

## Final Report

Full investigation pursuant to referral under  
section 24(2)(a) of the *Independent Commissioner Against Corruption Act 2012*

Public Authority	Port Pirie Regional Council
Public Officer	Mayor John Rohde
Ombudsman reference	2018/02770
ICAC reference	2018/002260; 2018/002296; 2018/002372
Date of referral	1 March 2018
Issues	<ol style="list-style-type: none"><li>1. Whether Mayor John Rohde committed misconduct and/or maladministration in public administration by organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body</li><li>2. Whether Mayor John Rohde committed misconduct and/or maladministration in public administration by failing to inform the council of his relationship with a resident of the Philippines and of his intention to visit this person during visits to the Philippines as part of a council trade mission</li><li>3. Whether the Port Pirie Regional Council committed maladministration in public administration by funding the Mayor to travel to the Philippines for the purposes of a council trade mission in circumstances where a formal approval process was not followed by the council</li></ol>

### 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 potential issues of misconduct and maladministration in public administration within the meaning of that Act (**the referral**).

Section 14B of the Ombudsman Act provides:

#### 14B—Referral of matter by OPI or ICAC

- (1) If a matter is referred to the Ombudsman under the ICAC Act, the matter—
- (a) will be taken to relate to administrative acts for the purposes of this Act; and
  - (b) must be dealt with under this Act as if a complaint had been made under this Act and—
    - (i) if the matter was the subject of a complaint or report under the ICAC Act—as if the person who made the complaint or report under that Act was the complainant under this Act; or
    - (ii) if the matter was assessed under that Act after being identified by the Commissioner acting on the Commissioner’s own initiative or by the Commissioner or the Office in the course of performing functions under any Act—as if the Commissioner was the complainant under this Act.

- (2) In this section—

*Commissioner* means the person holding or acting in the office of the Independent Commissioner Against Corruption under the ICAC Act;

*ICAC Act* means *Independent Commissioner Against Corruption Act 2012*;

*Office* means the Office for Public Integrity under the ICAC Act.

The referral arises from a number of separate but related reports made to the Office for Public Integrity in respect of the Port Pirie Regional Council (**the council**) and its officers.

For the purposes of this report, the referral raises the following allegations:

- that the council’s Mayor, Mr John Rohde, travelled to the Philippines in April and May of 2016 for the purposes of a council trade mission in circumstances where he did not prepare a business case concerning the trade mission for consideration by the council’s elected body and in circumstances where he did not obtain a formal determination of the council’s elected body to approve and fund the trade mission (**issue one**)
- that Mayor Rohde travelled to the Philippines for the purposes of the trade mission in circumstances where he did not declare to the council that he had formed an online relationship with a resident of the Philippines and that he intended to visit this person during the relevant visits to the Philippines (**issue two**)
- that the council spent public funds on the Mayor’s visits to the Philippines in circumstances where a formal approval process was not observed by the council (**issue three**).

Issues one and two have been assessed as raising potential issues of misconduct and maladministration in public administration on the part of Mayor Rohde.

Issue three has been assessed as raising a potential issue of maladministration in public administration on the part of the council.

The issues of misconduct in public administration concern alleged breaches by Mayor Rohde 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 a contravention of Part 3 can constitute grounds for disciplinary action under the *Local Government Act 1999*, I have considered these matters under section 5(3)(a) of the ICAC Act.

In addition, as a breach of the Code is a breach of section 63(2) of the Local Government Act, and as a matter referred to me under the ICAC Act will be taken to relate to administrative acts for the purposes of the Ombudsman Act, I have considered whether the conduct of Mayor Rohde relates to administrative acts that have been made contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act. In doing so, I have exercised my ‘own initiative’ powers under section 13(2) of the Ombudsman Act.

## Investigation

My investigation has involved:

- assessing the information provided by the reporters
- seeking a response from Mayor Rohde
- seeking a further response from Mayor Rohde
- seeking information from the council's former Chief Executive Officer, Dr Andrew Johnson
- seeking a response on behalf of the council from the council's Acting Chief Executive Officer (as at 14 March 2018), Mr James Holyman
- seeking further information from the council's current Chief Executive Officer, Mr Peter Ackland
- seeking information from the resident of the Philippines with whom Mayor Rohde was alleged to have formed a relationship
- considering:
  - the ICAC Act
  - the *Ombudsman Act 1972*
  - the *Local Government Act 1999*
  - the *Local Government Act (Members Allowances and Benefits) Regulations 2010*
  - the Code
  - the council's *Corporate Credit Card Policy, Elected Members Allowances & Support Policy, Procurement Policy and Procurement Thresholds & Delegations Policy*
- preparing a provisional report and seeking the views of the parties
- preparing this final 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.<sup>1</sup> 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 ...<sup>2</sup>

## Response to my provisional report

1. I provided my tentative views to the parties by way of my provisional report dated 11 September 2018.
2. Mayor Rohde responded to my provisional report by way of letter from his solicitor dated 19 October 2018.
3. Mayor Rohde expressed disagreement with my provisional views. He submitted that a conclusion of maladministration in public administration was not available in circumstances where I had indicated my preparedness to accept that he genuinely

<sup>1</sup> 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.

<sup>2</sup> *Briginshaw v Briginshaw* at pp 361-362, per Dixon J.

believed that the relevant expenditure had been authorised by the council's former Chief Executive Officer.

4. Mayor Rohde otherwise emphasised the total cost of the Philippines trade mission to the council:

[T]he only expenses paid by Council for these two trips were for the airfares and some parking fees and taxis. The Mayor paid for his own accommodation and meals. Even when he took [Bita]<sup>3</sup> to a trade function organised for Council by a Federal Government Agency as part of the trade mission he paid for her attendance out of his own funds, not Councils [sic].

[...]

The cost of the [aborted] trip to Shandong Province with associated on costs far exceeded what Council expended to send the Mayor in economy class to the Philippines without meeting his accommodation or meal expenses.

5. Mayor Rohde again denied that his relationship with Bita had a romantic aspect at the time of the trade mission. He objected to my conclusion that he should have declared his intention to meet with Bita prior to the relevant visits to the Philippines:

To [...] find the Mayor was duty bound to advise Council that he proposed to meet with the identified woman, which he did only once on both trips at his sole expense, is untenable. Were that test to be applied across the Board [sic] every Elected Member that ever travelled at Council expense but on their own time planned to meet up with a relative or friend for dinner would have to disclose that proposed meeting in advance of Council approving the expenditure on the trip to avoid the possibility of a later finding of maladministration in public office [sic] were a complaint to be later made. That with respect is nonsense.

