failure to reinstate Summerfield Track following a landslip in June 2012*.



G E Brouwer

**OMBUDSMAN**

25 March 2014

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# Background

## Introduction

1. Councils play a crucial role in our State as they are the closest tier of government to communities and therefore should understand the need to be responsive and relevant to citizens' concerns.
2. In this matter, elderly ratepayers of Latrobe City Council found themselves in a particularly vulnerable and precarious position due to a natural disaster. As a result their only access road to their property known as Summerfield Track was closed due to a landslip. The complainants, Mr Mohm and Mrs Evelyn Fauzee, have been unable to return to their property, tend their livestock and live in their home since June 2012.
3. My investigation identified that there is scope for key agencies involved in the funding of natural disasters to be more aware of their roles and responsibilities, increase coordination and work together to provide timely information to ensure efficient, effective and responsive outcomes.
4. The council advised me in its response to my draft report, that the Department of Treasury and Finance had, on 7 March 2014, approved funding for the permanent reinstatement of Summerfield Track under the Natural Disaster Funding Assistance Program. This will allow Mr and Mrs Fauzee, 21 months after the natural disaster, to return to their property on a permanent basis.
5. Notwithstanding the constructive outcome that has been achieved for the Fauzees by my office's intervention, I have decided to report to Parliament on this matter, as it highlights how inaction by an agency can cause significant distress and inconvenience to citizens.
6. This report also has broad applicability to councils and agencies which have a role in responding to natural disasters and working with community members to rectify damage caused.

## Complaint to my office

7. On 1 July 2013, my office received a complaint about the lack of action taken by the Latrobe City Council (the council) to reinstate vehicle access to a rural property, following a landslip on 4 June 2012. Mr Mohm and Mrs Evelyn Fauzee of 10 Summerfield Track, Jumbuk<sup>1</sup>, advised my office that they had been unable to return to their home and property since the landslip and were living temporarily with their daughter and son-in-law in Melbourne.
8. My office made enquiries with the council under section 13A of the *Ombudsman Act 1973* (the Act) and the council advised that it was pursuing the option of reinstating access through a neighbouring business property. The council, however, did not specify when this was to occur.

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<sup>1</sup> Jumbuk is approximately 25.5kms from Morwell.

9. I wrote to the council's Chief Executive Officer (CEO) on 5 September 2013 requesting information on how and when this matter would be resolved. The council did not provide a timeline and advised that it was reliant on funding from the Department of Treasury and Finance (DTF).
10. On 4 December 2013 in a further letter to the CEO, I proposed that the council commence reinstatement of the track to Mr and Mrs Fauzee's property within a month without waiting for DTF funds and that they should attempt to recover the funds from DTF at a later time. I also proposed that 'the council immediately provide temporary access to the property while a permanent solution is finalised'.
11. I considered these proposals to be appropriate as:
  - the council is the responsible road authority in relation to Summerfield Track
  - there had been ongoing delays in the council resolving this matter
  - it is unreasonable for the council to await funding from DTF which may or may not be forthcoming
  - the council did not have a plan to meet the cost of the works if DTF did not provide the funding
  - Mr and Mrs Fauzee have not had access to their home for 18 months and did not know when access would be restored.
12. The council responded that it could not commence the reinstatement of the track as the landslip was still moving and that without financial assistance from DTF the 'cost of completing the said works is not currently within Council's capacity'.
13. On 16 January 2014, 19 months after the landslip, I notified the Minister for Local Government and the council's Mayor and Acting CEO of my intention to investigate this matter under section 15B of the Act.
14. On 31 January 2014 my office was informed by the council that temporary access had been restored to 10 Summerfield Track.
15. In response to my draft report, the council said that it was informed by the Department of Treasury and Finance on 7 March 2014 that funding for the permanent reinstatement of Summerfield Track has been approved under the Natural Disaster Funding Assistance Program. Council also said that it '... will give this project absolute priority'.

