

Report

Full investigation - *Ombudsman Act 1972*

Complainant	Ombudsman 'own initiative' investigation, section 13(2) <i>Ombudsman Act 1972</i>
Council member	Former Councillor, Ms Hazel Wainwright
Council	City of Onkaparinga
Ombudsman reference	2018/01726
Council reference	GCEM2017-11 GCEM2017-12
Date complaint received	12 February 2018
Issues	<ol style="list-style-type: none">1. Whether Ms Wainwright breached clause 3.11 of the Code of Conduct for Council Members by failing to appropriately disclose her interest as a Director of Bendigo Community Bank2. Whether Ms Wainwright breached clause 3.11 of the Code of Conduct for Council Members by failing to submit her Primary Return and annual Ordinary Returns as prescribed by the Local Government Act3. Whether Ms Wainwright breached clause 3.11 of the Code of Conduct for Council Members by failing to appropriately disclose her interest as a member of the SA Best party.

Jurisdiction

Between November 2014 and November 2018, Ms Hazel Wainwright was an elected member of the City of Onkaparinga (**the council**). The complaint concerns the conduct of Ms Wainwright whilst she was an elected member of the council.

Specifically, the complaint alleges a breach by Ms Wainwright of Part 3 of the Code of Conduct for Council Members (**the Code of Conduct**), which is made pursuant to section 63 of the *Local Government Act 1999*.¹ An act of a council member that may constitute grounds for complaint under the Local Government Act is taken to be an 'administrative act' for the purposes of the *Ombudsman Act 1972*.²

In order to protect the identity of the complainant, I commenced an 'own initiative' investigation under section 13(2) of the Ombudsman Act.

¹ The Code of Conduct was gazetted on 29 August 2013.

² Section 263A(4) Local Government Act; section 3, Ombudsman Act.

Investigation

My investigation has involved:

- assessing the information provided by the complainant
- seeking and considering a response from Ms Wainwright
- seeking and considering a response from the council
- seeking information from the President of the SA Best party, Nick Xenophon
- seeking and considering a further response from the council
- considering:
 - the Ombudsman Act
 - the Local Government Act
 - the *Local Government (General) Regulations 2013 (the LG Regulations)*
 - the Code of Conduct
 - the Local Government Association of South Australia Training Standards for Council Members, 6 November 2014
 - Nick Xenophon's SA-Best Incorporated Constitution
- preparing a provisional report
- providing Ms Wainwright, the council and the complainant with my provisional report for comment, and considering their responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.³ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...⁴

Response to my provisional report

I provided my tentative views to the parties by way of my provisional report dated 21 November 2018.

On 11 December 2018 Mayor Thompson provided a response by email, which stated that she had no further comment on this matter.

Ms Wainwright provided a response by email on 6 December 2018. Ms Wainwright's response included the following submission:

I am duly apologetic and regretful regarding my neglect to inform the general public of my interest as a member of the SA Best party. It was not my intention to deceive or mislead anyone by this oversight, as I had thought I had registered my interests in the return document.

I have worked extremely hard over the past four years by supporting many community organisations, local groups and individuals on a voluntary basis. When I was aware of my

³ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁴ *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

oversight, I sought to remedy it immediately. Once again, I apologise for this mistake and I am truly sorry for any disgruntlement I have caused.

Ms Wainwright's submission has been duly noted. Notwithstanding the above, I consider that it was incumbent on Ms Wainwright as an elected member of a council and a public officer, to ensure that she at all times complied with her statutory obligations under the *Local Government Act 1999* and Code of Conduct for Council Members.

The complainant provided a response by email dated 13 November 2018. The complainant responded, *inter alia*:

- that they agreed with my provisional views
- that they considered that Ms Wainwright had failed to meet her obligations, in some manner, within every Ordinary Return that she submitted for the 2014 - 2018 term as an elected member of the council
- that Ms Wainwright's response to my investigation does not admit to any wrongdoing, nor does Ms Wainwright accept that she had failed to meet her obligations as an elected member of the council
- that Ms Wainwright's response to my investigation attempts to blame the council administration and system for her political membership not being visibly declared within her 2017 Ordinary Return
- requests that my report also make a finding that Ms Wainwright acted contrary to law when she failed to declare her political membership within 30 days after becoming a supporter member of the (former) national Nick Xenophon Team on 16 October 2016
- raised concern that I have made no recommendations at the conclusion of my report, despite finding that Ms Wainwright failed to meet her obligations as an elected member, and requested that I reconsider my position and provide an explanation for my final position.

