

FINAL REPORT

Full investigation - *Ombudsman Act 1972*

Public Authority	City of West Torrens (the council)
Public Officer	Cr George Vlahos
Ombudsman reference	2016/04845
ICAC reference	2016/000412
Date of referral	7 June 2016
Issue	Whether Cr Vlahos committed misconduct in public administration in relation to his conduct at the council meeting on 5 April 2016

Jurisdiction

This matter was referred to the Ombudsman by the Commissioner pursuant to section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012* (**the ICAC Act**), as raising a potential issue of misconduct in public administration within the meaning of that Act (**the referral**).

The referral arose out of two reports to the Office for Public Integrity (**OPI**). The reporters wish to remain anonymous. I shall refer to them as first reporter and second reporter.

The referral gives rise to one issue.

This issue concerns an alleged breach by Cr Vlahos of clause 3.13 of Part 3 of the Code of Conduct for Council Members (**the Code**). Failure by a council member to comply with Part 3 of the Code constitutes misconduct. As the Code does not provide that a contravention of Part 3 constitutes grounds for disciplinary action, I have considered these matters under section 5(3)(b) of the ICAC Act which provides that other misconduct by a public officer while acting in his or her capacity as a public officer amounts to misconduct in public administration.

Investigation

My investigation has involved:

- assessing the information provided by the reporters
- seeking and receiving two written responses from Cr Vlahos
- speaking with the first reporter and the second reporter
- considering:
 - the ICAC Act, the Ombudsman Act and the Local Government Act
 - the Code
- providing the reporters and Cr Vlahos 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.¹ 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 ...²

Response to my provisional report

In response to my provisional report Cr Vlahos requested a copy of the council's audio recording of the council meeting on 5 April 2016. Once provided, Cr Vlahos responded on 17 May 2017 and made the following submissions:

- the audio confirms that Cr Vlahos declared a conflict of interest in part 4 disclosure statements but he disputed that he declared a material conflict of interest
- the minutes do not accurately reflect the audio in this regard as it described his interest as 'material' when he did not consider that he had a material conflict interest or declare it as such
- he did not consider that he had a material conflict of interest because he did not consider attendance at the conference was a benefit because it was held in Adelaide and his own transportation had to be arranged
- he did not know he was going to be nominated until item 17.3 was discussed and because the wording of the motion stated 'subject to their confirmation....' he considered that he could withdraw from attending the conference should he not be able to obtain leave from work
- he queried why the reporters made the complaint about his spouse attending the conference dinner even though both reporters acknowledged that he usually attends conferences on his own
- he considered that he should have left the chamber, even though he did not vote on item 17.3.

I have considered Cr Vlahos's response and my view is that:

- the audio is inaudible during the part 4 disclosure statement where it can be heard that Cr Vlahos stated 'item 17.3 AMAC' but then there is further comment that is inaudible and, since every other member was asked what type of interest they have, I cannot be satisfied whether Cr Vlahos identified his interest as material or not
- Cr Vlahos had a material conflict of interest because he stood to gain a benefit that would not be enjoyed in common with all or a substantial proportion of the ratepayers, electors or residents of the council area
- Cr Vlahos therefore should have left the chamber at item 17.3
- if Cr Vlahos considered that the minutes were not reflective of the audio, he could have raised that issue with the council at the following council meeting when the council voted on adopting the previous minutes
- the motion to adopt the minutes for the 5 April 2016 council meeting was carried at the 19 April 2016 council meeting.

¹ 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.

² *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

Whilst I accept that Cr Vlahos provided a balanced response in his submissions which, it appears, come from a genuine belief that he did not have a material interest, it does not alter my view that he should not have remained in the chamber once he was nominated to attend the conference at item 17.3.

The first and second reporter pointed out a typographical error in the Recommendation section of my provisional report, which has been amended. No further submission was made by the reporters in relation to the content of the provisional report.