## Investigation methodology

16. My investigation included:
  - review of relevant council and DTF files in relation to Summerfield Track
  - a site visit to Summerfield Track on 4 October 2013 to view the landslip
  - interviews with Mr and Mrs Fauzee (accompanied by their daughter) and relevant officers of the council, DTF and VicRoads.

17. My officers conducted seven interviews under either oath or affirmation. Each witness was advised that they could be accompanied at interview by either a lawyer or support person. No witness chose to be so accompanied.
18. Pursuant to section 25A(3) of the Act no person identified in this report is the subject of adverse comment or opinion. Rather, my concerns lie with the council as an organisation.

### **Summerfield Track landslip**

19. Mr and Mrs Fauzee have resided at their Jumbuk property for around 20 years. The property comprises a residence and 85 acres of farmland. Summerfield Track, the only access road to the property, is a steep, grass and stone, single vehicle route cut into the hillside above Jumbuk Road. The Fauzees are the only users of Summerfield Track.
20. Summerfield Track is listed as a 'Limited Access Road' in the council's published Public Road Register and the council is listed as the responsible road authority for the track. *Council's Road Management Plan 2013-2017* states that the council is to inspect Limited Access Roads each year.

## Ombudsman investigation

21. The landslip occurred on Summerfield Track on 4 June 2012. At this time Mr and Mrs Fauzee were in Melbourne. Since that date Mr and Mrs Fauzee have been unable to return to their property.
22. Mr and Mrs Fauzee told my officers that they had suffered considerable emotional distress and anxiety at not being able to access their property and belongings and to care for their livestock of around 60 sheep and a steer. Mr Fauzee said that at least half of his sheep have died in the last 18 months. In a letter to the former council CEO dated 30 September 2013 Mr Fauzee sought reassurance that the council would 'expedite our road access so we can return to our home and care for our animals. In the short term, we also ask that the council provide assistance to ensure our animals are not neglected'.
23. Refer to Appendix A to this report for photos of Summerfield Track affected by the landslip and following temporary reinstatement in January 2014.

### Overview of the council's handling of the Summerfield Track landslip

24. Outlined below is a brief chronology of council's handling of this matter:
  - **24 July 2012:** The Acting Chief Executive Officer stated in a letter to Mr and Mrs Fauzee that the track could not be opened on the same alignment and that an investigation and discussion with adjoining landowners would take place to find a solution.
  - **23 October 2012:** The Coordinator Infrastructure Maintenance advised Mr and Mrs Fauzee's daughter that the council was investigating the options available to provide access to the property.
  - **1 March 2013:** Mr and Mrs Fauzee were advised that council officers were gathering technical reports.
  - **9 July 2013:** The Acting CEO advised Mr and Mrs Fauzee that it was not possible to reinstate the original track or provide access through neighbouring properties. The Acting CEO stated that council had met with State Government officials to ensure that the State Government would be in a position to assist with a solution.
  - **July 2013:** Council commissioned a report on the *Summerfield Track, Jumbuk, Review of Options for Restoration of Access, 1, Traffic Engineering Report* (the engineering report). The report outlined the following four options (with approximate costs): (i) reconstruct the road (\$450,000); (ii) provide access through a neighbouring private property (between \$508,260 and \$656,610); (iii) provide access through a neighbouring business property (\$536,800); and (iv) acquire Mr and Mrs Fauzee's property (either \$370,000 with access or \$225,000 without access).