I have carefully considered the response from the complainant. My provisional report made a provisional finding in relation to Ms Wainwright's obligations to notify the Chief Executive Officer within one month of becoming a member of the national Nick Xenophon Team. My final view on this matter may be found at paragraph 96.

In response to the complainant's request that I clarify why I have not made any recommendations in that matter, I provide the following information:

- as this investigation concerns the actions of an elected member of the council, any recommendations would be directed to the council to take relevant action against the elected member
- as Ms Wainwright is no longer an elected member, the council does not have the authority or power to take any further action against Ms Wainwright in this matter.

My views remain as expressed in my provisional report.

Background

Legislative requirements and council forms

1. Sections 65 to 67 and Schedule 3 of the Local Government Act require elected members of the council (**elected members**) to disclose their private interests.
2. This information is required to be disclosed in the form of a 'Primary Return', which is completed when an elected member is first elected,⁵ and subsequently within an 'Ordinary Return', which is to be completed annually.⁶

⁵ Local Government Act 1999, Section 65.

⁶ Local Government Act 1999, Section 66.

3. Details of prescribed registerable interests must be completed when an elected member submits their Primary Return and annual Ordinary Return.⁷ The format of a Primary Return is set out in a document in the LG Regulations called a 'Form 3'.⁸ The format of an Ordinary Return is set out in a document in the LG Regulations called a 'Form 4'.⁹ Both forms require the elected member to provide details of registerable interests required by the form, and confirm the contents of the completed form with a signature.¹⁰
4. The council has advised my Office that its standard practice each year is to send an electronic 'open for editing' Ordinary Return form to the elected members via email. The form consists of a table with the registerable interests in one column, and three corresponding columns for the elected member to answer each of the items as they apply to themselves, their spouse or partner, or a person related to a member.¹¹ The format of the Ordinary Return form that the council provides to its elected members is illustrated below:

Registrable interests		Details		
		You	Partner	Others
1	Provide a statement of any income source of a financial benefit ² that you have or a person related to you ³ has received, or was entitled to receive, during the return period.			
2	State the name of any company or other body, corporate or unincorporate, in which you held, or a member of your family ⁴ held, any office during the return period whether as director or otherwise.			
3	If you, or a member of your family ⁴ , received a contribution in cash or in kind of or above the amount of \$750 for or towards the cost of travel ⁵ beyond the limits of the State during the return period (other than a contribution by the council, the State, an employer or a person related to you by blood or marriage), state the source of the contribution.			

5. The form can be completed by typing relevant content within the text box. It is noted that if the information typed into the text box contains more text than is provided within the text box spacing, the text entries are obscured from view. The reader is able to utilise a 'drop down' function within the 'open for editing' version of the document in order to read the hidden text, however if the document is printed, the text remains hidden.
6. Elected members are required to lodge an annual Ordinary Return with the Chief Executive Officer of the council (**the CEO**) on or within 60 days after 30 June each year.¹² Elected members are also required to notify the CEO of a change or variation in their registerable interests within one month of the change or variation.¹³
7. The CEO maintains information about the elected members' private interests on a 'Register of Interests'. Section 70(a1) of the Local Government Act requires the council to publish certain information from the Register of Interests on the council's website, including 'the name of any political party, any body or association formed for political

⁷ Local Government Act 1999, Schedule 3, clause 2 and Local Government (General) Regulations 2013, Schedule 1.

⁸ Local Government (General) Regulations 2013, Schedule 1.

⁹ Local Government (General) Regulations 2013, Schedule 1.

¹⁰ Local Government (General) Regulations 2013, Schedule 1.

¹¹ Under the Local Government (General) Regulations 2013, Schedule 1. The term 'a person related to a member' means 'a member of the member's family, a family company of the member, or a trustee or a family trust of the member.'

¹² Local Government Act 1999, section 66.

¹³ Local Government Act 1999, section 67(1).

purposes or any trade or professional organisation...of which [the elected member] is a member.'