6. Mayor Rohde's response has not persuaded me to change my views in respect of his conduct.
7. I have already identified in my report why I consider that it was inappropriate that Mayor Rohde proceed with the trade mission, notwithstanding his understanding of the 'authorisation' provided by the former Chief Executive Officer.
8. The comparison with the costs of the aborted Shandong mission is unhelpful. It does not speak to the considerations which form the basis for my conclusion as to the Mayor's maladministration in public administration.
9. I have also already identified in my report why I consider that Mayor Rohde's liaisons with Bita can be distinguished from the sort of ordinary socialising referred to above.
10. The Chief Executive Officer of the council responded to my provisional report to express the council's satisfaction with my conclusions in respect of issue three. The Chief Executive Officer declined to comment on my provisional conclusions concerning the conduct of the Mayor.
11. My views remain as expressed in my provisional report.

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<sup>3</sup> Bita is variously referred to in the submissions as 'the female', 'the Filipino woman' and 'the identified woman'.

## Background

12. Mayor Rohde was elected Mayor of the council in November 2014. As principal member of the council, Mayor Rohde receives an annual allowance of approximately \$51,200.00 and is also entitled to receive and make use of a council credit card.

### *Travel to the Philippines*

13. Between April and June 2016 Mayor Rohde undertook two council-funded visits to the Philippines.
14. The ostensible purpose of those visits was for Mayor Rohde to represent the council as part of an international trade mission organised by the Department of State Development (DSD).
15. Mayor Rohde's first visit to the Philippines took place in April 2016. It does not appear in dispute that during this trip, Mayor Rohde met with representatives of Austrade (being the Commonwealth agency responsible for promoting Australian trade internationally), the Philippine Chamber of Commerce and Industry and the Australian Embassy. The purpose of these meetings, according to Mayor Rohde, was to lay the groundwork for the subsequent visit to the Philippines as part of the formal trade mission.
16. Mayor Rohde's second visit to the Philippines saw him return to Manila on 25 May 2016 and depart the Philippines on 1 June 2016. It does not appear in dispute that during this visit Mayor Rohde participated in a number of meetings with local business leaders as part of the DSD-led trade mission.
17. The two visits to the Philippines came at a cost to the council of approximately \$4,440.08, comprising the cost of airfares to and from the Philippines in respect of both occasions, airport parking fees, the cost of shipping council information packs and sample products to Manila and certain DSD fees.
18. These costs appear to have been met by way of a combination of direct invoicing to the council (in the case of the airfares), by way of transactions charged to Mayor Rohde's council-issued credit card (in the case of airport parking and some of the DSD fees) and by way of transactions charged to the council-issued credit card of a council employee (in the case of the shipping costs and remaining DSD fees).
19. The council did not arrange or pay for Mayor Rohde's accommodation during the periods he spent in the Philippines, nor did the council meet the costs of Mayor Rohde's meals or incidentals during these visits.
20. Mayor Rohde submitted to my investigation that this is because he paid these expenses himself, out of his own funds. This is not contradicted by any of the parties who supplied information to my investigation. Indeed, the financial records supplied to my investigation disclose no relevant transactions on the part of the council.
21. On the information before my investigation, the following does not appear to be in dispute:
  - prior to the relevant visits to the Philippines, the council's elected body was not made formally aware of Mayor Rohde's intention to participate in the DSD trade mission
  - the council's elected body was not formally notified of Mayor Rohde's intention to travel to the Philippines at the council's expense

- that Mayor Rohde did not present the council's elected body with a business case in respect of the trade mission, and, consequently, no such business case was approved by the elected body
  - no business case concerning the trade mission was prepared at all
  - Mayor Rohde did not seek the approval or authorisation of the council's elected body in respect of his use of council funds to meet the costs of his travel to and from the Philippines for the purposes of the trade mission.
22. The above matters form one aspect of the referral; the relevant questions being, was it appropriate in the circumstances for Mayor Rohde to make use of council funds for the purposes of his attending the trade mission? And was it appropriate in the circumstances for the council to fund Mayor Rohde's visits to the Philippines?

### *Bita*

23. There is a separate but related allegation raised by the referral.
24. It is not contested that at the time of the relevant visits to Manila, Mayor Rohde had formed an online acquaintance with a resident of the Philippines; a woman named Bita.
25. In fact, Mayor Rohde made use of his initial visit to the Philippines in April 2016 to meet with Bita. Mayor Rohde met with Bita a second time during his subsequent visit to the Philippines in May 2016.
26. It has been reported in the media, but is denied by Mayor Rohde, that Mayor Rohde and Bita had formed a long-distance, romantic relationship by the time of the relevant visits to the Philippines.
27. It is not in dispute that, prior to undertaking the relevant visits to the Philippines, Mayor Rohde omitted to disclose the fact of his relationship with Bita – whatever its actual nature – to the council's administration and elected body. Nor did Mayor Rohde disclose to the council's administration and elected body that he intended to meet with Bita during the council-funded visits to the Philippines.
28. The nature and circumstances of the relationship between Mayor Rohde and Bita are of material import to the issues considered by my investigation.
29. Mayor Rohde submitted to my investigation that he first encountered Bita via an online dating advertisement:
- I found Bita quite by accident on a pop up [which] I think was called international cupid<sup>4</sup> and found her profile and saw she had photos of Victor Harbor so was interested to talk to her and find out why she was in South Australia and what she knew about the State.
30. Mayor Rohde submitted to my investigation that he was not in a relationship (which I understand to mean a relationship in the non-platonic sense) with Bita at the time of the relevant visits to the Philippines:
- I did have an online friendship with this person but at that stage it certainly was not a relationship.
31. Mayor Rohde was unequivocal that his acquaintance with Bita did not inform his determination to participate in the trade mission:

<sup>4</sup> 'International Cupid' markets itself as 'a popular foreign dating and personals site helping 1000s of singles find their prospective long-term partner.' See <<https://www.internationalcupid.com/>>, last accessed 23 August 2018.

In no way was my friendship an influencing factor in why I decided to travel to the Philippines[;] it came down solely to what I thought would be the best possibility in promoting my regional businesses and certainly if you look at the itinerary for the Mission you can see that I tried to maximise my time there and gained some opportunities as well to try and help other parts of the South Australian economy.

[...]

I did not disclose meeting this person overseas because at that stage she was just a friend. I have been on conferences interstate and in Adelaide where I have caught up with family and friends while there and on these occasions thought nothing more of it than that. I reiterate that my objective in travelling to the Philippines was to promote my Regional businesses.

32. Mayor Rohde acknowledged meeting with Bita during both council-funded visits to the Philippines.
33. However, according to Mayor Rohde, it was not until the end of 2016, and after his council-funded travel, that his acquaintance with Bita took on a romantic aspect. Mayor Rohde submitted that he then made a third visit to the Philippines, this time entirely at his own expense:

After the work I had undertaken to build relations and opportunities for exports to the Philippines I was asked back again to progress things further in May of 2017. On this occasion because I was travelling there I wanted to spend more time with the person I had built a relationship with[,] therefore the trip was not just about trade. Accordingly I was never going to ask that this trip be funded in anyway [sic] by Council.

