



Report - City of Marion

Full investigation - *Ombudsman Act 1972*

Complainant	Councillor Kathleen Allen
Council member	Councillor Bruce Hull
Council	City of Marion
Ombudsman reference	2014/03637
Date complaint received	23 April 2014
Issue	Whether Councillor Hull engaged in repeated or sustained inappropriate behaviour such as to constitute misconduct under Part 3 of the Code of Conduct.

Jurisdiction

Councillor Kathleen Allen made a complaint to the council alleging that Councillor Bruce Hull had:

- repeatedly breached Part 2 of the Code of Conduct for Council Members (**the Code of Conduct**)¹
- breached his general duties as an elected member
- breached Part 3 of the Code of Conduct in the alleged misuse of council resources which have been used (and continue to be used) to further his campaign of bullying and harassment
- breached his duties as an 'Other person' under the *Work Health and Safety Act 2012*.

The legislative scheme envisages that:

- complaints in relation to Part 2 of the Code of Conduct (general behaviour; responsibilities; relationships and other matters) be made to the council, for investigation in accordance with its adopted process
- complaints in relation to Part 3 of the Code of Conduct (misconduct) be directed to my office or the Office of Public Integrity for investigation.

Part 3.17 of the Code of Conduct states that at the discretion of the council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under Part 3.

The council resolved to refer the complaint about Cr Hull to me for investigation.²

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

² City of Marion General Council Meeting, 8 April 2014.

Looking at the totality of the allegations, it appears that the most significant allegation is that of Cr Hulls' repeated or sustained inappropriate behaviour. As such, I determined that my investigation would focus on this allegation.

I determined that the conduct of Cr Hull in relation to his comments about the council's hiring of a driver for Cr Allen may amount to repeated or sustained inappropriate behaviour that can be elevated to an allegation of misconduct under Part 3 of the Code of Conduct made pursuant to section 63 of the *Local Government Act 1999*. An act of a council member that may constitute grounds for complaint under the Local Government Act is taken to be an 'administrative act' for the purposes of the Ombudsman Act.³

I have not considered any conduct of Cr Hull prior to 1 September 2013 because the Code of Conduct does not operate retrospectively, and only applies to acts of council members after 1 September 2013.

Investigation

My investigation has involved:

- assessing the information provided by the council
- seeking a response from Councillor Hull
- seeking further information from the council
- considering the Local Government Act
- considering the *Local Government (Members Allowances and Benefits) Regulations 2010 (the Member Allowances and Benefits Regulations)*
- Considering the *Local Government (General) Regulations 2013*
- considering the Code of Conduct
- considering the City of Marion Elected Members Expenses, Benefits, Support and Facilities Policy (**the council's Expenses Policy**)⁴
- providing Cr Hull, the council and the complainant with my provisional report for comment, and considering their responses
- preparing this report.

Standard of proof

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.⁵ 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
...⁶

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

⁴ City of Marion, Elected Members Expenses, Benefits, Support and Facilities Policy, Policy No. GP-23, Version 6, Authorisation Date 27/9/2011.

⁵ 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.

⁶ *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

Response to my provisional report

In response to my provisional report, the complainant commented, by email dated 30 June 2014, in summary, that:

- the mayor did not ever make the offer to the complainant that she could stay at her house, and that this was a misquote in The Advertiser article
- Cr Hull has been asked to retract statements and make public apologies on a number of occasions in the past and 'any apology given by him lacks any sincerity, and is only given under duress, with no remorse intended'
- there has been no acknowledgement by Cr Hull 'or any apparent awareness, of the harm and damage his aggressive, caustic, bullying, and intimidating remarks that he has inflicted can have on another person'
- her formal complaint is not in isolation and that 'his blatant disrespectful and bullying behaviour is ongoing, and continuous, and these remedies have been tried and tested many times' and do 'not act as a deterrent for Cr Hull'.