Ms Wainwright's Primary and Ordinary Return - Interest as a Director of Aldinga Community Bendigo Bank

8. Ms Wainwright has informed my Office that she was first accepted as a Director of the Aldinga Community Bendigo Bank (Fleurieu Community Enterprises) (ACBB) on 18 November 2013. Ms Wainwright has also informed my Office that she was co-opted onto the ACBB Board in November 2013.
9. Ms Wainwright was elected as a member of the council in November 2014.
10. Following Ms Wainwright's election to the council she completed a Primary Return, dated 18 November 2014.
11. The Form 3, as prescribed by the LG Regulations, included item 2, as follows:

State the name of any company or other body, corporate or unincorporate, in which you hold, or a member of your family holds, any office whether as director or otherwise.
12. The council's Form 3 that was completed by Ms Wainwright presented item 2 as follows:

State the name of any company or other body, corporate or unincorporate, in which you hold, or a member of your family holds, any office whether as director or otherwise, for the purpose of obtaining financial gain (including at some time in the future).
13. Item 5 of the Form 3, as prescribed by the LG Regulations, requires the elected member to:

State the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which you are a member.
14. Ms Wainwright's Primary Return, dated 18 November 2014, did not record her interest as a Director of ACBB at any of the items.
15. The council has advised my Office that on 25 November 2014, it provided its elected members with an in-house training session about lodging Primary and Ordinary Returns, as part of mandatory training requirements within 12 months of a local government election.
16. On 2 December 2014 Ms Wainwright submitted a revised Primary Return. Ms Wainwright did not list any registrable interests under item two. Under item 5, Ms Wainwright's interests were recorded as follows:

5	State the name of any political party, any body or association formed for political purposes or any trade or professional organisation ⁶ of which you are a member.	Aldinga Bay Business and Tourism Assoc Bendigo Community Bank- Aldinga Willunga Business and Tourism Assoc McLaren Vale Bus Assoc Fleurieu Food	NO DISCLOSURE REQUIRED	NO DISCLOSURE REQUIRED
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17. Under Schedule 3 of the Local Government Act, 'trade or professional organisation' means 'a body, corporate or unincorporate, of employers or employees, or persons engaged in a profession, trade or other occupation, being a body of which the object, or

one of the objects, is the furtherance of its own professional, industrial or economic interests or those of any of its members.’

18. During the course of my Investigation, my officer asked Ms Wainwright whether she considered her position as a Director of ACBB constitutes a membership of a ‘trade or professional organisation’, as defined within Schedule 3 of the Local Government Act. On 14 June 2018 Ms Wainwright provided the following response to my Office:
- she re-stated the definition of a ‘trade or professional organisation’
 - that her role as a Director of ACBB is one of supporting the community with funds raised by the Fleurieu Community Enterprises Ltd branches, and therefore not furthering her own professional interests
 - that the support offered [by ACBB] as a community bank is by way of granting money to sporting groups, community organisations and community events, which all, in one way or another, benefit the local community
 - that she is not paid as a Director of the ACBB and is purely engaged with ACBB in a voluntary capacity
 - that she felt that she has fulfilled her legal obligations in declaring being a Director on the Bendigo Bank Board.
19. On 17 August 2015 Ms Wainwright submitted her annual Ordinary Return. Ms Wainwright’s annual Ordinary Return was printed and then signed by Ms Wainwright, and subsequently scanned and sent to the council via email.
20. The Form 4, as prescribed by the LG Regulations, included item 2, as follows

State the name of any company or other body, corporate or unincorporate, in which you held, or a member of your family held, any office during the return period whether as director or otherwise.

21. The council’s Form 4 that was completed by Ms Wainwright presented item 2 as follows:

State the name of any company or other body, corporate or unincorporate, in which you hold, or a member of your family holds, any office during the return period whether as director or otherwise.

22. Under item 2, Ms Wainwright recorded the following:

2	State the name of any company or other body, corporate or unincorporate, in which you hold, or a member of your family ² holds, any office during the return period whether as director or otherwise.	-Director of Bendigo Community Bank, Aldinga	
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23. Ms Wainwright’s subsequent Ordinary Returns, and amended Ordinary Returns for the 2016 and 2017 financial years list her interest as a Director of ACBB under item 2 of Form 4.
24. On 12 February 2018 my Office received a complaint that alleged that Ms Wainwright had failed to declare her interest as a Director of ACBB.

Ms Wainwright’s Ordinary Return - Political interest as a member of the SA Best party

25. When completing an annual Ordinary Return, item 7 of the Form 4 requires an elected member to:

State the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which you are a member.