- **22-28 August 2013:** Council submitted the engineering report to DTF. DTF asked VicRoads for its assessment on the report's options and for the council and VicRoads to work together to provide information as to what is normal cost versus betterment and enhancement.
- **30 August 2013:** The council's General Manager Community Liveability, wrote to the neighbouring business requesting its approval to realign a section of Summerfield Track through its property.
- **6 September 2013:** A handwritten note by the Coordinator Civil Works stated a call is to be made to the neighbouring business 'to hold off providing a response to construction of track off south end of Summerfield Track'.
- **9 October 2013:** Council met DTF and VicRoads to discuss natural disaster funding for a number of damaged assets in the municipality, including Summerfield Track.
- **10 October 2013:** The Manager Community Development advised Mr and Mrs Fauzee's daughter that the council was awaiting approval of funding from DTF and, in turn, DTF was waiting for financial support from the Federal Government. The Manager Community Development also stated that the council had drafted a letter to the neighbouring business to request access through its property and that the letter would be sent after the council had been notified that its DTF funding application was approved.
- **11 October 2013:** Council seeks VicRoads help and states that it considers that there is no betterment involved in its preferred option of reinstating access through the neighbouring business property.
- **31 January 2014:** Council advises Mr and Mrs Fauzee, via an email to their daughter, that it had provided temporary access to 10 Summerfield Track with the completion of civil works at a cost of \$40,000. The council stated:
 

We will continue to monitor Summerfield Track to ensure it remains safe for vehicle access but may need to perform additional civil works or close the road again should the track fail. As the works completed are only a temporary solution only, it is very important that your parents notify Latrobe City Council should they notice any movement in the road at all. This is particularly important after any rain event. We hope to be in a position to confirm the permanent solution to provide access for your parents over the next two weeks.
- **7 February 2014:** After consulting with the council, VicRoads submits information to DTF for restoration of Summerfield Track which includes a funding amount regarded as 'betterment'<sup>2</sup>.

<sup>2</sup> Betterment means the restoration or replacement of an asset to a more disaster-resilient standard than its pre-disaster standard. Source: Natural Disaster Relief and Recovery Arrangements Determination 2012, Version 1, clause 3.6.7.

## Key issues identified with the reinstatement of Summerfield Track

25. My investigation identified that there have been significant delays by the council in reinstating the Summerfield Track following the landslip in June 2012. This is notwithstanding that the track is classified a public road for which the council has responsibility and the road is the only access the Fauzees have to their property.
26. Key issues identified in my investigation of this matter include:
  - Insufficient action by the council immediately following the landslip.
  - An unwillingness by the council to expend funds or conduct any works until approval of funding eligibility from DTF.
  - A lack of clarity about the roles and responsibility of the council, DTF and VicRoads in the natural disaster funding process. This has resulted in a prolonged period of consultation about the council's eligibility to obtain funding.
  - A failure by the council, over an extended time period, to communicate definitive progress and outcomes to the Fauzees.

### Insufficient action by council following the landslip

27. At interview, council officers provided a number of reasons why immediate attention was not given to the Summerfield Track landslip. My officers were told that there were a number of landslips across the municipality in 2011 and 2012 and that ensuring the necessary physical resources/dedicated staff to fix the landslips, 'proved to be a challenge'. The council also told my officers that it prioritised its resources on the older landslips in the municipality.
28. The council stated that its consideration of a solution for Summerfield Track was hampered by the area being prone to landslips and the council considered that repairing the landslip was not a sustainable solution. The council also said that it 'placed all its eggs into one basket' at first by pursuing a sole option of re-establishing access via a neighbour's private property. However, when this option did not materialise into a viable solution (six months later in around December 2012), the council said it had to reconsider the action it would take. The council said that after six to seven months following the landslip, they began to look at other options. At this time the council appointed a consultant to consider options that could be pursued to reinstate access to the track.
29. The council acknowledged to my officers that it should have acted more quickly and that its lack of prioritisation may have been compounded by the knowledge that Mr and Mrs Fauzee were living with their daughter and son-in-law and as such, they did not consider that Mr and Mrs Fauzee's welfare was at 'immediate risk'.