34. Mayor Rohde submitted to my investigation that he deleted the applications he used to communicate with Bita following the dissolution of the relationship in October 2017. He claimed to be unable to retrieve his message history relating to the period relevant to my investigation.
35. In light of Mayor Rohde's response to my investigation, I wrote to Bita (using an email address recorded in the documents supplied to the Office for Public Integrity) to query the nature of her relationship with Mayor Rohde at the time of the council-funded visits.
36. I subsequently received two emails from Bita. In the first of these emails, Bita supplied my investigation with what appears to be an instant message conversation between herself and Mayor Rohde (which I infer took place following my letter to Bita), in which Bita appears to have confronted Mayor Rohde about his characterisation of their relationship:

Bita: Stop being such a liar.. why did u say we were not a couple in april amd [sic] may 206? [sic]

ajr1708:<sup>5</sup> Where did you see that?

Bita: That is for me to know. Answer my question.

Selfish asshole you are [sic]

Liar

37. Bita submitted:

See attached recent communication and you can judge for yourself who is lying. I provided my statement before (we became a couple Feb 26, 2016). I have no reason to lie, he has. I do not want anymore [sic] media publications as it has impacted me severely [sic].

<sup>5</sup> Mayor Rohde's full name is Andrew John Rohde.

38. In her second email, Bitu supplied my investigation with photographs that appear to depict an invoice relating to a Valentine's Day gift she received from Mayor Rohde, dated 14 February 2017, and an accompanying card, the text of which provides:

Hi sweetheart want to send all my love to you for Valentines Day and our first Anniversary. Really wish I was with you but will there [sic] as soon as I can. Love you – Andrew

39. Bitu submitted:

Just in addition to what I have mentioned pls find attached the copy of the card and document verifying that we were a couple in Feb 2016. The card says happy Valentines and happy first year anniversary in feb 2017.

### *The decision to undertake the trade mission*

40. Mayor Rohde submitted to my investigation that he first became interested in exploring export opportunities with the Philippines in approximately January or February 2016, following a chance encounter and discussion with a diplomatic representative to the country.

41. I understand that at this time, Mayor Rohde and the council's then-Chief Executive Officer, Dr Andrew Johnson, had commenced preparing for the Mayor to attend the then-upcoming joint local and State Government trade mission to Shandong Province, China. My investigation has been supplied with evidence showing that Mayor Rohde obtained a Chinese visa for this purpose and was undertaking Mandarin lessons as at 16 March 2016.

42. According to Mayor Rohde, his conversation with the diplomatic representative to the Philippines caused him to reconsider this approach:

He [the Consul General] informed me that the Philippines were the second fastest growing economy in South East Asia with a growing importation of Australian products and that a South Australian led Business Mission would be travelling there in late May 2016. This information was very useful in considering what would be a better option.

Once I received the itinerary for the China trip it became very clear that there would be limited time to be able to expose our Regional businesses to Chinese importers as there were only two trade fairs of only around 3 hours each for the entire trip away. It became very clear that travelling to the Philippines would be a better option.

43. According to Mayor Rohde, following receipt of the China itinerary he contacted the Philippines consulate and obtained the contact details for Austrade's Senior Trade Commissioner in Manila. Mayor Rohde submitted that this official advised him 'to travel before the mission and build a rapport and understanding of Filipino's [sic].'
44. According to Mayor Rohde, he then determined to approach Dr Johnson for 'advice' in respect of the proposal.
45. I have been provided with two competing accounts of the discussion between the Mayor and the Chief Executive Officer that followed.
46. On Mayor Rohde's version of the conversation, he initially volunteered to Dr Johnson that:

I would be prepared to pay for all my expenses as I could see the benefit in travelling to promote the area.

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47. According to Mayor Rohde's account of the conversation, Dr Johnson responded:
- that would be ridiculous as I [Rohde] was travelling to promote economic development for the Council and the Region[.]
48. According to Mayor Rohde, Dr Johnson then:
- enquired as to the cost of airfares to the Philippines which were under \$2000 and immediately indicated that fell within his delegatory [sic] powers and that he would cover the cost through his budget.
49. According to Mayor Rohde:
- [Dr Johnson] said that would then mean it wasn't necessary to go through the chamber as it was a relatively small amount. I hesitated and asked "are you sure that will be ok?." He assured me it would be.
50. Mayor Rohde submitted that he then enquired with Dr Johnson as to whether there was 'any process that needed to be in place before travelling.' Dr Johnson is described as having replied to Mayor Rohde that he (Rohde) 'would need to give a report of [his] travels after returning from the Business Mission.'
51. Dr Johnson in his response to my investigation acknowledged meeting with the Mayor to discuss the Philippines proposal and acknowledged expressing his general support for the proposal on this occasion.
52. Dr Johnson submitted that he could not recall whether Mayor Rohde first offered to meet the costs associated with the trade mission. Dr Johnson accepted, however, that he indicated to Mayor Rohde that it would be appropriate for the council to pay these costs, subject to the following qualification:
- I indicated that the two issues that I had with the proposed trips were the potential cost of the trip and the fact he [Rohde] would need to discuss the issue with the Elected members.
53. Dr Johnson submitted that he 'left it to Mayor Rohde to resolve these issues.'
54. Dr Johnson was unequivocal in his response to my investigation that he did not 'formally approve the cost' of Mayor Rohde's travel to the Philippines.
55. The outcome of the meeting between Dr Johnson and Mayor Rohde was not documented.
56. According to Mayor Rohde, notwithstanding Dr Johnson's advice that the matter would not need to 'go through the chamber', he (Rohde) thought it was 'proper though to let the Elected Members know that I was travelling on behalf of Council overseas.' According to Mayor Rohde, he did so:
- firstly by notifying [Deputy Mayor Leon] Stephens at one of our regular debriefs between he, the CEO and myself. I then made the other Elected Members know about the trip at one of our workshops that fall between Ordinary Meetings of Council. At the time of this first visit [to the Philippines] I received no questions or enquiry into any further details about the trip.
57. On 24 March 2016 the council processed a purchase order for return flights to Manila.

The total cost of those flights to the council was \$1994.00. The purchase order<sup>6</sup> was formally authorised by the council's then-Director, Corporate and Community and at the request of the Mayor's secretary.

58. I have reviewed the council's budget pertaining to the 2015/2016 financial year and note that during this period the amount of \$150,000.00 was allocated for 'economic development projects and events.'