Cr Hull provided a response by email dated 6 July 2014. In summary, Cr Hull replied that:

- section 59 of the Local Government Act requires a council member to keep resources and expenditure under review
- a council member should question costs 'that seem unreasonable, a perk or not in the public interest'
- the use of social media 'enables a greater reach in connecting with the community'
- twitter is 'widely recognised as a robust forum with strong commentary that passes in an instant. Debate rages and dies and is a two edged sword.'
- only two of his tweets mentioned the complainants name, and 'one of them is a referral to a media report'. The rest of the tweets are 'a small part of the wider debate that took place in the local print media and on the radio'
- it is a 'regular practice' to forward emails from ratepayers and is 'anticipated as part of an elected member's role and part of Council's information management'
- Cr Allen's complaint 'sits in the wider context of a media storm' in which his tweets 'were a minor part'
- he is 'not responsible for what is reported in the newspapers'
- 'Occ Health and Safety and Code of Conduct... should not be used as a weapon to silence criticism'.

I have considered Cr Hulls' comments but have not changed my provisional views.

The council responded by letter dated 25 June 2014.

The council sought clarity about whether a breach of Part 3 of the Code of Conduct is also a breach of the council members' statutory duty in section 62 of the Local Government Act. I have not considered whether Cr Hull has breached section 62 of the Local Government Act.

The council also sought clarity about the extent of my foreshadowed recommendations, namely whether they are intended to dispose of and remedy the allegation of repeated or sustained inappropriate behaviour only, or whether they are intended to remedy the complaint as a whole. As I determined to investigate only the allegation of Cr Hull's alleged repeated or sustained inappropriate behaviour, I advise that the recommendations address this issue only.

The council requested that I provide timeframes within which Cr Hull is to comply with the recommendations. I have done this.

Background

1. Cr Kathleen Allen was provided transport home from council meetings in a car with a driver for four council meetings after she fell asleep at the wheel on her journey home from a council meeting in February 2014.
2. Cr Hull commented about the provision of a council funded driver for Cr Allen on many occasions through two twitter accounts: 'Cr Hullabaloo' and 'Earl of Warradale'. I have included a selection of Cr Hull's tweets in this report.
3. On 31 March 2014, Cr Hull tweeted:

@BynerLeon Marion councillor Kathleen Allen chauffeured from Mt Compass home to meetings nwspl.us/2Fd hfo Lady Kathleen of No Compass?
4. On 31 March 2014, Cr Hull tweeted:

@theTiser SO, this is not an April Fools Day joke? @CityofMarion
5. On 31 March 2014, Cr Hull tweeted:

You be the judge! \$260 round trip for each meeting or function, way too much for ratepayers to fund. A damn disgrace! adelaidenow.com.au/messenger/west...
6. On 31 March 2014, Cr Hull tweeted:

@FrankPangallo I agree, strange how this all seemed to be cloaked as just mileage on the members register. Not even a cab? @amynmoran
7. On 31 March 2014, Cr Hull tweeted:

Hey @coreyblacksell You standing for election @CityofMarion in Nov? You could get the Chauffeur up to Pinnaroo Mate nwspl.us/2Fd hfo
8. On 31 March 2014, Cr Hull tweeted:

@891adelaide @SophiaMacRae @IanHenschke @891Abc I could tell you about whistleblowing and Councillor's chauffeur driven cars at Marion?
9. On 31 March 2014, Cr Hull tweeted:

@macdonald_julie @newscomauHQ This speaks volumes about the sick Marion Council culture and contempt of ratepayers Julie #MarionDecides
10. On 31 March 2014, Cr Hull tweeted:

I could fall asleep at the #OaklandsXing, should I have a Chauffeur as well? nwspl/us/2Fd hfo with me being an Earl and all @LGAofSA
11. On 31 March 2014, Cr Hull tweeted:

@AndrewFaulkner9 Chauffeur Editorial in Messenger. As a Marion Councillor I am appalled, as are most of the community. But admin see no wrong?
12. On 31 March 2014, The Advertiser tweeted:

Marion councillor Kathleen Allen chauffeured from Mt Compass home to meetings nwspl.us/2Fd hfo

The tweet included a link to the following article, written by Ms Amy Moran, which was published in The Advertiser newspaper on 1 April 2014:

Marion councillor Kathleen Allen chauffeured from Mt Compass home to meetings

MARION ratepayers are paying from an elected member to be chauffeured between council meetings and her Mount Compass home after she fell asleep at the wheel.