30. The council said that by April 2013, 10 months after the landslip, it was clear as to what it wanted to do and decided upon a single point of contact to liaise with DTF and VicRoads.
31. The council commissioned a report dated July 2013 entitled *Summerfield Track, Jumbuk, Review of Options for Restoration of Access, 1, Traffic Engineering Report* (the engineering report). This report detailed the four options the council considered including its preferred option of reinstating access via a neighbouring business property.
32. At interview on 12 February 2014, a VicRoads officer told my investigation that the council had advised VicRoads of the landslip in a telephone call sometime in early 2013 and provided a copy of the engineering report to VicRoads in July 2013.
33. A DTF officer said the council met with DTF and VicRoads officers in June 2013 to discuss landslip matters including Summerfield Track, a year after the landslip.
34. Evidence provided by DTF indicates that the council provided a copy of the engineering report to it on 22 August 2013.
35. The council's former CEO said that the landslip was not escalated to the councillors for a decision on the action to be taken, as it was considered to be 'an operational matter' that council officers would resolve. The former CEO also said that, at that time, a decision from DTF on funding for the track's landslip was 'close'.
36. Council officers told my investigation that the 'hold ups' [to reinstate Summerfield Track] were due to a lack of capacity to approve an alternative funding solution with DTF and that the council could have acted sooner by allocating additional resources to prepare technical details and designs for the reinstatement of the track.

### **Council's unwillingness to expend funds**

37. At interview on 5 February 2014, the council's Manager Infrastructure Development stated that the council did not have the budget to conduct the necessary works to reinstate access to the Fauzee's property via the neighbouring business and it considered that spending money on the existing track would not be an appropriate use of public money due to the high-risk of the track slipping again.
38. The council said it considered that as there was specific government funding for rectifying damage caused by natural disasters it should pursue this option. In an email dated 23 January 2014 the council's Manager Infrastructure Development stated to DTF:
 

'... should Latrobe be liable to pay for these works out of our rates, it equates to approximately a 1% rate increase right across the municipality. This is going to be very hard to sell! Particularly when there is natural disaster funding available ...'

## Natural disaster funding process

39. The council said that it approached DTF in July 2013 (a year after the landslip) to ascertain its eligibility for funding under the Commonwealth-State Natural Disaster Relief and Recovery Arrangements (NDRRA). DTF stated the council advised that there had been a landslip on Summerfield Track during a telephone call in approximately March or early April 2013 and that on 22 August 2013 the council provided DTF with a copy of the options report.
40. DTF administers the Natural Disaster Financial Assistance for local councils in Victoria and considers the eligibility of claims, in liaison with the Australian Government. Key aspects of the assistance scheme include:
- Restoration works must occur within two years after the end of the financial year in which a natural disaster occurred. The deadline on DTF's website for the storms and flooding that occurred on 4 June 2012 is 30 June 2014.
  - Agencies may claim to restore essential public assets<sup>3</sup> damaged as a direct result of a natural disaster. Restoration is only to the pre-existing condition. Ineligible costs include costs that mitigate, restore or replace an asset to a more disaster resilient level or higher level of service ('betterment', unless otherwise agreed).
  - Financial assistance may be based on actual expenditure incurred or an advance payment.
  - Claims are to be submitted to DTF and are generally processed within 6 to 8 weeks. The expenditure claimed is formally assessed by VicRoads.
41. At interview a DTF officer said that the normal process would be for the council to complete the civil works to reinstate Summerfield Track and then, submit a claim for disaster funding to DTF to administer the funding claims. DTF would then request VicRoads to assess the works and make a recommendation as to the eligibility of the work for natural disaster funding.
42. The DTF officer said that DTF ascertains from the information provided by local councils and VicRoads' assessment, whether the funding claimed [the cost of the works] represents reinstatement to existing standards or reinstatement to a better or enhanced standard [funding of betterment is currently on hold and enhancement funding is generally not covered by the disaster funding].
43. At interview, a VicRoads officer said that DTF relies on it to inform what happened and whether a council's claim meets the funding guidelines and criteria or if there is betterment or enhancement to an essential public asset.

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<sup>3</sup> Essential public asset - An asset that the state and Commonwealth agrees is an integral and necessary part of the state's infrastructure, if lost would severely disrupt the normal functioning of a community and needs to be restored or replaced as a matter of urgency. *Source:* Natural Disaster Relief and Recovery Arrangements Determination 2012, Version 1, clause 3.6.1.