26. On her 17 August 2015 ordinary return, Ms Wainwright recorded the following interests under item 7:

7	State the name of any political party, any body or association formed for political purposes or any trade or professional organisation ⁸ of which you are a member.	Aldinga Bay Business & tourism Assoc, Willunga Business & Tourism Assoc, Fleurieu Food, McLaren Vale Bus & Tourism Assoc, Fr of Sellicks, Aldinga Bay Residents Assoc		
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27. Ms Wainwright's final recorded entry under item 7 is partially hidden from view within the text box on her Ordinary Return.
28. On 31 March 2016 amendments to the Local Government Act included an obligation for council members to notify the CEO of a change or variation in the information appearing on the elected member's Register of Interests within one month of the variation.¹⁴
29. To ensure that the elected members of the council were aware of these changes, the council arranged an in-house training session, an article in the council's Weekly News, and sent several informative emails to the elected members.
30. On 6 September 2016 the council wrote to Ms Wainwright to advise her that she had failed to submit her annual Ordinary Return.
31. The prescribed Form 4 of the LG Regulations requires the elected member to include both the signature of the elected member and the date. On 12 September 2016, Ms Wainwright submitted her annual Ordinary Return. The Ordinary Return appears to have been completed and then sent electronically. The electronic version of Ms Wainwright's Ordinary Return, as provided to my Office by the council, was not locked from editing, and was also not signed or properly dated by Ms Wainwright, as illustrated below:

Signature of Member
 Cr Hazel Wainwright 12/09/
 Date

32. The council has advised my Office that it does not appear to have a signed and properly dated copy of Ms Wainwright's Ordinary Return, dated 12 September 2016. The council has also advised my Office that the council's internal procedure for receiving Primary Returns and Ordinary Returns has been updated to ensure that all returns are signed when received.
33. Ms Wainwright recorded the following interests under item 7 on her Ordinary Return, dated 12 September 2016:

7	State the name of any political party, any body or association formed for political purposes or any trade or professional organisation ⁸ of which you are a member.	Aldinga Bay Business & tourism Assoc, Willunga Business & Tourism Assoc, Fleurieu Food, McLaren Vale Bus Assoc, Fr of Sellicks, Aldinga Bay Residents Assoc		
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34. The two final recorded entries under item 7 are partially hidden from view within the text box on the Ordinary Return. However, as the document was sent to my Office in an editable electronic version, my officer was able to utilise the 'drop-down' function within the document to view the additional items that have been listed under item 7.

¹⁴ Local Government Act 1999, section 67(1).

35. Ms Wainwright has advised my Office that she became a supporter member of the (formerly named) national Nick Xenophon Team on 3 October 2016.
36. Ms Wainwright also advised my Office that she became a member of the SA Best party on 27 May 2017.
37. In July 2017 and August 2017 the council reminded its elected members about their obligations to lodge their annual Ordinary Return. The reminder was sent via email and via an article in the council's Weekly News.
38. On 28 August 2017 Ms Wainwright submitted her annual Ordinary Return. Ms Wainwright's annual Ordinary Return was printed and then signed by Ms Wainwright, and subsequently scanned and sent to the council via email. Under item 7, Ms Wainwright recorded the following:

7	State the name of any political party, any body or association formed for political purposes or any trade or professional organisation ⁸ of which you are a member.	-Aldinga Bay Business & tourism Assoc, -Fleurieu Food, -Mclaren Vale Bus Assoc, -Fr of Sellicks, -Aldinga Bay Residents Assoc, -Fleurieu Food		
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39. Each of Ms Wainwright's recorded interests under item 7 is punctuated with a comma, except for the final entry, Fleurieu Food.
40. On 7 October 2017 Ms Wainwright was publicly announced as a candidate for the SA Best party.
41. On 7 November 2017 a formal complaint was lodged with the council, alleging that Ms Wainwright had failed to disclose her political interest with the SA Best party on her Ordinary Return, and had not updated her Ordinary Return within one month to reflect her political interest with the SA Best party.
42. On 15 November 2017 the council sent a letter to Ms Wainwright that reminded her of her obligations under the Local Government Act, and advised Ms Wainwright that her Register of Interests did not reflect that she is a candidate for the SA Best party. The letter requested that an updated Ordinary Return be submitted to the CEO as a matter of urgency.
43. On 16 November 2017 Ms Wainwright provided an amended Ordinary Return. Ms Wainwright's amended Ordinary Return was printed and then signed by Ms Wainwright, and subsequently scanned and sent to the council via email. Under item 7, Ms Wainwright recorded the following:

7	State the name of any political party, any body or association formed for political purposes or any trade or professional organisation ⁸ of which you are a member.	-Aldinga Bay Business & tourism Assoc, -Fleurieu Food, -Mclaren Vale Bus Assoc, -Fr of Sellicks, -Aldinga Bay Residents Assoc, -Fleurieu Food -Mclaren Vale Bocce Club -Southern Vales View Club -SABest party		
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44. On 17 November 2017 the Register of Interests on the council's website was updated to reflect Ms Wainwright's political interest as a member of the SA Best party.