Cr Kathleen Allen has claimed four round-trips totalling more than \$1000 since the first on February 25, a claim permitted under the council's elected member expenses policy.

"I suffered a micro-nap and nearly swerved onto the side of the road after a late night council meeting," Cr Allen said.

"Meetings can go beyond 10 at night and can be fatiguing after working during the day."

Cr Allen said she moved to Mount Compass last July "for family reasons" but refused to give specifics or say whether she would stand for re-election in November.

Marion director Kathy Jarrett said hiring a chauffeur-driven car, worth \$260 per trip, was the "cheapest and best" option.

Ms Jarret said other, more expensive options, included Cr Allen staying in a motel or taking a taxi to and from meetings.

She said council staff decided it was not suitable for Cr Allen to drive home after learning of her "micro-nap".

"When we became aware of what occurred, we looked at options under our policy to allow Cr Allen to continue to serve her community," Ms Jarrett said.

Neither Ms Jarrett or Cr Allen would say whether the chauffeur trips would continue and if so, for how long.

The chauffeur bill is on top of Cr Allen's \$2000 in mileage expenses since July.

Cr Cheryl Connor claimed \$1000 and Cr Fank Verrall claimed \$90 for the same period, with all other councillors not claiming any mileage.

Deputy mayor Tim Pfeiffer claimed \$1000 in taxi fares, as he took a taxi from work in the city to meetings.

He said he used public transport or rode his bike to and from work, and taking a taxi from work to council meetings ensured he arrived on time.

"While I do use taxis, I have never claimed mileage from the council for the use of a vehicle and I claim few other expenses," Cr Pfeiffer said.

13. On 2 April 2014, a council officer emailed the council members asking them to provide feedback for the council's submission to the Local Government Remuneration Tribunal, which, under section 76 of the Local Government Act, is required to determine, on a four yearly basis, allowances for members of local government councils. Cr Hull replied to all the recipients of the email, and cc'd Ms Moran, as follows:

I guess we could all ask for our own Chauffeur?
I have no other contribution to make.

14. On 2 April 2014 a ratepayer sent the following email to the mayor :

Dear Felicity

I am writing in reference to the article in the Adelaide advertiser of 1 April 2014 in which it is reported that the Marion Council provides a chauffeur service for an elected member. If this is true this is an outrageous waste of council revenue.

If Councillor Allen lacks the stamina for the drive from Marion to Mt Compass surely her lifestyle choices should be fully explored before the ratepayers foot the bill of over \$1,000 for 4 round trips? Things Councillor Allen may need to address include getting to bed early the day prior to late meetings, obesity, sleep apnoea and diet and exercise. Additionally safe driving strategies commonly employed by people on long journeys include stopping along the way to refresh with a thermos of coffee, getting out of the vehicle and deep breathing fresh air or driving with the window wound down.

I would like to know if any of the above issues/strategies were explored with the elected member before council took the decision to fund her travel.

I regularly drive from suburban Adelaide to Goolwa at various hours of the day and the journey takes me via Mt Compass. Even at my advanced age (61 years) I have never felt fatigued and I would consider such a trip as a very short one comparative to the distances many people in the community undertake on a regular basis. Many people undertake such trips to commute to and from their places of employment. Should their employers follow the example set by Marion Council and provide a car with driver, or is Marion Council way out of step with accepted workplace practices?

Furthermore I question Councillor Allen's ability to represent the ratepayers (of whom I am one) of Marion Council while she resides in Mt Compass.

Please note that earlier this year I wrote to Marion Council concerning the waste of council funds on a Christmas party for staff. I sincerely hope that this will not be repeated in 2014.