### *The first visit to the Philippines*

59. Mayor Rohde flew to Manila on 8 April 2016.
60. Mayor Rohde submitted to my investigation that this trip was a 'useful exercise to discuss what was required for a successful mission with Austrade Manilla [sic].'
61. The following is an account of Mayor Rohde's itinerary during the visit, as tabled before the council's 24 January 2018 ordinary meeting:

- |                     |   |
|---------------------|---|
| Friday 8th April:   | Arrived late evening Manila on Qantas flight from Sydney  |
| Saturday 9th April: | Picked up from accommodation (am) by Austrade and Philippine Chamber of Commerce Reps Tour of Austrade and Australian Consulate Offices RCBC building Makati Tour of Makati Business District   |
| [...]               | Taken to the site of 70th year celebrations Australia – Philippine relations held recently.   |
| Monday 11th April:  | First preliminary meetings with Austrade representatives (Senior Trade Commissioner South East Asia - Anthony Weymouth & Business Development Manager Vanessa Perez about current climate for export opportunities to the Philippines. First discussions around businesses I wanted to advocate for on SA Business Mission.<br><br>(AM)<br><br>(PM)<br><br>Meeting with Director Philippine Chamber of Commerce and Industry – Rosa Piro who highlighted the changing face of the Philippine economy and how growth is directly impacting on a need for greater imports in food particularly from the US and Australia. There is a growing middle class in the Philippines. |
| Tuesday 12th April  | (AM)<br><br>Worked with Austrade Reps to finalise Regional businesses best suited for Mission. Commences [sic] work with Vanessa Perez to tie them to export opportunities with Philippine businesses.  |
| [...]               | Ambassador Amanda Gorely called into to say hello before wrapping up and heading to the Airport. [...]<br><br>Returned to Australia[.]  |

62. Mayor Rohde acknowledged to my investigation that he met with Bitu for a restaurant dinner during the course of this visit to the Philippines. There has been no allegation that Mayor Rohde used council funds in connection with the dinner or in association with the rendezvous more generally.

<sup>6</sup> My provisional report observed that 'the *expenditure* was formally authorised...' In his response to my provisional report, Mayor Rohde submitted that this statement was 'untrue [as] the expense was agreed to be paid in advance by the CEO under his delegated authority.' I consider the Mayor's belief as to the authorisation provided by Dr Johnson later in this report.

63. Mayor Rohde returned to Australia on 12 April 2016. According to Mayor Rohde, he then worked closely with the Chief Executive of Regional Development Australia (Yorke and Mid North) 'to identify any other businesses that might benefit from [his] attendance on the mission.'
64. Mayor Rohde submitted that he also returned to Dr Johnson 'and discussed in detail what had transpired on the first trip and the possibilities that might exist in attending the second and more important Business Mission.'
65. According to Mayor Rohde, Dr Johnson:

was happy to again use his delegated authority to cover the cost of the airfare out of his budget and to also pay for the cost of trade samples which we sent over by courier.

66. Mayor Rohde submitted that he then:

spoke to the Deputy Mayor in our regular briefings and again wanted the Elected Members to know what I was doing so I informed them of my second trip in the formal surrounds of an Ordinary Meeting of Council. I opened the floor for questions and the only question received was around was I going to report back to Council on my return, which of course was yes.

67. I have reviewed the agenda concerning the 27 April 2016 ordinary meeting of the council and note the following is disclosed within the 'Mayoral Report' tabled before the council on this occasion:

Friday 8 April 2016 - 12 April 2016

- Philippine Trade Mission for Regional Business Engagement Opportunities

[...]

Monday 18 April 2016

- Interview ABC Radio, Tim Bennett re Philippine Trade Mission for Regional Business Engagement Opportunities

### ***The second visit to the Philippines***

68. On 19 May 2016 the council processed a second purchase order for return flights to Manila. The total cost of those flights to the council was \$1598.00. As in the previous case, the purchase order was formally authorised by the council's then-Director, Corporate and Community and at the request of the Mayor's secretary.
69. The following is an account of Mayor Rohde's itinerary relating to the second visit to the Philippines, as tabled before the council's 24 January 2018 ordinary meeting:

Wednesday 25th May	Arrived Manila via Qantas flight with majority of delegation.
Thursday 26th May	Welcome Reception – Shangri-La hotel  Opportunity to meet other delegates on Mission along with Minister  Hamilton-Smith and Special Envoy, Sir Angus Houston.
Friday 27th May	Plenary Session Breakfast with Makati Business Club, Management Assoc of the Philippines and the Philippine Chamber of Commerce and Industry (Shangri-La Hotel) – Enormous networking opportunity with key note speech by Minister Hamilton-Smith. (From this breakfast I managed to create 2 further opportunities for follow up meetings)

[...]

- (AM) Meeting – Irvin Cadabona & Patrick Cristobal – Environment Management Bureau (EMB) for [local business]; discussion centred on the ease of exporting e-waste out of the Philippines in particular the current documentation and certificates required to export this material to China.
- (PM) Meeting – Brett Tolhurst – Wine Depot/Wine Warehouse for [local business] Wine Depot is one of the biggest importers and distributors of wines in the Philippines and represents 16 wine labels from Australia. Brett was keen to sample [local business]'s wine that I brought with me as he had not tried anything from this Region.
- Meeting – Michelle Monzones & Allen Buesar – Benacorn Corporation for [local business] this company is engage in dairy farming on a very large scale and also supply silage (total mix ration) to other dairy farms. Interested In the mix of ingredients in [local business]'s pellets for own use and then possible distributor of [local business]'s product in the Philippines.
- Meeting with Stella Barruela –Trans Millenium [sic] Mercantile Corporation for [local business]. [T]here is a growing middle class in the Philippines looking for higher quality products including breads. Interested in the high protein content of [local business]'s flour.
- Business Dinner with Philippine Customers – Shangri-La hotel
- Saturday 28th May (AM)
- Visit to S & R Membership shopping (same as CostCo) for [local business]. Found most products were on the cheaper scale and not of the same quality as [local business], would not compete on price.
- Meeting with Product Development Manager – Rustan's Supermarkets Makati for ([local business]) this is the upmarket supermarket chain in the Philippines stocking a number of internationally known brands. They aim to supply to their customers premium quality brands of which [local business] fits the brief. Ongoing discussions with this company.
- (PM)
- South Australian Alumni Luncheon – Australian Ambassador's Residence – chance to connect with South Australia alumni from the Philippines
- [...]
- Sunday 29th May (AM)
- Farewell breakfast for those travelling onto Vietnam
- Monday 30th May (AM & EARLY PM)
- Travel to Cavite Economic Zone - Cavite
- Meeting with Kudo Takamura St Agnes Vallejo – Southcoast Metal Enterprises Inc for [local business]. Largest recycler of computer componentry in the Philippines with majority of parts going to China and some to South Korea. Gauging e-waste possibilities for export to Australia.
- (PM) – FOLLOW UP MEETING FROM BUSINESS BREAKFAST
- Meeting with Bernardo Benedicto 111 – President Benedicto Steel Group for [local business]. After meeting Bernardo at the Business Breakfast I provided a detailed summary to him of activities across the Spencer Gulf including the current situation

in Whyalla. As a buyer of steel and having previously visited Whyalla he was interested in purchasing and asked me to make with [sic] contact the relevant people to see if this could be progressed. Once finished I contacted Mark Mentha from Korda Mentha and gave him Bernardo's contact details to see if they could secure a sale of steel to the Philippines.