45. The council has advised my Office that in November 2017, the council administration commenced quarterly articles in the Weekly News, reminding elected members to update their Ordinary Returns if their interests vary or change.
46. The council has also advised that during the council meeting held on 30 January 2018, Ms Wainwright made a personal statement to the council that she was the SA Best candidate for the seat of Mawson in the March 2018 State election.
47. On 12 February 2018 my Office received a complaint which alleged that Ms Wainwright had failed to meet her obligations under the Local Government Act and the Code of Conduct. It was alleged that Ms Wainwright had failed to declare her interest as a member of the SA Best party within her 2017 Ordinary Return, and she had also failed to update her Ordinary Return within 30 days of becoming a member of the SA Best party.
48. Ms Wainwright formally resigned from the SA Best party on 9 May 2018.
49. On 14 June 2018 Ms Wainwright provided a response to my Office in relation to the allegations that she had failed to disclose her interest as a member of the SA Best party. Ms Wainwright stated:
- that she feels that she has fulfilled her obligations under clause 3.11 of the Code of Conduct whilst serving as an Onkaparinga councillor, with the assistance of the council's governance team
 - that she has fulfilled her legal obligations in declaring her membership to a political party
 - with respect to the omission of her interest as a member of SA Best from her Ordinary Return dated 27 August 2017, the only explanation that she can subscribe to is that the council's governance team had sent through a document that incorporated a 'drop-down box', whereby when she completed the form, printed, signed and scanned the document and sent it back to the governance team, the drop-down box was not activated and the information that she had entered was not revealed
 - it was not her intention to mislead or misrepresent herself or her position as a councillor through the publication of her Ordinary Returns document.

Relevant law

Local Government Act

50. Section 65 of the Local Government Act provides:

Each person who is elected as a member of a council (other than a person who was a member of that council immediately before the conclusion of that election) or is appointed as a member of a council must, within six weeks after election or appointment, submit to the chief executive officer a primary return in accordance with Schedule 3.

51. Section 66 of the Local Government Act provides:

Each member of a council must, on or within 60 days after 30 June in each year, submit to the chief executive officer an ordinary return in accordance with Schedule 3.

52. Clause 1 of Schedule 3 to the Local Government Act defines 'trade or professional organisation' to mean:

- a body, corporate or unincorporate, of—
- (a) employers or employees; or
 - (b) persons engaged in a profession, trade or other occupation,

being a body of which the object, or one of the objects, is the furtherance of its own professional, industrial or economic interests or those of any of its members.

53. Clause 2(1) of Schedule 3 to the Local Government Act provides that a Primary Return must contain, *inter alia*:

(b) the name of any company, or other body, corporate or unincorporate, in which the member or a member of his or her family holds any office whether as director or otherwise;

...

54. Clause 2(2) of Schedule 3 to the Local Government Act provides that an Ordinary Return must contain, *inter alia*:

(b) if the member or a member of his or her family held an office whether as director or otherwise or in any company or other body, corporate or unincorporate, during the return period - the name of the company or other body;

...

55. Clause 2(3) of Schedule 3 to the Local Government Act provides that both a Primary and Ordinary Return must contain, *inter alia*:

(b) the name of any political party, any body or association formed for political purposes or any trade or professional organisation of which the member is a member;

...

56. Section 67(1) of the Local Government Act provides:

A member of a council who has submitted a return under this Division must notify the chief executive officer of a change or variation in the information appearing on the Register in respect of the member or a person related to the member (within the meaning of Schedule 3) within 1 month of the change or variation.

Maximum penalty: \$10 000.

57. Section 69 of the Local Government Act provides:

A member of a council who submits a return under this Division and Schedule 3 that is to the knowledge of the member false or misleading in a material particular (whether by reason of information included in or omitted from the return) is guilty of an offence.

Maximum penalty: \$10 000.

58. Section 70(a1) of the Local Government Act provides:

A council must publish, in accordance with the regulations, the following details in relation to each member of the council contained in the Register on a website determined by the chief executive officer (and cause the details on the website to be updated at regular intervals):

- (a) the member's income sources (within the meaning of Schedule 3) or employer;
- (b) the name of any political party, any body or association formed for political purposes or any trade or professional organisation (within the meaning of Schedule 3) of which the member is a member;
- (c) any gifts received by the member that are required to be included in the information entered in the Register in relation to the member.