15. On 2 April 2014 the mayor responded to the ratepayer's email as follows:

Hi [ratepayer]

Thank you for your email, Cr Allen is a hardworking councillor and you get very good value from her efforts.

Cheers

Felicity

16. On 2 April 2014, the ratepayer forwarded his email to the mayor, along with the mayor's response, to Cr Hull. Cr Hull sent the following responses to the ratepayer:

Dear [ratepayer]

Thank you for raising these concerns with me,

There seems to be widespread palpable outrage about this matter and quite frankly I feel it is a disgrace.

There is just no plausible explanation or excuse for this behaviour at the expense of our rate payers.

It beggars belief that this interpretation of our allowance policy was given approval, it is yet another performance matter to be discussed by Council.

Can I assure you that your concerns will be raised within Council and every effort will be

made to tighten up our Policy to provide appropriate governance that reflects the community values expected of us.

Thank you once again for your correspondence, may I have your permission to share it with other Members?

Kind regards
Bruce
Dear [ratepayer]

I am truly sorry and embarrassed about the response you received from Mayor Lewis, perhaps with your permission I could share that with other Elected Members as well?

Kind regards
Bruce

17. On 4 April 2014, Cr Hull tweeted:

Retribution pending over my comments/tweets re Cheffeur [sic] / Councillor. Not allowed to represent the community outrage & disgust?! @AndrewFaulkner9

18. On 7 April 2014, The Advertiser posted the following article written by Ms Moran on its website. The article was published in The Messenger newspaper on 8 April 2014:

Marion Mayor Felicity-ann Lewis defends use of chauffeur to bring councillor to meetings

MARION Mayor Felicity-ann Lewis has defended a councillor's decision to charge more than \$1000 in chauffeur bills back to the council.

Councillor Kathleen Allen has used a chauffeur to take her to and from four meetings at a cost of \$260 per round trip (<http://www.adelaidenow.com.au/messenger/west-beaches/marion-councillor-kathleen-allen-chauffeured-from-mt-compass-home-to-meetings/story-fni9llx9-1226870308665>) - paid for by ratepayers - since February after falling asleep at the wheel on the way home from a council meeting.

The chauffeured trips are on top of \$2000 in mileage Cr Allen has claimed between July and February.

Dr Lewis said if Cr Allen resigned in July when she moved to Mount Compass, Marion ratepayers would have had to pay "a lot more than \$2000" for a by-election.

However, any resignations between now and November's Local Government election will not spark a by-election because of their proximity to the poll.

"We are encouraging Cr Allen to stay and we support her," Dr Lewis said.

An advertiser.com.au poll found 80 over cent of almost 700 respondents thought it was unfair for ratepayers to pick up Cr Allen's chauffeur bill,

Cr Allen, who represents ratepayers in Darlington, Hallett Cove, O'Halloran Hill, Seacombe Heights, Seaview Downs, Sheidow Park and Trott Park, would not comment on the issue further last week.

Cr Kathleen Allen has used a chauffeur to get to council meetings since February.

But she has previously refused to say whether the trips would continue through to the November election, and whether she would stand.

Dr Lewis said council staff would become "more aware of how costs can be mitigated" since the original April 2 Guardian Messenger report.

She said she had offered Cr Allen a bed at her home after the meetings.

But Dr Lewis said it was fair for Cr Allen to return home in a safe means if she chose.

“It’s a social justice issue and a health and wellbeing issue... we want to encourage people to do their work,” she said.

Meantime, Marion councillors were last week invited to comment on the council’s submission to the local government remuneration tribunal, which is conducting its four-yearly review of elected members’ allowances.

A report considering councillor feedback would be presented at Marion’s April 22 meeting.

19. On 7 April 2014, Cr Hull tweeted:

Council Meeting tonight, may bump into the Cheffeur [sic] again in the Members Car Park. For me? No! Reckon I would be told to walk or on ya bike.

20. On 7 April 2014, Cr Hull tweeted:

adelaidenow.com.au/messenger/west... Did David Spiers [sic] departure from Council require a by election? No!