44. The DTF officer said that instead of firstly completing the works to the track and making a claim to DTF under the NDRRA, the council approached DTF to assess the council's eligibility for NDRRA funding to reinstate the track.
45. Following this, in an email dated 28 August 2013 DTF requested that VicRoads review the Summerfield Track landslip and provide advice to DTF about the council's preferred option including a breakdown of the costs associated with normal reinstatement of the track and betterment and enhancement of the asset. DTF said that it asked VicRoads and the council to work together to provide the information.
46. In an email to VicRoads dated 5 February 2014, the council stated:

... it has been consistently Latrobe City Council's stance that there is no betterment involved in the claim ... Should VicRoads believe there is betterment in any of the elements, you need to provide that information to DTF as part of your assessment.
47. The VicRoads officer told my officers that 'it was not up to VicRoads to decide which elements of the preferred option was betterment'. The VicRoads officer said that was a matter for the council.
48. In response to my draft report, VicRoads stated:

The claim process is designed to facilitate early delivery of restoration works. In this case, the Latrobe City Council was informed early that the betterment component of the restoration works would not be reimbursed through the Natural Disaster Relief and Recovery Arrangements. Given this, it is the Council's decision whether to undertake the works or not.

...

The difficulties experienced in the Summerfield Track case are unusual. Most councils engage well with VicRoads and works are rarely delayed because of the claim process.
49. The council's former CEO stated at interview that if the council knew that the matter 'would drag on' council officers would have asked councillors to 'take the risk on making a decision' on the matter. However, council assumed that the funding decision from DTF was 'close'. The council also said if it did not receive DTF approval for the funds, it would seek a decision from councillors. The view presented to them by officers would be that it did not make sense to repair the track and that the preferred option [access via neighbouring business property] should be considered and the money 'taken from elsewhere'.
50. At the date of my draft report an application for funding to reinstate the track had not been submitted to DTF by the council.
51. The DTF officer has advised my investigation that applications for 'betterment' funding are to be put on hold pending a Productivity Commission Inquiry into natural disaster funding arrangements during 2014. Therefore, it is unlikely that costs associated with betterment will be funded for works completed before the 30 June 2014 deadline. My officers were also told by DTF that funding applications for betterment of assets could have been considered if submitted by the council prior to 20 December 2013.

## Lack of clarity of roles and responsibilities

52. Interviews with officers from the council, DTF and VicRoads identified that there was a lack of understanding about the roles and responsibilities of the various agencies in the application and assessment process for natural disaster funding.
53. DTF told my officers that it expects that if a local council required funding assistance, the local council should provide the information that is required. DTF said it was clear that the council did not have a strong understanding of the natural disaster funding process. As a result, it met council officers in June 2013 to discuss its flood recovery progress in general and the funding process. DTF said that it also provides information for local councils on its website via the 'frequently asked questions' section.
54. DTF said that it thought there could be 'continual improvement' to the information about the roles and responsibilities on DTF's website, however, it also considered that the council should be 'more organised and forthcoming with information'.
55. The council stated that it regarded that there was joint responsibility between it, VicRoads and DTF in the natural disaster funding process and there was not a clear understanding between the parties when assessing the council's eligibility about such aspects as:
  - the information required
  - the timelines for information provision
  - the constraints of the funding<sup>4</sup>
  - the circumstances of the landslip
  - the difficulty of the site's terrain.
56. The council further advised that it regarded DTF and VicRoads lacked an understanding of 'the practical issues of the matter and took a bureaucratic approach' in considering the council's option. Council officers said:
  - that the natural disaster funding arrangements were 'not flexible enough' and if crushed rock above a certain level was added to the track to reinstate it, this could be considered 'betterment' and the council may not be eligible for funding
  - it expected that VicRoads would assess what work was eligible for funding
  - it was waiting for information from VicRoads and it did not know if VicRoads had the expertise to provide the advice required on this particular case given the landslip circumstances and the conditions of the terrain
  - it was not sure whether VicRoads understood what DTF was asking for, or that DTF understood the response provided by VicRoads.