59. Section 63 of the Local Government Act and Regulation 7 of the LG Regulations provide for the Code of Conduct; and compliance by council members is mandatory.

Code of Conduct for Council Members

60. Clause 3.11 of the Code of Conduct provides:

Council members must lodge with the Council a complete and accurate primary return of their interests, and subsequent ordinary returns, as required by legislation.

Whether Ms Wainwright breached clause 3.11 of the Code of Conduct for Council Members by failing to appropriately disclose her interest as a Director of Bendigo Community Bank

61. It is alleged that Ms Wainwright failed to disclose her interest as a Director of ACBB at all.
62. Whilst Ms Wainwright's Primary Return did not include any reference to ACBB, she amended it less than one month later to record her interest as 'any trade or professional organisation of which [she is] a member'. In submitting her annual Ordinary Returns, Ms Wainwright appropriately recorded her interest as a Director of ACBB thereafter.
63. I address other procedural errors in regards to Ms Wainwright's declaration of her interest in ACBB later in this report.
64. It appears that the allegation against Ms Wainwright is based on the information available on the elected member's Register of Interests on the council's website.
65. Section 70(1a) of the Local Government Act requires the council to publish certain information from the Register of Interests on the council's website. However, the legislation does not require the council to include information on its website about all of the elected member's interests. Relevantly, section 70(1a) does not require the council to publish information about 'the name of any company or other body, corporate or unincorporate, in which [the elected member] either holds (or held), or a member of [the elected member's] family holds (or held), any office whether as director or otherwise.'¹⁵
66. Section 70(a1) does require the council to publish 'the name of any political party, any body or association formed for political purposes or any trade or professional organisation (within the meaning of Schedule 3) of which the member is a member.'
67. Under Schedule 3 to the Local Government Act 'trade or professional organisation' means 'a body, corporate or unincorporate, of employers or employees, or persons engaged in a profession, trade or other occupation, being a body of which the object, or one of the objects, is the furtherance of its own professional, industrial or economic interests or those of any of its members.' As ACBB is not a 'trade or professional organisation', as defined under the Schedule 3 to the Local Government Act, Ms Wainwright's interest as a Director of ACBB is not required to be disclosed on the Register of Interests on the council's website.

Opinion

68. Having regard to the circumstances of this matter, I consider that continuing to investigate the issue of Ms Wainwright's declaration of her interest in ACBB is unnecessary or unjustifiable within the meaning of section 17(2)(d) of the Ombudsman Act.

¹⁵ As stated under item 2 of the 'Form 3' and 'Form 4' for submitting an Ordinary and Primary Return.

Whether Ms Wainwright breached clause 3.11 of the Code of Conduct for Council Members by failing to submit a Primary Return and annual Ordinary Return as prescribed by the Local Government Act

69. During the course of investigation of this matter, a number of procedural errors were identified, and they have been further explained below. It was discovered that Ms Wainwright:
- did not originally disclose her interest with ACBB within her original Primary Return
 - subsequently disclosed her interest in her amended Primary Return as a 'trade or professional organisation' despite later characterising this interest to not be a 'trade or professional organisation'
 - failed to submit her 2016 annual Ordinary Return by the required deadline
 - did not properly sign and date her 2016 Ordinary Return.

Failure to disclose interest with ACBB in original Primary Return

70. Whilst Ms Wainwright did not originally disclose her interest with ACBB on her original Primary Return, she promptly submitted a revised Primary Return declaring this interest after receiving mandatory training from the council. Given the age of this matter, and that Ms Wainwright subsequently updated her Primary Return, I consider further investigation of this matter to be unnecessary or unjustifiable.

Subsequent characterisation of her interest in ACBB as a 'trade or professional organisation' in Ms Wainwright's updated Primary Return