21. At the council meeting on 8 April 2014 the council considered Cr Allen’s complaint against Cr Hull in confidence. Cr Allen made a personal explanation to the council, as follows:

I am making a formal complaint about Councillor Hull’s behaviour, due to the fact that on this occasion it has affected me, and my family, and I believe it to be very personal. I have been harassed by the media to give “my side of the story”, due to the following personal reasons, you will understand why I did not want this incident to be prolonged.

This is not in any way, a justification that Council engaged a hire car for me to the last 4 Council Meetings, as this was within the parameters and admissible under the rules, and supported by Council adopted policy, and I appreciate the respect to my health and safety in my workplace, as I have done nothing wrong.

It perhaps could have been resolved much earlier, if prior to going to the media, and a request for the register of expenses be released, perhaps if the person had contacted me, as common courtesy, and given me the opportunity to discuss the incident. As a team working together, we could have discussed the fact I did not request a hire car, but Council looked at options for me, taking into account my health and safety. It has now escalated to this stage, by Councillor Hull, which could have been avoided, and which I did not initiate.

At no time have I retaliated publicly, or any other way, but have remained dignified in my resolve to continue my work as a Councillor.

Apart for Tuesday Council meetings, I drive to other Civic Events, sometimes 3 and 4 times a week.

My personal explanation is about, why I decided, that on the 3 counts of my grievance, and under the behavioural code, it is bullying, harassment, intimidation and an attempt to try to humiliate and ridicule me, and it blatantly shows public disrespect for another Council Member as per the Code of Conduct.

I did not speak to anyone of the incident, when I dozed off, on the Victor Harbour Road, on the way home after a late night finish to a Council Meeting. After the incident, I sat in the car for half an hour, with all the windows down, prior to driving home. Fortunately, I avoided what could have been a worse outcome. I was badly shaken by the incident, but I chose not to speak of it for the following personal reasons.⁷

⁷ I do not consider it necessary to include Cr Allen’s personal reasons in this report, to avoid further public attention on her and her family.

...

Councillor Hull then proceed to perpetuate the story, by public tweeting, on his website, under the guise of the title Earl of Warradale, which I found escalated the disrespectful, bullying, intimidating, demeaning and abusive assault about the incident. I see this as a form of cyber-bullying.

...

Councillor Hull then proceeded to circulate, on the Council email website, letters from a resident, whom he had encouraged, and sought permission to release and circulate private correspondence between him and the Mayor, which was very personal about me, and made derogatory remarks about my health, and lifestyle choices, amongst many other personal, disgraceful observations. This has caused me great personal embarrassment and humiliation.

These letters were private, and addressed to the Mayor, and Councillor Hull proceeded to distribute them to all Elected Members, members of staff, and the Messenger Press, using council resources.

...

Perhaps in his quest to provide our ratepayers with all this information via the media, it is a pity they do not know, that the amount of the expenditure on my use of transport on four occasions, will be minimal in comparison, to the amount that will be spent on this investigation into his behaviour, which he has initiated, and this will eventually cost the ratepayers a large sum, plus the cumulative amount Council has had to spend over the years, for legal advice investigating Councillor Hull's inappropriate behaviour, and the resulting harm to other elected members, staff, and guest speakers. Not to mention the waste of time this fiasco has caused, all over me getting a hire car to Council.

I have observed over my time as a member, the persistent disrespect by Councillor Hull to our Mayor, CEO, and other Elected Members, guest speakers and numerous staff.

Due to the reasons, I have given in this personal explanation, I have decided to make this formal complaint, as I think enough is enough, this bullying and continued inappropriate behaviour has to stop now. He has done enough harm to people in the past, I am his target for the present, but let it stop now for the future harm he may do. I tend not to be competitive, or combative, and avoid confrontation, but on this occasion I feel an injustice has been done.