Tuesday 31st May

(LATE AM) – FOLLOW UP MEETING FROM BUSINESS BREAKFAST

Meeting Oscar Barrera – Philexport re: potential for Australian Port Logistics Company [to] be involved with Mabini Grains Handling Port in Batangas and then potential for export of South Australian grain to the Philippines. The Philippines has a growing demand for grain for the production of bread and for feeding a growing flock of chickens for domestic consumption. The majority of grain enters in through the port of Manila which is shallow and can take many days to unload ships. Oscar and his consortium were looking for a partnership with an international company to manage a deep water port at Batangas and then to value add with possible grain export from South Australia.

Wednesday 1st June

Return to Australia

70. Mayor Rohde acknowledged to my investigation that during this second visit to the Philippines he paid for Bitu to accompany him to a dinner event that formed part of the trade mission itinerary.
71. Mayor Rohde submitted that on his return to Australia, he:
- delivered and [sic] extensive verbal report to the Elected Members identifying not only the parts of the mission that were specific to this area but also the opportunity I had while away in assisting Sir Angus Houston [the special envoy for South Australia] in a possible alliance with one of our stevedoring companies and grain exports but [sic] also the Whyalla steelworks in possible exports.
72. Mayor Rohde submitted:
- After giving my report I again gave Elected Members the opportunity to ask questions of which there were only two, both not related to providing a business case before leaving. I also undertook that if any Elected Member required further written information that I would be happy to provide that but none took up the offer. After this meeting the local newspaper journalist also ran a story about my trip away and the opportunities that I had identified.
73. Mayor Rohde confirmed to my investigation that he met the costs of his accommodation during both visits to the Philippines. He submitted that he did so as 'he did not want to place [a] bigger burden on Council'. He supplied my investigation with the names of the hotels at which he stayed.
74. Mayor Rohde submitted that he did not have regard to the elected member allowances provisions of the Local Government Act because he did not seek to be reimbursed for expenditure associated with the trade mission. He submitted that he sought Dr Johnson's 'guidance though this process as [he] knew that [Dr Johnson] had travelled to China before with the previous Mayor.'

### *The internal investigation*

75. On 6 November 2017 Bitu sent an email to the council's elected members which purported to set out the history of her relationship with Mayor Rohde and which

adverted to the liaisons that took place during Mayor Rohde's council-funded visits to the Philippines.

76. Bita claimed in this email to have commenced a relationship with Mayor Rohde in February 2016. She alleged that at this time Mayor Rohde falsely represented to her that he had separated from his wife.
77. I understand that Bita's email was a cause of concern for some of the council's elected members. This formed the impetus for an internal review of Mayor Rohde's mayoral expenditure.
78. That review, which was conducted by Dr Johnson, concluded that the Mayor's expenditure had been entirely 'for Council related business.' Advice was also obtained from the council's solicitors to the effect that there was 'no evident legal or financial exposure for the Council in this matter.'

### Relevant law, policies, etc.

#### *ICAC Act*

79. 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.

80. Section 5(4) of the ICAC Act provides:

(4) *Maladministration in public administration*—

- (a) means—
  - (i) conduct of a public officer, or a practice, policy or procedure of a public authority, that results in an irregular and unauthorised use of public money or substantial mismanagement of public resources; or
  - (ii) conduct of a public officer involving substantial mismanagement in or in relation to the performance of official functions; and
- (b) includes conduct resulting from impropriety, incompetence or negligence; and
- (c) is to be assessed having regard to relevant statutory provisions and administrative instructions and directions.

#### *Local Government Act*

81. 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.

82. Section 137 of the Local Government Act provides:

### 137–Expenditure of funds

Subject to this or another Act, a council may expend its funds as the council thinks fit in the exercise, performance or discharge of its powers, functions or duties under this or other Acts.

83. Section 77 of the Local Government Act provides that council members are entitled to be reimbursed by the council for certain expenses incurred in the course of their official duties. The section distinguishes between expenses that require approval from the council (either specifically or under a policy established by the council for the purposes of section 77) and those that do not require advance approval.
84. Regulation 6(b) of the Local Government (Members Allowances and Benefits) Regulations prescribes the following category of expenditure as requiring approval from the council in order to be reimbursed to an elected member:

#### 6–Expenses requiring council approval–section 77(1)(b)

[...]

- (b) travelling expenses incurred by the member as a consequence of the member's attendance at a function or activity on the business of the council (other than for which the member is reimbursed under section 77(1)(a) of the Act)[.]

85. Section 44 of the Local Government Act provides that a council may delegate its powers and functions to other persons. Subsection (3) qualifies this provision to provide that certain powers and functions may not be delegated:

#### 44–Delegations

- (1) A council may delegate a power or function vested or conferred under this or another Act.
- (2) A delegation may be made–
- [...]
- (c) to an employee of the council;
- [...]
- (3) However, a council may not delegate–
- [...]
- (e) power to approve expenditure of money on works, services or operations of the council not contained in a budget adopted by the council;
- (g) power to approve payment or reimbursement of expenses that may be paid at the discretion of the council and for which the council has not adopted a formal policy or made specific financial provision[.]

86. Section 49 of the Local Government Act obliges a council to develop procurement policies, practices and procedures directed towards, *inter alia*, 'obtaining value in the expenditure of public money'.

### ***Policies***

#### *The Credit Card Policy*

87. The council maintains a *Corporate Credit Card Policy* (**the Credit Card Policy**).
88. During the period relevant to my investigation, clause 2.1 of this policy authorised the Mayor to receive a council credit card. Clause 2.4 set out the conditions of use for such cards:

- The credit card is to be used for the purchase of goods and services that have been approved in the Annual Budget.

[...]

- No personal use of the card is permitted.

### *The Allowances Policy*

89. The council maintains an *Elected Members Allowances & Support Policy (the Allowances Policy)*, developed and adopted for the purposes of section 77(1)(b) of the Local Government Act.

90. During the period relevant to my investigation, Clause 8.1 of this policy relevantly provided:

#### **8.1 Travelling Expenses**

In addition to eligible journeys (as defined in Regulation 3), Elected Members are entitled to receive reimbursement for expenses actually and necessarily incurred in travelling to a function or activity on the business of Council. Elected Members should first check the availability of a Council pool car before considering using their own vehicle for travel outside the Council area.

The following conditions apply to these expenses:

- Travel both within and outside the Council area must be incurred by the Elected Member as a consequence of attendance at a function or activity on the business of Council. A 'function or activity of Council' means official Council functions including Mayor/Chairperson receptions, opening ceremonies, dinners, citizenship ceremonies and official visits etc; inspection of sites within the Council area which relate to Council or Committee agenda items; attendance at meetings of community groups and organisations as a Council appointed delegate (but not to attend meetings of community groups or organisations when fulfilling the role of local representative, as the Elected Members allowances provides [sic] for this).

91. Clause 8.2 additionally provided:

#### **8.2 Other Expenses**

Pursuant to section 77(1)(b) of the Act Council approves reimbursement of:

[...]