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<sup>4</sup> Betterment activities, if approved, are generally equally funded between State Government, Federal Government and the relevant local council.

57. VicRoads advised that there was no information that set out the roles of the parties in the natural disaster funding process, however, 'it is up to the council to meet the guidelines of the funding'.
58. I consider that the lack of clarity in roles and responsibilities to be a significant factor in the delay in council resolving this matter. My investigation identified that the council had been engaging with both DTF and VicRoads in relation to natural disaster funding for reinstatement of Summerfield Track since early 2013 and as recently as February 2014, however the matter has not progressed to a satisfactory conclusion.
59. The technical issues involving the nature of the reinstatement costs-whether 'normal costs' or betterment or enhancement costs-have resulted in considerable discussions between the council, DTF and VicRoads and requests for information to inform the funding decision.
60. Each request for information raised further questions about the nature of the reinstatement works proposed by the council and disagreements between council and VicRoads as to the existence of 'betterment' works (not likely to be funded) in the costings.
61. The DTF officer said at interview on 13 February 2014 that while DTF had received information from the council on 7 February 2014 and submitted this to the Commonwealth Government, DTF anticipated that the information would not be sufficient to complete an assessment of the council's eligibility for natural disaster funding.
62. In response to my draft report DTF stated:
- ... in general, Victorian councils have a good understanding of the standard processes and eligibility that apply in relation to natural disaster funding, although this level of understanding varies across councils, and navigating the relevant processes may not be straightforward in more complicated circumstances. ... detailed information is available to councils regarding natural disaster financial assistance (NDFA) eligibility and processes through the DTF website, which is regularly maintained. DTF has also presented on the NDFA at relevant Municipal Association of Victoria forums.
63. VicRoads stated in response to my draft report:
- ... VicRoads will continue to collaborate with the Department of Treasury and Finance, Local Government and the Commonwealth Government in order to provide greater clarity to all involved in the administration of natural disaster funding. For example, a best practice exercise was carried out in August 2013 ... These are being used to improve natural disaster funding processes.

## Ineffective communication with the Fauzees

64. The council's Manager Community Development said at interview on 6 February 2014 that he was nominated to be the point of contact for Mr and Mrs Fauzee. The council officer also said that he was not involved in the specific work to reinstate access to Mr and Mrs Fauzee's property.

65. The council officer also said he considered that the nominated council officer's role was to liaise with the other relevant council teams in order to keep Mr and Mrs Fauzee informed and up-to-date with the progress being made.
66. However, the council told my investigation that as there was a lack of progress in the council reinstating the track and the Fauzees' access, this meant that definitive information could not be provided to Mr and Mrs Fauzee.
67. The council said that it was aware that Mr and Mrs Fauzee were distressed at the length of time it was taking to resolve the matter and that on occasion, it assisted them by visiting the property to check on their livestock and take energy meter readings.
68. Mr and Mrs Fauzee said at interview that they felt that 'they had to be proactive' with the council, and often contacted the council to seek more information.
69. Mr Fauzee said that when he contacted the council to ask about the message his daughter had received about the reinstatement of temporary access to his property, the council's Manager Community Development was unaware this had occurred.

## Records management

70. My review of the council's files relating to the Summerfield Track landslip revealed a lack of records maintained about its contact with DTF. In response to my officers' enquiries the council advised that emails were not kept on the council's general records management system and outcomes of telephone calls were not maintained. The council's Manager Infrastructure Development said that he kept relevant emails about Summerfield Track in a folder in his personal email account.
71. VicRoads said that it had difficulties in obtaining information from the council particularly when relevant officers were on periods of leave. For example:
  - The council's Manager Infrastructure Development emailed VicRoads on 11 October 2013 requesting assistance with an information request from DTF. The Manager Infrastructure Development also advised that the council's Coordinator Infrastructure Planning would be the liaison while the Manager Infrastructure Development was on holiday.
  - The council's Coordinator Infrastructure Planning emailed VicRoads on 21 October 2013 requesting the same assistance and VicRoads responded to the council on that day.
  - In an email dated 25 October 2013, VicRoads' Senior Planning Officer said to VicRoads' Manager Assets that the council's Coordinator Infrastructure Planning stated that 'he is unfamiliar with the background regarding Summerfield Track and asked if VicRoads could wait for [the council's Manager Infrastructure Development] to return in two weeks (6 Nov 13)'.