This will then enable all of us to get on with our promise to the Community, to represent them, and advocate on their behalf. I made a commitment, and took an oath to do this, and I will stand tall, and continue to represent them. It is very sad to see our hard work being diminished in the community, and the reputation of Marion Council being tarnished publicly by Councillor Hull. When all the majority of us want to do is get on with the work we set out to do. I certainly did not sign up to be bullied, demeaned, and vilified in the public domain. Hence the reason I have made a formal complaint.

There have been other instances, in the past, where Councillor Hull has used aggressive and abusive behaviour towards me and others, and I did not take any action.

But now, this continuous abuse recently, only hinders my working with the community, and is affecting my physical, mental and social wellbeing, an attempt to tarnish me reputation in the community as well as affecting me family.

Let's, once and for all, make this a safe workplace, free from any risk, and an environment free from bullying and intimidation, not only now, but in the future, because if we don't take action now, there is no sign that this will change.

Let's get on with our core business, and finish our term on a high note of productivity, working constructively together, in genuine pursuit of making Marion a most wonderful place to be proud of.

Cr Allen then declared a conflict of interest and left the council meeting for the consideration of the item.

22. On 9 April 2014, Cr Hull tweeted:

@MayorRosenberg @LGAofSA Customers do like driven Councillor's but not by Cheffeur! [sic]

23. On 9 April 2014, Cr Hull tweeted:

@AdelaideAdagia Cheffeurs? [sic]

24. On 14 April 2014, Cr Hull tweeted:

So Marion Council will not rule out using Cheffeur [sic] to drive a Councillor home to Mt Compass \$ Council voted against motion to review policy!

25. On 14 April 2014, Cr Hull tweeted:

There is even more expense to ratepayers re this that I cannot talk about legally. Or be in deeper poo for blowing whistle.

26. On 16 April 2014, Cr Hull tweeted:

@FrankPangall @LGAofSA Send the driver! pic.twitter.com/48hTQfM8Ti



27. On 16 April 2014, Cr Hull tweeted:

@messengernews Just jealous of Marion's Cheffuer? [sic]

28. At the council meeting on 22 April 2014 the council again considered in confidence, Cr Allen's Code of Conduct complaint against Cr Hull. The council made a number of resolutions, including to refer the complaint to me for investigation and resolution under Part 3 of the Code of Conduct.

29. On 19 April 2014, Cr Hull tweeted:

@Rob_Lucas Common Rob, even as a Marion Councillor you can have a driver. No big deal?

30. On 23 April 2014 the council's Acting Chief Executive Officer, Ms Heather Montgomerie, referred the complaint to my office in accordance with the council's 22 April 2014 resolution.

31. On 28 April 2014, Cr Hull tweeted:

This is unsatisfactory @LGAofSA, along with the use of Cheffeurs [sic] at Marion. Regulatory changes are required STAT:- adelaidenow.com.au/messenger/east...

32. On 29 April 2014, Cr Hull tweeted:

No allowance rise proposed at Marion, in enough poop with our cheffeur [sic]?
Remuneration Tribunal need broad holistic lens. adelaidenow.com.au/messenger/city...

33. On 29 April 2014, Cr Hull tweeted:

Elected member forum finished at 9.00pm. Cheffeur [sic] & nice car waiting in car park,
your rates at work? #MarionDecides pic.twitter.com/rPyeo926rz

34. On 1 May 2014, Cr Hull tweeted:

@ TimLooker But can we ALL have a Cheffeur [sic] please, I am tired and it is a long
drive through that#OaklandsXing?@BynerLeon

35. On 3 May 2014, Cr Hull tweeted:

@ australian @MayorRosenberg Cheffeurs [sic] for Councillors as well!

36. On 5 May 2014, Cr Hull tweeted:

@ Rob_Lucas Can still get a car/driver here at Marion Rob, but only if you live 45 km
away. Not an issue for ratepayers apparently?

37. On 12 May 2014, Cr Hull tweeted:

@indaily Nothing to hand back at Marion, give or take a Cheffeur [sic] or two?

Relevant law

38. 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.