- Expenses incurred by the Member as a consequence of the Elected Member's attendance at a conference, seminar, training course or other similar activity that is directly or closely related to the performance or discharge of the roles or duties of the Member. Expenses will only be reimbursed for attendance at conferences, seminars, etc which have been approved by Council. The following types of expenses will be reimbursed – airfares, registration fees, accommodation, meals, taxi fares, carparking.

92. Clause 9 provided:

### **9 EXPENSES AND SUPPORT REQUIRING COUNCIL APPROVAL**

All other expenses, reimbursements and support not detailed above will require approval by Council on a case by case basis.

### *The Procurement Policy*

93. The council maintains a *Procurement Policy (the Procurement Policy)*.

94. During the period relevant to my investigation, clause 3 of this policy set out a number of 'procurement principles' to be observed by council officers, including, most relevantly:

***Principle 3 - Probity, Accountability and Transparency***

Council will demonstrate accountability in procurement by ensuring that decisions are able to be explained and evidence provided to ensure that an independent third party can clearly see that a fair and reasonable process has been followed. Personnel must be able to account for all decisions and provide feedback on them. Additionally, an audit trail will be visible for all procurement activities for monitoring and reporting purposes.

95. Clause 6 of this policy provided:

**6. DELEGATIONS**

- 6.1 The CEO has authority to procure goods, materials, works, services and consultancies provided that the value of the procurement does not exceed \$100,000 (ex GST), subject to the Council approved budget allocation, and the CEO may delegate such authorisation to other employees in accordance with Section 101 of the Act.
- 6.2 The Chief Executive Office is permitted to sub-delegate this purchasing authority to other Council staff.
- 6.3 Any procurement outside Council's adopted budget or greater than \$100,000 (ex GST) requires a decision of Council to proceed.

***The Procurement Delegations Policy***

96. The council maintains a *Procurement Thresholds & Delegations Policy* (**the Procurement Delegations Policy**). During the period relevant to my investigation, clause 3.3.2 of this policy delegated to the Director, Corporate and Community the authority to approve purchase orders up to a value of \$100,000.00.

***The Code***

97. The Code is established under section 63(1) of the Local Government Act and applies to all council members.
98. Part 3 of the Code relevantly provides:

**Misuse of Council resources**

- 3.14 Council members using Council resources must do so effectively and prudently.  
[...]
- 3.16 Council members must not use public funds or resources in a manner that is irregular or unauthorised.

**Whether Mayor John Rohde committed misconduct and/or maladministration in public administration by organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body**

***Maladministration in public administration***

99. Pursuant to section 5(4) of the ICAC Act, a public officer commits maladministration in public administration in circumstances where his or her conduct results in an irregular

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and unauthorised use of public money, the substantial mismanagement of public resources or otherwise involves substantial mismanagement in or in relation to the performance of official functions.

100. In the circumstances, I have elected to limit my consideration of this issue to the question of whether Mayor Rohde's conduct in organising and undertaking the trade mission resulted in the substantial mismanagement of public resources.
101. The Local Government Act provides that a principal role of a council is to 'represent the interests of its community to the wider community'.<sup>7</sup> The functions of a council include 'to promote its area and to provide an attractive climate and locations for the development of business, commerce, industry and tourism'.<sup>8</sup>
102. On this basis, I do not consider that an issue of maladministration in public administration intrinsically arises from the council's participation in a foreign trade mission.
103. In the present case, it has been alleged that Mayor Rohde's conduct in organising and undertaking the relevant visits to the Philippines was inappropriate because, among other reasons, the initiative should have been authorised by the council's elected body.
104. It does not appear to be in dispute that the question of the council's participation in the trade mission was not put to the council's elected body for a determination.
105. Consequently, the elected body was not afforded an opportunity to scrutinise the proposed use of council funds for such an undertaking, nor was it afforded an opportunity to consider the more general question of whether it was appropriate that the council seek to further a trade relationship with the Philippines at all.
106. The Local Government Act delineates between a council member's individual role ('to represent the interests of residents and ratepayers, to provide community leadership and guidance, and to facilitate communication between the community and the council') and a council member's collective responsibilities as part of the governing body of the council.<sup>9</sup>
107. Most relevantly, council members are collectively responsible for 'keep[ing] the council's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery, under review'.<sup>10</sup>
108. The Local Government Act also assigns specific responsibilities to the Mayor or chairperson of a council; most relevantly, 'to act as the principal spokesperson on the council', 'to exercise other functions of the council as the council determines' and 'to carry out the civic and ceremonial duties of the office of principal member'.<sup>11</sup>
109. Save for when presiding over a meeting of the council, the Mayor or chairperson of a council is not vested with any particular decision-making authority under the Local Government Act.
110. There is no evidence before me that the council delegated to Mayor Rohde the authority to organise or undertake a foreign trade mission on behalf of the council.

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<sup>7</sup> Local Government Act, section 6(d).

<sup>8</sup> Local Government Act, section 7(g).

<sup>9</sup> Local Government Act, section 59(1).

<sup>10</sup> Local Government Act, section 59(1)(a)(iii).

<sup>11</sup> Local Government Act, section 58(1).

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111. I am mindful of Mayor Rohde's account of the meeting he conducted with the council's Chief Executive Officer. Mayor Rohde submitted that on this occasion, Dr Johnson expressed approval for the proposal and provided authorisation for the council to meet the costs of the airfares. I note that Dr Johnson has denied issuing such an authorisation to the Mayor.
  112. For the purposes of the present report, I am prepared to accept that Mayor Rohde genuinely believed that Dr Johnson had authorised the expenditure associated with the proposal.
  113. Even taking his evidence at its highest, I do not consider that Mayor Rohde should have undertaken the trade mission on the strength of the remarks attributed to Dr Johnson.
  114. It was not appropriate that the trade mission proceed in the absence of a resolution from the council's elected body.
  115. I say this because the decision to establish or develop a trade relationship with a foreign market is not a matter that can reasonably be considered to fall within the ordinary operations of a council. Such an initiative involves the consideration and setting of long-term strategic priorities. If to be worthwhile, it also foreshadows the investment of significant organisational resources.
  116. These are considerations that properly fall within the responsibility of the council's governing body.
  117. For substantially the same reasons, it was also inappropriate that the trade mission proceed in the absence of a formal business plan that had been developed and adopted by the council's elected body.
  118. While I accept that some degree of planning went into the initiative, no effort appears to have been made to formally identify the long-term objectives, specific strategies and the risks applicable to the proposal, even if only as agreed between Mayor Rohde and the Chief Executive Officer.
  119. Setting aside these criticisms, I am also troubled by the lack of any documentation concerning the meeting between the Mayor and the Chief Executive Officer.
  120. I do not consider it appropriate that the proposal proceeded in circumstances where the putative authorisation and its basis had not been recorded. At the very least, this appears to have resulted in considerable uncertainty as to how and why the expenditure was approved in the absence of a resolution from the elected body.
  121. In my view, Mayor Rohde's account of the meeting is also problematic because it suggests that a matter so serious as to touch upon (if not direct) the trade priorities of the Port Pirie community was considered and determined by just two council officers behind closed doors and in a manner that excluded any real public input or scrutiny.
  122. This approach was all the more unwise because the person who was to receive the ostensible benefit of the airfares was one of the two participants to the discussion. If nothing else, such an approach introduced a heightened risk of corruption.
  123. In my view, the effect of the Allowances Policy, when considered in light of regulation 6(b) of the Local Government (Members Allowances and Benefits) Regulations and section 77 of the Local Government Act, was that Mayor Rohde would not have been

eligible to be reimbursed for expenditure incurred in connection with the trade mission without the approval of the council's elected body.<sup>12</sup>