Background

1. Cr George Vlahos has been an elected member of the City of West Torrens (**the council**) since 2000.
2. The council held a meeting on 5 April 2016 (**the meeting**) where it considered who would attend the Australian Mayoral Aviation Council (**AMAC**) Conference which took place at Adelaide from 4 to 6 May 2016. The Agenda Report for the council meeting included AMAC Conference agenda papers, and, on page 20 the following information:

The 2016 proxy to Mayor Trainer on the Australian Mayoral Aviation Council is Cr Palmer.

The full conference delegate registration fee is \$1,694 for AMAC members. Registration includes attendance at the Annual General Meeting, Conference sessions on Thursday and Friday, lunches and morning and afternoon teas (where indicated in the program), Adelaide Airport Inspection and attendance at the Conference Dinner.

3. The minutes of the meeting record at item 4 'disclosure statements':

4.DISCLOSURE STATEMENTS

The following disclosures of interest were made:

Item	Type of Conflict	Elected Member
Council Item 17.3 -Australian Mayoral Aviation Council Conference 2016 - Adelaide	Material	Cr Mangos
...		
Council Item 17.3 -Australian Mayoral Aviation Council Conference 2016 - Adelaide	Material	Cr Palmer
...		
Council Item 17.3 -Australian Mayoral Aviation Council Conference 2016 - Adelaide	Material	Cr Vlahos

4. At item 17.3 the minutes record:

17.3 Australian Mayoral Aviation Council Conference 2016 - Adelaide

8.10pm *Cr Palmer declared a material conflict of interest as he wished to attend the AMAC Conference and left the meeting for the discussion and vote on the item*

8:10pm *Cr Mangos declared a material conflict of interest as he wished to attend the AMAC Conference and left the meeting for the discussion and vote on the item.*

The Australian Mayoral Aviation Council (AMAC) will hold its Annual Conference at the Stamford Plaza, Adelaide from 4 to 6 May 2016 (inclusive).

RECOMMENDATION(S)

1. Subject to their confirmation, Council approves the attendance of Mayor Trainer and Cr/s.....at the Annual AMAC Conference at the Stamford Plaza, Adelaide from 4 to 6 May 2016
2. Expenses to be reimbursed in accordance with Council policy.
3. Subject to their confirmation, council approves the attendance of spouses/partners of attending Elected Members and further, consistent with Council policy, that the cost of any incidental meals be met by Council.

COUNCIL DECISION

MOVED Cr Haese SECONDED Cr Tsiaparis that:

1. Subject to their confirmation, Council approves the attendance of Mayor Trainer and Crs Palmer, Mangos and Vlahos at the Annual AMAC Conference at the Stamford Plaza, Adelaide from 4 to 6 May 2016.
2. Expenses be reimbursed in accordance with Council policy.
3. Subject to their confirmation, Council approves the attendance of spouses/partners of attending Elected Members and further, consistent with Council policy, that the cost of any incidental meals be met by Council.

CARRIED

8.11pm Cr Mangos returned to the meeting

8.11pm Cr Palmer returned to the meeting.

5. Present at the meeting were fourteen elected members, with the presiding member being the Acting Mayor Kym McKay. Mayor Trainer was an apology.
6. The referral alleges that Cr Vlahos:
 - considered and voted for himself to attend the AMAC Conference
 - had attended two training sessions on conflict of interest³ and was reminded of the conflict of interest provisions of the Local Government Act at the meeting on 5 April 2016.
7. The referral further alleged that the council considered whether Cr Vlahos's spouse/partner was eligible to attend the AMAC Conference.
8. On 22 June 2016 I informed Cr Vlahos of the referral as follows:

It is alleged that you had a material interest in item 17.3 as per section 73(1)(a) of the *Local Government Act 1999* (SA), and that you also had a material interest as per section 73(1)(b) of the Local Government Act because your spouse/partner would receive the benefit of incidental meals at the conference. It is alleged that you did not deal with your material conflict of interest in accordance with section 74(1) of the Local Government Act, which requires the member to inform the meeting of the interest and leave the meeting room. The allegation notes that Crs Garth Palmer and Arthur Mangos each declared a material interest at item 4, and 17.3 and left the chamber whilst the council debated and voted on the motion.
9. On 12 July 2016 I received a reply from Cr Vlahos. Cr Vlahos stated:
 - he did not believe that he had a material conflict of interest
 - he cannot recall declaring a material conflict of interest at item 4 and did so because he 'may have been confused'

³ On 4 February 2016 provided by Michael Kelledy on the topic 'Local Government (Accountability and Governance) Amendment Bill 2015, and 17 March 2016 provided by Michael Kelledy and Tracey Riddle 'Conflict of Interest and Informal Gatherings Training'.

- at the time of the discussion he had not considered whether he wanted or was able to attend the AMAC Conference as he works full-time
 - he did not consider that he had a material conflict of interest pursuant to section 73(1)(b) of the Local Government Act because he did not have a spouse/partner
 - he had not discussed nor thought about whether he wanted or was able to attend the AMAC Conference so remained in the chamber
 - he did not know why Cr Haese nominated him to attend the AMAC Conference other than an assumption that he may want to go given his attendance at previous meetings; there was no prior discussion with Cr Haese about Cr Vlahos' attendance
 - he chose not to vote on the item once he was nominated by Cr Haese because he did not have time to consider whether he had a conflict of interest
 - he knew the new provisions of the Local Government Act were in place, including new conflict of interest provisions
 - the discussion and resolution took one minute
 - he is a Hilton ward representative of the council. The boundary of the Hilton ward is the Adelaide Airport. The Hilton ward is impacted by the activities of the airport mainly due to the flight path being over the Hilton ward
 - he attended the AMAC Conference on Thursday 5 May 2016 using an annual leave day, and attended the morning session on Friday 6 May 2016. He did not attend on Wednesday 4 May 2016 as it included an airport tour and he had previously toured the airport
 - he did not bring his spouse/partner as he did not have one at the time
 - he did not consider that he received a benefit. Other than the conference registration no other expenses were incurred by the council - he travelled to and from the conference using his own transportation. The conference dinner was a buffet meal in the hotel, he did not consider this a benefit given that he had to give up his day to attend the conference
 - he accepted that he should have given more consideration prior to the council meeting as to whether he wanted to attend the conference
 - he recalled attending the training of the various types of conflicts of interest but did not recall what to do in the situation where the discussion in the council meeting had already commenced
 - in retrospect he may have breached the new conflict of interest provisions and should have declared an interest at item 17.3 but 'time was short in which to make the decision and to avoid any doubt I did not participate in the vote'⁴
 - if he did breach the conflict of interest provisions of the Local Government Act it was unintentional.
10. On 30 November 2016 my Officer spoke with Cr Rosalie Haese. Cr Haese stated that:
- she cannot recall whether she nominated Cr Vlahos to attend the AMAC Conference or not
 - if she did nominate him she cannot recall whether she spoke with him prior to the meeting
 - she recalled that at the commencement of each term all elected members state which conferences they would be interested in attending and it may have been that Cr Vlahos expressed an interest in the AMAC Conference, and that is why Cr Haese may have nominated Cr Vlahos
 - in relation to nominations of elected members for conferences, it is up to the elected member to choose whether to discuss their nomination with that member prior to the council meeting

⁴ Letter to the Ombudsman from Cr Vlahos, 12 July 2016, page 3.