39. Regulation 7 of the *Local Government (General) Regulations 2013* prescribes:

7—Code of conduct for members

For the purposes of section 63 of the Act, the *Code of Conduct for Council Members* published by the Minister in the Gazette on 29 August 2013 (and as in force on that day) is adopted as a code of conduct to be observed by the members of all councils.

40. Part 2 of the Code of Conduct provides:

2. Behavioural Code

...

General Behaviour

...

2.2 Act in a way that generates community trust and confidence in the Council.

2.3 Act in a reasonable, just, respectful and non-discriminatory way when dealing with people.

2.4 Show respect for others if making comments publically.

...

Relationship with fellow Council Members

2.9 Endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.

2.10 Not bully or harass other Council members.

...

41. Clause 3.17 of Part 3 of the Code of Conduct provides:

...repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.

42. Section 77(1) of the Local Government Act provides that a member of the council is entitled to receive from the council:

- (a) reimbursement of expenses of a kind prescribed for the purposes of this paragraph, incurred in performing or discharging official functions and duties; and
- (b) reimbursement of expenses of a kind prescribed for the purposes of this paragraph, and approved by the council (either specifically or under a policy established by the council for the purposes of this section), incurred in performing or discharging official functions and duties.

43. The Members Allowances and Benefits Regulations define a 'prescribed meeting' as:

...a meeting of the council or council committee, or an informal gathering, discussion, workshop, briefing, training course or similar activity which is directly or closely related to the performance or discharge of the roles or duties of the member.

44. An 'eligible journey' is defined as:

a journey (in either direction) between the principal place of residence, or a place of work, of a member of the council, and the place of a prescribed meeting.

45. Regulation 5 includes:

Reimbursement of expenses – section 77(1)(a)

- (1) Subject to this regulation, for the purposes of section 77(1)(a) of the Act, the kinds of expenses for which a member of a council will be reimbursed are as follows:
 - (a) travelling expenses actually and necessarily incurred by the member in travelling to or from a prescribed meeting if–
 - (i) the journey is an eligible journey; and
 - (ii) the journey is by the shortest or most practicable route;
 - (b) ...
- (2) However–
 - (a) in relation to the operation of subregulation (1)(a)–

- (i) if an eligible journey relates to travel between a place within the area of a council and a place outside the area of a council (in either direction), the member is only entitled to be reimbursed in respect of expenses that can be attributed to travel within the area of the council; and
- (ii) ...

46. Regulation 6 includes:

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

For the purposes of section 77(1)(b) of the Act, the following kinds of expenses for which a member of a council may be reimbursed are prescribed:

- (a) ...
- (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);
- (c) travelling expenses incurred by the member in undertaking an eligible journey to the extent that those expenses are attributable to travel outside the areas of the council;

...

47. The council’s Expenses Policy was approved by the council members at a meeting on 30 November 2010. It provides that:

Elected Members are entitled to receive reimbursement for travelling costs within the area of Council. Reimbursement is restricted to ‘eligible journeys’ (as defined in Regulation 3) by the shortest or most practicable route and to the part of the journey within the Council area, ie; any travelling outside the Council area in order to attend prescribed meetings is provided by this policy under ‘Additional Reimbursement and Support’.

...

Pursuant to Section 77(1)(b) of the Act and Regulation 6 of the Regulations, Council approves the reimbursement of expenses for Elected Members as described below:

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:

- “prescribed meeting” as it related to that component outside the Council area, up to a maximum of \$50 or 100km per return journey;

Whether Councillor Hull engaged in repeated or sustained inappropriate behaviour, such as to constitute misconduct under Part 3 of the Code of Conduct

- 48. Cr Allen alleges that Cr Hull’s disapproval of her use of a hired driver has resulted in him engaging in persistent bullying and intimidation, contrary to the council’s Code of Conduct.
- 49. I consider that the provision of a driver for Cr Allen is in accordance with the Local Government Act and the council’s Expenses Policy.
- 50. Section 77(1)(b) of the Local Government Act permits the council to reimburse expenses of a kind prescribed for the purposes of the section and that have been approved by the council under a policy.