71. I note that Ms Wainwright originally declared her interest as a Director of ACBB as 'any trade or professional organisation of which [she is] a member'. It is not clear why Ms Wainwright originally characterised her interest in this manner, as Ms Wainwright's response to my Office appears to suggest that she does not characterise her interest as a Director of ACBB as meeting the definition of an interest in 'a trade or professional organisation.'
72. It appears that Ms Wainwright may have originally listed her interest in this manner as the council's form at the relevant time did not accurately reflect item 2 under Form 3 under the Local Government Act and LG Regulations. Relevantly, the council's Form 3 characterised the interest 'as director or otherwise' to be 'for the purpose of obtaining financial gain (including at some time in the future).' As Ms Wainwright's position as a Director of ACBB does not provide her with a source of income, it would appear reasonable that Ms Wainwright did not declare her interest under item 2 of her Primary Return.
73. My officer sought clarification from the council as to whether its current Form 3 remained inconsistent with the relevant legislation, to which the council advised that it updated its Form 3 in 2015 to remedy this inconsistency.
74. By way of comment, I also note that the council's Form 4 for Ms Wainwrights' 2015 and 2016 Ordinary Returns did not accurately reflect item 2 under Form 4 under the Local Government Act and LG Regulations. Specifically, item 2, as stated within the council's Form 4, only required the elected member to state any interest for which they currently *hold* a position 'as director or otherwise', rather than requiring the elected member to state an interest for which they *held* a position 'as director or otherwise' during the return period. It appears that this irregularity with the council's forms was also remedied by the council, as it does not appear in subsequent Ordinary Returns.
75. I consider it likely that Ms Wainwright was acting in good faith when declaring her interest in ACBB under the Primary Return as a 'trade or professional organisation'. Further, Ms Wainwright subsequently appropriately declared her interest with ACBB under item 2 in

her subsequent Ordinary Returns. Accordingly, I consider further investigation of this matter to be unnecessary or unjustifiable.

Failure to submit 2016 annual Ordinary Return within the prescribed timeframe

76. Ms Wainwright did not submit her 2016 annual Ordinary Return within 60 days after 30 June 2016, which is contrary to section 66 of the Local Government Act. However, Ms Wainwright promptly submitted her Ordinary Return upon receiving notification from the council that her annual Ordinary Return was outstanding.
77. In all of the circumstances, I consider that given the age of this matter and Ms Wainwright's subsequent submission of her Ordinary Return, I consider that there would be no further meaningful outcome if this matter were pursued further. Accordingly, I consider further investigation of this matter to be unnecessary or unjustifiable.

Failure to sign and properly date 2016 annual Ordinary Return

78. Ms Wainwright's Ordinary Return, dated 21 September 2016, was provided in a format that was not locked from editing.
79. The Ordinary Return included Ms Wainwright's typed name and the date of the Return as '12/09'. The Ordinary Return omitted the relevant year from the date, and the absence of a formal signature.
80. My officer considered that as the document was not locked from editing, it was plausible that the document had been unintentionally edited and subsequently saved on the council's records. However whilst making further enquiries, the council provided my investigator with a copy of the email from Ms Wainwright which submitted her 2016 Ordinary Return. This email confirmed that Ms Wainwright submitted her Ordinary Return unsigned and improperly dated.
81. However, I do not consider this would amount to a failure to submit a complete and accurate return, pursuant to clause 3.11 of the Code of Conduct. Accordingly, I consider further investigation of this matter to be unnecessary or unjustifiable.

Opinion

82. Having regard to the circumstances of this matter, I consider that continuing to investigate the issue of Ms Wainwright's additional failures to submit a Primary Return and annual Ordinary Return as prescribed by the Local Government Act is unnecessary or unjustifiable within the meaning of section 17(2)(d) of the Ombudsman Act.

Whether Ms Wainwright breached clause 3.11 of the Code of Conduct for Council Members by failing to appropriately disclose her interests as a member of the SA Best party

83. Ms Wainwright became a supporter member of the (former) national Nick Xenophon Team on 3 October 2016.
84. Ms Wainwright subsequently became a member of the SA Best party on 17 May 2017. The SA Best Constitution suggests that when Ms Wainwright became a member of SA Best, her membership with the Nick Xenophon Team ceased.¹⁶
85. As clause 2(3) of Schedule 3 requires declaration of political party membership, the effect of section 67(1) of the Local Government Act was that Ms Wainwright was required to

¹⁶ Nick Xenophon's SA- Best Incorporated Constitution, clauses 5.4.3 and 5.4.4.