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- the Hilton ward borders the eastern side of Adelaide airport so this also could be why Cr Haese thought that Cr Vlahos would be interested in the AMAC Conference
 - she does not know if he voted on item 17.3 because her seating at council meetings means her view of Cr Vlahos is obscured
 - it is her view that if a member does not leave the chamber during a discussion they would have voted on the item
 - she did not know whether Cr Vlahos attended the AMAC Conference
 - she did not know whether Cr Vlahos had a spouse/partner in April 2016 as she does not know Cr Vlahos personally.
11. On 30 November 2016 my Officer spoke with the first reporter, who stated that:
- there is audio of the meeting but it is inaudible at item 17.3 and therefore does not add anything to the investigation
 - there is a legal obligation to vote if you remain in the chamber in accordance with the *Local Government (Procedures at Meetings) Regulations 2013*
 - a conference is considered a benefit and this has been confirmed by legal advice sought by the council which has been summarized and provided to all elected members
 - it is difficult to prove if Cr Vlahos voted or not as no records are kept on voting patterns, only if a division is called
 - if he did not want to accept the nomination from Cr Haese to attend, Cr Vlahos should have spoken up when asked as to whether he did not want to accept the nomination
 - it is possible that Cr Vlahos did not know he was being nominated but only until the point of the motion at item 17.3
 - there was at least an hour between item 4 and item 17.3 so he had time to consider between when he declared an interest initially, and when item 17.3 came up for debate
 - it was noticeable to all in the chamber that Cr Vlahos should have left the chamber with Crs Palmer and Mangos
 - all elected members have reminders about material conflicts of interest on their desks in the chamber room
 - Cr Vlahos is not married and usually attends conference alone.
12. On 30 November 2016 my Officer spoke with the second reporter, who stated that:
- they could not recall whether Cr Vlahos voted in respect of item 17.3 except that normal protocol is to declare your interest and then leave the chamber
 - Cr Vlahos participated in the process by staying in the chamber and hearing the debate
 - Cr Vlahos does not have a partner or spouse
 - Cr Vlahos usually attends conferences alone
 - the council incurred registration fees which covered meals of \$1,694 and that there was no accommodation or travel costs paid as the AMAC Conference in Adelaide
 - no costs were paid to Cr Vlahos in respect of a spouse/partner which suggested that he did not have a partner attend.
13. The first and second reporter have provided some additional material as follows:
- an email reply from Cr Vlahos to Executive Assistant Megan Rex on 13 April 2016 in relation to registration for the AMAC Conference stating 'please register me, dinner yes, no partner'
 - a copy of the tax invoice provided by AMAC to the council dated 13 April 2016 with amounts of \$1,540 attendance fees for Mayor Trainer, Crs Mangos,

Palmer and Vlahos and \$175 additional conference dinner tickets for Mrs C Mangos and Mrs C Palmer only

- a copy of the audio file of the meeting.

Relevant law

14. Section 5(3) of the ICAC Act provides:

(3) *Misconduct in public administration* means—

- (a) contravention of a code of conduct by a public officer while acting in his or her capacity as a public officer that constitutes a ground for disciplinary action against the officer; or
- (b) other misconduct of a public officer while acting in his or her capacity as a public officer.

15. Section 63 of the Local Government Act provides:

63-Code of conduct for members

- (1) The Governor may, by regulation, prescribe a code of conduct to be observed by the members of all councils.
- (2) Council members must observe the code of conduct.

16. Section 73(1) of the Local Government Act provides:

73-Material conflicts of interest

(1) Subject to this section, for the purposes of this Subdivision, a member of a council has a *material conflict of interest* in a matter to be discussed at a meeting of the council if any of the following persons would gain a benefit, or suffer a loss, (whether directly or indirectly and whether of a personal or pecuniary nature) depending on the outcome of the consideration of the matter at the meeting:

- (a) the member
- (b) a relative of the member
- (c) a body corporate of which the member is a director or a member of the governing body;
- (d) a proprietary company in which the member is a shareholder
- (e) a beneficiary under a trust or an object of a discretionary trust of which the member is a trustee
- (f) a partner of the member
- (g) the employer or an employee of the member
- (h) a person from whom the member has received or might reasonably be expected to receive a fee, commission or other reward for providing professional or other services;
- (i) a person of a prescribed class.

(2)-(4) ...