72. Since the landslip in June 2012, a significant number of council officers have had involvement in this matter. For example, council's files indicate that there have been four officers in the position of council Chief Executive Officer.
73. The council's Manager Risk and Compliance stated at interview on 30 January 2014 that she considered that a change in roles at senior executive level should not impact on the day-to-day work of the council.

## Conclusions

74. Councils play a crucial role in our State as they are the closest tier of government to communities and therefore should understand the need to be responsive and relevant to citizens' concerns.
75. In this matter, the Fauzees, elderly ratepayers of the Latrobe City Council, found themselves in a particularly vulnerable and precarious position due to a natural disaster which occurred almost two years ago. The Fauzees have been unable to return to their property, tend their livestock and live in their home since June 2012. In January 2014 temporary access for the Fauzees was restored as the Summerfield Track was reinstated. However, given the temporary nature of the reinstatement and risk that the track will fail again, the Fauzees remain anxious and do not stay at their property. I am concerned that definitive action has only been taken by the council as a result of the involvement of my office and I consider that the responsiveness of the council has been inadequate.
76. Resolving this matter has proved both a challenging and complex task given the nature of the road and landslip, the cost involved and the location of the Fauzee property in relation to the track. Natural disasters are not unusual in the council's municipality and in such situations the council needs to take a leadership role and have appropriate and adequate mechanisms in place to deal efficiently and effectively with situations. My investigation identified that this has not occurred in this case.
77. My investigation also identified that there is scope for key agencies involved in the funding of natural disasters to be more aware of their roles and responsibilities, increase coordination and work together to provide timely information to ensure efficient, effective and responsive outcomes. As the funding administrator on behalf of the state government, DTF had a critical role to provide guidance and support to council agencies. Council said that they believed a decision about the Commonwealth State funding of the reinstatement of Summerfield Track was 'close' and therefore, they took no further action to resolve the matter. This was not the case, and it reflects either that expectations were not managed by the key agencies involved and/or communications between them on this important issue were ineffective.
78. Further, I cannot understand how the council could have considered that DTF's decision was 'close' when they had not submitted an application for funding.

79. Key issues contributing to the delay in rectifying the Fauzee's access to their property included:
- delays in provision of information between agencies
  - technical issues about council's eligibility for disaster funding for the track
  - the council's departure from normal processes in seeking to establish their eligibility for funding prior to formally applying for funding or undertaking the works. These issues could have been avoided by timely action by the council.
80. In my view, the council did not manage this issue adequately from the beginning. The council did not give sufficient priority to resolving this matter, assessing all options and obtaining technical reports. Council officers have told my investigation that they justified this on the basis that there was less urgency in that the Fauzees were living elsewhere. This disregarded Mr and Mrs Fauzee's entitlement to access their property and reside in their own home.
81. The council stated that it reacted to contact from Mr and Mrs Fauzee but had no information to provide on the council's progress. From my investigation it would appear that although the council nominated a point of contact, that person was unaware of progress and therefore, was ineffective in keeping the Fauzees up-to-date.
82. I consider that poor record keeping combined with frequent personnel changes has adversely impacted on the council's handling of this matter and its decision-making.
83. In response to my draft report, the council stated:
- ... Latrobe City Council accepts that it should have acted more expeditiously and liaise with Mr and Mrs Fauzee more regularly and comprehensively, although the draft Report appears to insufficiently:
1. appreciate that Council was at all times concerned to ensure that any reinstatement not expose those who traversed Summerfield Track to any danger;
  2. appreciate that the cost of permanent reinstatement is significant, in the context of Council's available budgetary resources; and
  3. note the difficulties that a council finds itself in when responding to natural disasters, given the funding and other roles of Commonwealth and State Government agencies.