124. While I appreciate that section 77 of the Local Government Act is directed at expenditure that is reimbursed to an elected member, I query the wisdom of the approach adopted by Mayor Rohde in (at the very least) acceding to the council directly meeting his travel costs in such circumstances.
125. I acknowledge Mayor Rohde's submissions to the effect that he sought and acted upon the advice of the Chief Executive Officer in respect of the approvals needed for the proposal. I also acknowledge Mayor Rohde's submissions to the effect that he informally raised the matter of his travel with the Deputy Mayor and the elected body prior to the first visit to the Philippines and then formally afterwards.
126. For the purposes of the present investigation, I am also prepared to accept that the trade mission itself may have delivered benefits to the local community commensurate with the expenditure incurred by the council.
127. This notwithstanding, I am ultimately satisfied that Mayor Rohde's conduct resulted in the substantial mismanagement of public resources because it caused the council to expend several thousand dollars:
  - for the purposes of a significant initiative that should have been, but was not, formally authorised by the council's elected body
  - in the absence of a business plan that had been vetted and approved by the council's elected body
  - in circumstances where any authorisations that were provided were made in opaque circumstances and were not documented properly or at all.
128. In this regard, I make it clear that I do not consider it sufficient that Mayor Rohde disclosed his intention to participate in the trade mission to the elected members within the confines of the 27 April 2016 ordinary meeting. By this time, significant funds had already been committed to the initiative. In any case, there has been no suggestion that formal authorisation from the elected body was sought or granted on this occasion.
129. Accordingly, it is my final view that Mayor Rohde by his conduct in organising and undertaking the relevant visits to the Philippines committed maladministration in public administration.

### ***Misconduct in public administration***

130. I have considered the separate question of whether Mayor Rohde's conduct in organising and undertaking the relevant visits to the Philippines amounted to misconduct in public administration.
131. In this regard, I have considered whether Mayor Rohde contravened clauses 3.14 and 3.16 of the Code.
132. Clause 3.14 provides that elected members must use council resources 'effectively and prudently'.
133. Clause 3.16 provides that elected members must not use public funds or resources in a manner that is 'irregular or unauthorised.'

<sup>12</sup> That is, possibly in the capacity as a 'Council appointed delegate' to the mission under clause 8.1 or, more likely, with the approval of the council under clause 9 of the policy.

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*Clause 3.14*

134. I have already expressed the view that Mayor Rohde's conduct resulted in the substantial mismanagement of public resources.
135. For the same reasons as underpinning that conclusion, I am also of the view that by his actions in organising and undertaking the trade mission, Mayor Rohde failed to use public resources in an effective or prudent manner.
136. I am therefore satisfied that Mayor Rohde contravened clause 3.14 of the Code, thereby committing misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
137. On this basis, I am also satisfied that Mayor Rohde's conduct was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

*Clause 3.16*

138. The question of whether Mayor Rohde's conduct involved the irregular or unauthorised use of public funds or resources is more nuanced.
139. I appreciate that, on one level, Mayor Rohde's use of public funds to travel to the Philippines was not wholly unauthorised. By this I mean that, whatever the precise outcome of the Mayor's meeting with the Chief Executive Officer, the relevant transactions were approved by a member of staff with the requisite delegation.
140. This notwithstanding, I am of the view that Mayor Rohde's use of public funds was irregular because, as previously stated, it was done for a purpose that should have been, but was not, considered and authorised by the council's governing body.
141. I have considered Mayor Rohde's submissions to the effect that he was reassured by Dr Johnson that it was not necessary to put the matter before his fellow elected members.
142. On balance, however, I consider that it should have been apparent to Mayor Rohde, as principal member of the council, that the question of a council-funded trade mission to the Philippines was something that required the formal assent of the council's governing body.
143. I am therefore satisfied that Mayor Rohde contravened clause 3.16 of the Code, thereby committing misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
144. On this basis, I am also satisfied that Mayor Rohde's conduct was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

**Opinion**

It is my final view that by organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body, Mayor John Rohde committed maladministration in public administration.

It is also my final view that by organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body, Mayor John Rohde committed misconduct in public administration.

It is also my final view that Mayor John Rohde's conduct in organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

In the circumstances, I recommend under section 25(2)(f) of the Ombudsman Act and section 263B(1)(a) of the Local Government Act that the council issue a reprimand to Mayor Rohde.

Mindful of the business conducted by Mayor Rohde in connection with the trade mission, I do not consider it necessary or appropriate that I recommend that Mayor Rohde reimburse the council for the costs associated with the initiative.

**Whether Mayor John Rohde committed misconduct and/or maladministration in public administration by failing to inform the council of his relationship with a resident of the Philippines and of his intention to visit this person during visits to the Philippines as part of a council trade mission**

***Misconduct in public administration***

145. I have considered whether Mayor Rohde's omission to inform the council of his relationship with Bitia (whatever its precise form) and of his intention to visit Bitia during the relevant visits to the Philippines amounted to misconduct in public administration.
146. In this regard, I have considered whether Mayor Rohde's conduct contravened clause 3.14 of the Code.
147. As previously observed, clause 3.14 provides that elected members must use council resources 'effectively and prudently'.
148. Mayor Rohde has submitted that he maintained a friendship with Bitia at the time of his council-funded travel to the Philippines. He has denied being in a romantic relationship with Bitia at that time.
149. Mayor Rohde submitted that he was suffering from certain personal difficulties at the time that he first encountered Bitia. Out of sensitivity, I do not reproduce these submissions in the body of this report. I have, however, had regard to these matters in considering the issue of Mayor Rohde's conduct.
150. I note that Bitia has contested Mayor Rohde's account of the relationship in her correspondence with my investigation.
151. I note that neither party was able to supply my investigation with a copy of any correspondence pertaining to the period relevant to my investigation.
152. In addition to Bitia's submissions, there is some circumstantial evidence to suggest that the relationship had a romantic aspect as at April 2016; namely:
  - Mayor Rohde's acknowledgement as to his first encountering Bitia via an online dating platform
  - the text of the February 2017 Valentine's Day card
  - the terms of Bitia's email to the elected members dated 6 November 2017.