74-Dealing with material conflicts of interest

- (1) If a member of a council has a material conflict of interest in a matter to be discussed at a meeting of the council, the member must -
 - (a) inform the meeting of the member's material conflict of interest in the matter; and
 - (b) leave the meeting room (including any area set aside for the public) such that the member cannot view or hear any discussion or voting at the meeting, and stay out of the meeting room while the matter is being discussed and voted on.

Maximum penalty:

- (a) if the member votes on the matter with an intention to gain a benefit, or avoid a loss, for the member or another person-\$15,000 or 4 years imprisonment; or
 - (b) in any other case-\$5,000
- (2) However, a member of the council does not contravene subsection (1) by taking part in the meeting, or being in the chamber where the meeting is being conducted, if the member-
 - (a) has been granted an approval under subsection (3); and
 - (b) is complying with the conditions of the approval.
 - (3)-(6) ...

17. The Code provides:

3.13 Council members must be committed to making decisions without bias and in the best interests of the whole community and comply with the relevant conflict of interest provisions of the Local Government Act 1999

Whether Cr Vlahos committed misconduct in public administration in relation to his conduct at the council meeting on 5 April 2016

Whether Cr Vlahos had an interest and if so, whether he declared it

18. The referral alleged that Cr Vlahos should have declared a material conflict of interest at the council meeting on two bases:
 - his interest in attending the AMAC conference pursuant to section 73(1)(a) of the Local Government Act; and
 - the attendance of the elected member's relative (which includes a spouse/partner) pursuant to section 73(1)(b) of the Local Government Act.
19. Cr Vlahos informed my Office that in his view he did not have a material conflict of interest because he did not gain a benefit from attending the AMAC Conference, nor did he have a spouse/ partner and therefore a benefit could not be gained for them.
20. Despite this assertion Cr Vlahos declared a conflict of interest in item 17.3 (attending the AMAC Conference) at item 4 (disclosure statements) of the meeting. However when item 17.3 was discussed he did not declare any interest nor leave the chamber. Cr Vlahos informed my investigation that prior to the commencement of the council meeting he had not determined whether he was able or wanted to attend the AMAC Conference and could not have been aware if he had an interest or not. This was

contradicted by his declaration at item 4.⁵ In addition the agenda papers for the council meeting on 5 April 2016 (as excerpted above) also provided information in relation to the AMAC Conference so Cr Vlahos ought to have been aware that it was going to be discussed and to give thought as to whether he wanted or ought to have attended.

21. In relation to whether Cr Vlahos had a material conflict of interest in item 17.3 because his spouse/partner would benefit from attendance at the AMAC conference, the first and second reporters have confirmed Cr Vlahos's assertion that at that time he did not have a partner or spouse and attended the conference alone. No additional conference dinner tickets were paid to Cr Vlahos by the council for a spouse/partner to attend. I am therefore satisfied that he did not have a material conflict of interest in relation to motion number 3 regarding the attendance of a spouse or partner pursuant to section 73(1)(b) of the Local Government Act.
22. I consider, however, that Cr Vlahos had a material conflict of interest in item 17.3 as set out in section 73(1)(a) of the Local Government Act because he stood to gain the benefit of attendance at the AMAC Conference over and above all other elected members.