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- notify the CEO of a change in the information appearing on her Register of Interests within one month of becoming a member of the (former) Nick Xenophon Team in October 2016 and, subsequently a member of the SA Best party in May 2017.
86. I have not been provided with any evidence to suggest that Ms Wainwright notified the CEO of her political party membership within one month of becoming a member of the Nick Xenophon Team in October 2016, in accordance with her obligations under the Local Government Act
 87. I have also not been provided with any evidence to suggest that Ms Wainwright notified the CEO of her political party membership within one month of becoming a member of the SA Best party, in accordance with her obligations under the Local Government Act.
 88. Ms Wainwright's Ordinary Return dated 28 August 2017, and revised Ordinary Return, dated 16 November 2017, were both typed, printed, signed and dated, and then scanned and sent to the council via email.
 89. Ms Wainwright's Ordinary Return, dated 28 August 2017, does not record that she held a political interest as a member of the SA Best party. Ms Wainwright has advised my Office that her interest as a member of the SA Best party had been included on her completed Ordinary Return, but that this information was hidden, as the 'drop down' box on the Form 4 had not been activated.
 90. During my Office's investigation of this matter, the council provided a copy of the Form 4 template that it sent to each elected member to complete their annual Ordinary Return. My officer tested this assertion by Ms Wainwright by filling in the Form 4 template with the information contained within Ms Wainwright's updated Ordinary Return that was submitted on 16 November 2017. My officer observed that some of the text was indeed hidden within the Form 4 template. However, the final listing that was legible within the document's text box, being the second listing of 'Fleurieu Food', was partially hidden within the text box. Relevantly, this formatting anomaly can be observed in Ms Wainwright's previous Ordinary Returns that were completed, then subsequently printed, signed and dated. This anomaly was not present on Ms Wainwright's Ordinary Return dated 28 August 2017.
 91. It is also noted that Ms Wainwright's Ordinary Return submitted 28 August 2017, punctuates each listing under item 7 with a comma, except for the final listing, which was 'Fleurieu Food'. This use of punctuation is consistent with the assertion that the final listed interest under item 7 was 'Fleurieu Food.'
 92. The additional information under item 7 in Ms Wainwright's amended Ordinary Return dated 16 November 2017, contained differing punctuation (ie no use of commas between each item listed), which may also suggest that the additional listed interests were written at a separate time.
 93. In all of the circumstances, I consider it more probable than not that Ms Wainwright failed to record her membership of the (former) Nick Xenophon Team and, subsequently the SA Best party.
 94. Regardless, clause 3.11 of the Code of Conduct placed a duty on Ms Wainwright to ensure that she lodged 'complete and accurate...ordinary returns, as required by legislation.'
 95. This suggests that elected members are obligated not only to submit an Ordinary Return, but to ensure that the Ordinary Return is complete and accurate. By Ms Wainwright's own admission, within the process of signing, dating and subsequently scanning and

sending her Ordinary Return to the council, she did not ensure that the Ordinary Return was 'complete and accurate', in accordance with clause 3.11 of the Code of Conduct.

96. In light of the above, I am of the view that by failing to notify the CEO of a change in the information appearing on her Register of Interests within one month of becoming a member of the (former) Nick Xenophon Team; Ms Wainwright failed to comply with section 67(1) of the Local Government Act and consequently acted in a manner which is contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.
97. Further, I am of the view that by failing to notify the CEO of a change in the information appearing on her Register of Interests within one month of becoming a member of the SA Best political party; Ms Wainwright failed to comply with section 67(1) of the Local Government Act and consequently acted in a manner which was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.
98. I am also of the view that by failing to provide an accurate Ordinary Return on 28 August 2017 which recorded her political interest as a member of the SA Best party, Ms Wainwright failed to comply with clause 3.11 of the Code of Conduct, and consequently, section 63(2) of the Local Government Act, and on that basis acted in a manner which was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.
99. I note that Ms Wainwright subsequently undertook action to remedy the above by lodging an updated Ordinary Return reflecting her interest as a member of the SA Best party, which was also updated on the Register of Interests on the council's website.
100. I also note that Ms Wainwright was not re-elected in the recent council elections.

Summary and Recommendation

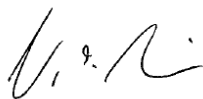
In light of the above my final views are as follows:

- Ms Wainwright's failure to notify the CEO of a change in the information appearing on her Register of Interests within one month of becoming a member of the (former) Nick Xenophon Team was contrary to section 67(1) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.
- Ms Wainwright's failure to notify the CEO of a change in the information appearing on her Register of Interests within one month of becoming a member of the SA Best political party, was contrary to section 67(1) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.
- Ms Wainwright's failure to provide an accurate Ordinary Return on 28 August 2017 which recorded her political interest as a member of the SA Best party, was contrary to clause 3.11 of the Code of Conduct, and consequently, section 63(2) of the Local Government Act, and thus consequently, was contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

As Ms Wainwright has not been re-elected to the council, I make no recommendations for this matter.

Final comment

In accordance with Part 3 of the Code of Conduct for Council Members, this report must be provided to a public meeting of the council within two ordinary meetings of the council receiving my report.



Wayne Lines
SA OMBUDSMAN

21 December 2018