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153. There is also the unusual fact of Mayor Rohde's determination to meet the cost of his accommodation through his own funds.
  154. In my view, it strains credulity, owing if nothing else to the circumstances of the first encounter, that the parties maintained nothing further than a 'friendship' during the period relevant to my investigation.
  155. Having carefully weighed the evidence, I consider it considerably more likely than not that there existed a romantic aspect to the relationship at the time of Mayor Rohde's first visit to the Philippines.
  156. The terms of the referral do not expressly require me to consider whether Mayor Rohde allowed his relationship with Bitá to influence his decision to pursue a trade mission to the Philippines.
  157. I am nevertheless greatly troubled by the fact of Mayor Rohde's travel to the Philippines at council expense mere months after his forming a relationship through an online dating platform with a resident of the country.
  158. That turn of events seems more than serendipitous, particularly considering that the council appears never to have previously contemplated pursuing a trade relationship with the country.
  159. Mayor Rohde's omission to declare his relationship with Bitá at the time he raised the possibility of his participating in the trade mission was, in my view, highly inappropriate.
  160. His omission to declare this information when the prospect of the council meeting the costs of his airfares was first canvassed was all the more inappropriate.
  161. The existence of the relationship and Mayor Rohde's intention to meet with Bitá should have been declared to the Chief Executive Officer during the preliminary discussions concerning the proposal. This information should also have been declared to the elected body in the course of seeking authorisation to undertake the trade mission.
  162. It was important that the council consider this information when determining whether to authorise and fund Mayor Rohde's participation in the initiative. If nothing else, the approach adopted by Mayor Rohde denied the council the opportunity to consider whether a more suitable delegate existed.
  163. In his response to my investigation, Mayor Rohde contended that he was not obliged to declare these matters to the council. He likened his meeting with Bitá in the Philippines to occasions in which he has met with friends or family when undertaking business-related travel.
  164. I have already observed that I do not accept Mayor Rohde's characterisation of his relationship with Bitá as at April 2016. The liaisons in the Philippines can be distinguished from the sort of ordinary socialising to which Mayor Rohde refers.
  165. I say this because, in the circumstances of this matter, a fair-minded observer might reasonably have concluded that the decision to undertake the trade mission had been influenced by personal, rather than public, interests.
  166. Indeed, that is my suspicion.
  167. All told, I am of the view that Mayor Rohde's use of council resources to visit the Philippines was not prudent, because it took place in circumstances where Mayor

Rohde withheld information from the council that should have, but did not, inform any decision to approve and fund the initiative.

168. It follows that I am satisfied that Mayor Rohde contravened clause 3.14 of the Code, thereby committing misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
169. On this basis, I am also satisfied that Mayor Rohde's conduct was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

## Opinion

It is my final view that Mayor John Rohde committed misconduct in public administration by failing to inform the council of his relationship with a resident of the Philippines and of his intention to visit this person during visits to the Philippines as part of a council trade mission.

It is also my final view that Mayor John Rohde's conduct in failing to inform the council of his relationship with a resident of the Philippines and of his intention to visit this person during visits to the Philippines as part of a council trade mission was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

In the circumstances, I recommend under section 25(2)(f) of the Ombudsman Act and section 263B(1)(a) of the Local Government Act that the council issue a further reprimand to Mayor Rohde.

In light of the above conclusions, I do not consider it necessary to determine whether a separate issue of maladministration in public administration arises from Mayor Rohde's conduct.

I nevertheless wish to emphasise that, in the circumstances of the matter, I consider Mayor Rohde's misconduct to fall at the higher end of the scale.

### **Whether the Port Pirie Regional Council committed maladministration in public administration by funding the Mayor to travel to the Philippines for the purposes of a council trade mission in circumstances where a formal approval process was not followed by the council**

170. Under section 5(4) of the ICAC Act, a public authority commits maladministration in public administration in circumstances where a practice, policy or procedure of the public authority results in an irregular and unauthorised use of public money or the substantial mismanagement of public resources.
171. Central to this definition of maladministration in public administration is the need to identify a practice, policy or procedure of the public authority that has resulted in one or more of the adverse outcomes.
172. I have considered the circumstances that caused the council to fund the Mayor's travel to and from the Philippines.
173. I have also had regard to the various council policies identified earlier in this report.
174. While I have already expressed the view that public resources were substantially mismanaged in connection with the initiative, I do not consider that this was attributable to a particular practice, policy or procedure of the council.

175. Rather, the funding of the trade mission appears predominantly attributable to the conduct of one (or possibly two) council officers. In the circumstances of this matter, I do not consider that such behaviour amounts to a practice of the council.
176. I am nevertheless concerned that the issue of the council's authorisation and funding of the trade mission does not appear to have been queried by the council's elected body prior to the disclosures made by Bitá.
177. In all of the circumstances, however, I am not satisfied that the council committed maladministration in public administration.

## Opinion

It is my final view that the Port Pirie Regional Council did not commit maladministration in public administration by funding the Mayor to travel to the Philippines for the purposes of a council trade mission in circumstances where a formal approval process was not followed by the council.

## Summary and Recommendations

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

1. Mayor John Rohde committed maladministration in public administration by organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body.
2. Mayor John Rohde committed misconduct in public administration by organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body.
3. Mayor John Rohde's conduct in organising and undertaking a trade mission to the Philippines on behalf of the Port Pirie Regional Council in the absence of formal approvals from the council's elected body was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2)(f) of the Ombudsman Act and section 263B(1)(a) of the Local Government Act that the council issue a reprimand to Mayor Rohde.

4. Mayor John Rohde committed misconduct in public administration by failing to inform the council of his relationship with a resident of the Philippines and of his intention to visit this person during visits to the Philippines as part of a council trade mission.
5. Mayor John Rohde's conduct in failing to inform the council of his relationship with a resident of the Philippines and of his intention to visit this person during visits to the Philippines as part of a council trade mission was contrary to section 63(2) of the Local Government Act and, consequently, contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act.

To remedy this error, I recommend under section 25(2)(f) of the Ombudsman Act and section 263B(1)(a) of the Local Government Act that the council issue a further reprimand to Mayor Rohde.

6. The Port Pirie Regional Council did not commit maladministration in public administration by funding the Mayor to travel to the Philippines for the purposes of a council trade mission in circumstances where a formal approval process was not followed by the council.

Section 18(5) of the Ombudsman Act provides that I must report any evidence of misconduct on the part of a member of an agency to the principal officer of the agency. As Mayor Rohde is himself the principal officer of the council, I have elected to send a copy of my report to both Mayor Rohde and the Deputy Mayor.

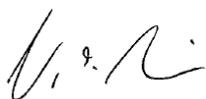
In accordance with Part 3 of the Code, this report must be provided to a public meeting of the council within two ordinary meetings of the council receiving my report.

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **22 January 2019** on what steps have been taken to give effect to my recommendations 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.

I have also sent a copy of my report to the Minister for Transport, Infrastructure and Local Government as required by section 25(3) of the Ombudsman Act.



Wayne Lines  
**SA OMBUDSMAN**

23 October 2018