Whether Cr Vlahos dealt with his interest in a way that complied with the Act

23. Section 74(1) of the Local Government Act sets out how an elected member ought to deal with a material conflict of interest, by (a) informing the meeting of the material conflict of interest and (b) leaving the meeting room and nearby vicinity while the matter was being discussed and voted on.
24. The reason that a council member with a material conflict of interest is required to leave the meeting room is so that there is no possibility of the council member influencing the other council members by his or her presence. In my view a failure to do this would demonstrate a lack of commitment to council members making decisions without bias and in the best interests of the community and thus a breach of clause 3.13 of the Code. Further, it would constitute a failure to comply with the relevant conflict of interest provisions of the Local Government Act as required by clause 3.13 of the Code.
25. Cr Vlahos declared a conflict of interest in item 17.3 at item 4 of the meeting but not again when item 17.3 was actually voted on, he accepted the nomination from Cr Haese to attend the AMAC Conference (by not stating any objection against it) at item 17.3, stayed in the chamber, heard the discussion but stated that he did not vote on the item.
26. Cr Vlahos stated that he was confused as to whether or not he had a material conflict of interest in relation to the AMAC Conference, that he was nominated by Cr Haese at the meeting, but did not know of her nomination prior to the meeting.
27. In my view Cr Vlahos appropriately declared his conflict of interest at item 4 in item 17.3. Section 74(1)(a) does not specify when the declaration is made and despite not making his declaration again at item 17.3, I consider that he appropriately made his declaration. However, because of the inaudible audio following Cr Vlahos's declaration I cannot be satisfied that he declared a *material* conflict of interest, as the minutes record. I am prepared, however, to accept that Cr Vlahos was confused as to what type of interest he had but that he did declare a conflict of interest at item 4, and clearly acknowledged that he had an interest because of a consideration that he may attend the AMAC Conference.

⁵ While it is unclear whether Item 4 accurately reflects Cr Vlahos' declaration, he acknowledges that he declared an 'interest'.

28. I consider that Cr Vlahos's error was that he stayed in the chamber and heard the discussion (even if it only lasted one minute). Cr Vlahos would have seen Crs Palmer and Mangos declare a material conflict of interest for a second time at item 17.3, and leave the chamber, and return following voting and in my view this should have served as another prompt to leave the chamber.
29. In relation to whether Cr Vlahos voted on item 17.3 I cannot be satisfied on the information before me to a *Briginshaw* standard of proof whether he did or did not. In any event I am satisfied that, having a material conflict of interest, section 74(1)(b) of the Local Government Act required Cr Vlahos to leave the chamber at the time the item was voted on. I therefore consider that by failing to comply with section 74(1)(b), Cr Vlahos breached clause 3.13 of the Code, and on that basis committed misconduct in public administration for the purposes of the ICAC Act.
30. As section 63 of the Local Government Act requires council members to observe the Code, I also consider that he acted in a way that appears to have been contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act

Opinion

In light of the above, my final opinion is that Cr Vlahos:

- breached clause 3.13 of the Code and therefore committed misconduct in public administration within the meaning of section 5(3) of the ICAC Act
- acted in a way that appears to have been contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Recommendation

To remedy this error, I make a recommendation under section 263B(1)(b) of the Local Government Act that the council require Cr Vlahos to issue an apology to the council for his error. I do not intend making any further recommendations in light of the fact that Cr Vlahos has acknowledged his mistake and that he has been recently trained in conflict of interest.

I intend to send a copy of my report to the principal officer of the council, Mayor Trainer, as required by section 18(5) of the *Ombudsman Act 1972*.

I intend to send a copy of my report to the Minister for Local Government as required by section 25(3) of the *Ombudsman Act 1972*.

Pursuant to section 263B(2) of the Local Government Act, if a council member fails to comply with a council requirement made as a result of an Ombudsman recommendation such as that above, the council member will be taken to have failed to comply with Chapter 5 Part 4 of the Local Government Act. In this event, the council is to ensure that a complaint is lodged against the member in the District Court.

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

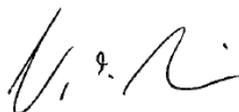
Final comment

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **23 August 2017** on what steps have been taken to give effect to my recommendation above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions taken to implement the recommendation.

In the event that no action has been taken, reason(s) for the inaction should be provided to the Ombudsman.

Pursuant to section 263B(2) of the Local Government Act, if a council member fails to comply with a council requirement made as a result of an Ombudsman recommendation such as that above, the council member will be taken to have failed to comply with Chapter 5 Part 4 of the Local Government Act. In this event, the council is to ensure that a complaint is lodged against the member in the District Court.



Wayne Lines
SA OMBUDSMAN

21 June 2017