51. As per the Members Allowances and Benefits Regulations, Cr Allen's journeys to and from the council meetings are 'eligible journeys' for 'prescribed meetings'.
52. The council's Expenses Policy provides that a council member, in undertaking an eligible journey in relation to travel outside the area of the council, is entitled to receive reimbursement for expenses incurred in travelling to a 'prescribed meeting', up to a maximum of \$50 or 100km per return journey. I consider that Cr Allen's return journey to the meetings is less than 100km and therefore she is entitled to such travel expenses from the council.
53. Having had regard to all of Cr Allen's personal circumstances, the details of which I am not prepared to reveal, I do not consider that the provision of a car to take Cr Allen home from four council meetings was unreasonable. I acknowledge that the council administration has work, health and safety obligations to Cr Allen. Further, I have viewed the council's Elected Member Register and Allowance Summary for 2013/2014 and consider that Cr Allen's expenses are not unreasonable.
54. I also acknowledge that Cr Hull has an interest in ensuring that council resources are used fairly, effectively and efficiently.⁸ However, in my view, if Cr Hull disagrees with the provision of a driver for Cr Allen, commenting to the media and making what I consider are disrespectful tweets is not an appropriate way for him to address his concerns. I note that Cr Hull has attempted to have the council's Expenses Policy amended on two occasions, once as a motion without notice and subsequently as a motion with notice. Both of these motions were lost.
55. My final view is that Cr Hull has breached the following clauses of Part 2 of the Code of Conduct:
- clause 2.2 – act in a way that generates community trust and confidence in the Council.
 - clause 2.3 – act in a reasonable, just, respectful and non-discriminatory way when dealing with people.
 - clause 2.4 – show respect for others if making comments publically.
 - clause 2.9 – endeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
 - clause 2.10 – not bully or harass other Council members.
56. There is a long history of complaints by staff and council members alleging inappropriate, bullying and intimidating behaviour by Cr Hull. Whilst I have not considered these past instances in this investigation, I note that Cr Hull has agreed in the past to take more care in relation to his interactions with staff. I also note that a number of staff members and council members have expressed concerns about their interactions with Cr Hull and his treatment of them in recent times. The report to the 8 April 2014 council meeting included the following comments from the council's Chief Executive Officer:

Workplace Health and Safety Risks

I have observed over the last number of months, and more particularly directly observed and been advised over the last 2 weeks, of the concerns of a number of staff regarding their interactions with, and behaviour of Councillor Hull.

As a result of these concerns, and Councillor Hull's past patterns of behaviours, I am seeking a conversation with Council about current levels of workplace health and safety risk together with options to mitigate any identified risks.

⁸ Section 8(h) of the Local Government Act.

57. In my view, Cr Hull's frequent tweets, along with his media comments and email correspondence demonstrate repeated and/or sustained breaches of Part 2 of the Code of Conduct. As such, my final view is that Cr Hull's conduct constitutes misconduct under Part 3 of the Code of Conduct.

Opinion

In light of the above, I consider that Cr Hull breached Part 3 of the Code of Conduct. In this way, Cr Hull acted in a manner that was 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) of the Ombudsman Act that the council:

1. reprimand Cr Hull
2. require Cr Hull to issue a public apology to Cr Allen, both written and verbal
3. require Cr Hull to agree to refrain from such conduct.

Final comment

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by 29 August 2014 on what steps have been taken to give effect to my recommendation/s above; and, if no such steps have been taken, the reason(s) for the inaction.

In accordance with Part 3 of the Code of Conduct, my report must be provided to a public meeting of the council, within two ordinary meetings of the council following the receipt of my recommendations. I ask that the council confirm to me in writing that my report has been so tabled within the stipulated timeframe.

I request that Cr Hull address the recommendations above within two ordinary meetings of the council providing my final report to a public meeting of the council.

Pursuant to section 263B(2) of the Local Government Act, I note that if a council member fails to comply with a council requirement made as a result of an Ombudsman recommendation such as those 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.

Megan Philpot
ACTING SA OMBUDSMAN

21 July 2014