## Recommendations

I recommend that the council:

### Recommendation 1

In light of the extreme delay in this matter, pay compensation to Mr and Mrs Fauzee for the loss of their amenity to their home and their inability to maintain their livestock and farm land.

#### ***Council response:***

Council notes what is recommended in the draft report about compensation but points out that no request for financial assistance has been made by Mr and Mrs Fauzee. Any request will be considered in good faith and on its merits.

### Recommendation 2

Develop guidelines to inform the management of matters involving natural disasters. Consideration to be given to implementing a case management approach, developing a communications strategy, ensuring appropriate technical expertise to inform funding eligibility decisions; and guidance on when matters should be escalated to the council for decision-making.

#### ***Council response:***

This recommendation is accepted and will be implemented.

### Recommendation 3

Make staff aware of their responsibilities to maintain accurate and comprehensive records to support council's decision-making.

#### ***Council response:***

The council supports this recommendation and it will be implemented. The council is already engaged in a process of improving its record management systems.

I recommend that DTF:

### Recommendation 4

Establish guidelines for relevant agencies outlining the roles and responsibilities of all parties in relation to accessing, processing and assessment of natural disaster funding.

#### ***Departmental response:***

The Secretary, Department of Treasury and Finance responded that DTF will review the current guidelines and support material to ensure that there is clarity around the roles and responsibilities of all parties in relation to natural disaster funding arrangements.

## Appendix A

Summerfield Track landslip as at 4 October 2013



Summerfield Track after temporary reinstatement, 31 January 2014





# Ombudsman's Reports 2004-14

## 2014

*Ombudsman Act 1973* Conflict of interest in the Victorian public sector – ongoing concerns  
March 2014

*Ombudsman Act 1973* Ombudsman's recommendations – Third report on their implementation  
February 2014

*Ombudsman Act 1973* Investigation into a complaint about the conduct of Authorised Officers on V/Line  
February 2014

## 2013

*Ombudsman Act 1973* Investigation into children transferred from the youth justice system to the adult prison system  
December 2013

*Ombudsman Act 1973* Review of the governance of public sector boards in Victoria  
December 2013

*Ombudsman Act 1973* Report on issues in public sector employment  
November 2013

*Ombudsman Act 1973* A section 25(2) report concerning the constitutional validity of aspects of Victoria's new integrity legislation  
October 2013

*Ombudsman Act 1973* Own motion investigation into unenforced warrants  
August 2013

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a Magistrates' Court registrar  
May 2013

## 2012

Own motion investigation into the governance and administration of the Victorian Building Commission  
December 2012

A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman  
December 2012

*Whistleblowers Protection Act 2001* Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop  
October 2012

*Whistleblowers Protection Act 2001*

Investigation into allegations of improper conduct by CenITex officers  
October 2012

*Whistleblowers Protection Act 2001*

Investigation into allegations of improper conduct involving Victoria Police  
October 2012

*Whistleblowers Protection Act 2001*

Investigation into allegations against Mr Geoff Shaw MP  
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program  
October 2012

Investigation into an alleged corrupt association  
October 2012

*Whistleblowers Protection Act 2001*

Investigation into allegations of detrimental action involving Victoria Police  
June 2012

Own motion investigation into Greyhound Racing Victoria  
June 2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria  
April 2012

*Whistleblowers Protection Act 2001* Conflict of interest, poor governance and bullying at the City of Glen Eira Council  
March 2012

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

## 2011

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  
October 2010

*Whistleblowers Protection Act 2001*  
Investigation into conditions at the Melbourne Youth Justice Precinct  
October 2010

*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  
February 2010

## **2009**

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
December 2009

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  
August 2009

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

**2008**

*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

August 2008

Investigation into contraband entering a prison and related issues

June 2008

Conflict of interest in local government

March 2008

Conflict of interest in the public sector

March 2008

**2007**

Investigation into VicRoads' driver licensing arrangements

December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters

November 2007

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

