

Redacted Final Report

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

Public Authority	City of Burnside
Public Officer	Cr Lance Bagster
Ombudsman reference	2017/10978
ICAC reference	2018/000103; 2018/000191; 2018/000255; 2018/000170
Date of referral	25 October 2017
Issues	<ol style="list-style-type: none">1. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, bullied or harassed other council members, thereby committing misconduct in public administration2. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, bullied or harassed council staff, thereby committing misconduct in public administration3. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to act in a way that generates community trust and confidence in the City of Burnside, thereby committing misconduct in public administration4. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to act in a reasonable, just, respectful and non-discriminatory way when dealing with people, thereby committing misconduct in public administration

5. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to show respect for others when making comments publicly, thereby committing misconduct in public administration
6. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to establish and maintain a respectful relationship with all council members, regardless of differences of views and opinions, thereby committing misconduct in public administration
7. Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, directed or influenced council staff with respect to the way in which they perform their duties, thereby committing misconduct in public administration
8. Whether Cr Lance Bagster supplied a copy of a confidential Preliminary Assessment Report to a member of the public, thereby committing misconduct in public administration

Jurisdiction

These matters were 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 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 reports made to the Office for Public Integrity and concerns the alleged conduct of Cr Lance Bagster of the City of Burnside (**the council**).

Broadly speaking, it is alleged that Cr Bagster:

- has over an extended period of time engaged in inappropriate and offensive communications with his fellow elected members and council staff
- forwarded a copy of a confidential Preliminary Assessment Report concerning the conduct of the council's chief executive officer to a member of the public.

The allegations give rise to various potential breaches of Part 2 and Part 3 of the Code of Conduct for Council Members (**the Code**).

I do not ordinarily investigate alleged breaches of Part 2 of the Code, although I may do so on a referral from the Commissioner.

During consultation with the Commissioner I expressed a willingness to investigate this matter because it appeared to me that an external investigation of Cr Bagster's conduct was warranted, having regard to the gravity of the alleged behaviour and the significant public resources that had already been expended by the council in relation to the matter.

As a contravention of Part 2 of the Code constitutes grounds for disciplinary action under clause 2.25 of the Code, and 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 Cr Bagster's conduct relates to administrative acts that have been made contrary to law within the meaning of section 25(1)(a) of the Ombudsman Act. I have decided to undertake this line of inquiry on my own initiative pursuant to section 263A(3) of the Local Government Act.

Investigation

My investigation has involved:

- assessing the information provided by the reporters
- seeking further information and relevant records from the council
- seeking and considering a response from Cr Bagster
- seeking and considering a further response from Cr Bagster
- considering information previously supplied to my Office
- considering:
 - the Local Government Act
 - the *Local Government (Elections) Act 1999*
 - the *Local Government (Procedures at Meetings) Regulations 2013*
 - the *Work Health and Safety Act 2012*
 - the Code
- preparing a provisional report and seeking the views of the parties
- considering further submissions from 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.¹ It is best summed up in the decision as follows:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issue has been proved ...²

Response to my provisional report

1. I provided my tentative views to the parties by way of my provisional report dated 10 July 2018.

Response from Cr Bagster

2. Cr Bagster responded to my provisional report by way of correspondence dated 31 July 2018 and 15 August 2018. In this correspondence, Cr Bagster objected to the substantive conclusions foreshadowed in my provisional report.
3. Cr Bagster expressed a number of objections towards the manner in which I formed my provisional views, submitting, *inter alia*:
 - my provisional views were tainted by bias or were based on irrelevant considerations
 - my provisional views were not compatible with the principle espoused in *Briginshaw*
 - my provisional views failed to give sufficient consideration to his responses to my investigation.
4. It is convenient that I consider and address the above objections before I turn to Cr Bagster's substantive response to my provisional report.

Objection 1 – Apprehension of bias and the taking into account of irrelevant considerations

5. Cr Bagster objected to my investigating the issues arising from the referral on grounds of bias.
6. In this regard, Cr Bagster adverted to the contents of a letter I caused to be sent to him on 12 December 2017 in the context of a largely unrelated investigation concerning his conduct.³ In that letter I objected to two emails that Cr Bagster had sent to my delegate. I notified Cr Bagster that I considered the content and tone of these emails to be inappropriate, offensive and to be generally unbecoming of a public officer. I instructed Cr Bagster that I would not be publishing his remarks to my delegate and would not be engaging further with him in respect of his requests that I do so.
7. I do not consider the contents of my 12 December 2017 letter, viewed in context, would cause a fair-minded observer to reasonably perceive that I might fail to bring an

¹ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

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

³ Ombudsman ref. 2017/07226.

impartial mind to the investigation of the issues arising from the present referral. Nor do I consider that the contents of my letter could give rise to such a perception in respect of my delegate.

8. Cr Bagster otherwise submitted that I have been biased in the construction I have afforded to his conduct, having regard to the purported similarities between my provisional views and the conclusions expressed in the Byrt Report⁴ and the Hines Report.⁵
9. I have already made it clear that my assessment of the evidence has not been informed by the conclusions expressed in either report.⁶ I repeat that statement.
10. Cr Bagster also objected to my consideration of certain newspaper articles concerning his difficulties within the council.⁷ I do not consider my reference to these articles in the introductory passages of my report to be inappropriate. In my view, such references are factual and relevant to the context of the reports made to the Office for Public Integrity.

Objection 2 – Failure to heed Briginshaw

11. Cr Bagster submitted that my provisional views were inconsistent with Dixon J's comments in *Briginshaw* to the effect that, in serious matters, satisfaction on the balance of probabilities should not be produced by 'inexact proofs, indefinite testimony, or indirect inferences.'
12. Cr Bagster did not elaborate on this submission, although I understand Cr Bagster's general position to be that the construction my provisional report afforded to his interactions with the relevant parties was not reasonably open to me in the circumstances.
13. In response, there is little I can do but reiterate that, consistent with *Briginshaw*, I have analysed the evidence supplied to my investigation with a degree of caution commensurate with the relative seriousness of the allegations.⁸

Objection 3 – Failure to heed Cr Bagster's response to my investigation

14. Cr Bagster submitted that I failed to give meaningful consideration to his submissions to my investigation. He asserted that statements to the contrary in my provisional report were disingenuous.
15. I reiterate that I have carefully considered each of Cr Bagster's responses to my investigation, including Cr Bagster's response to my provisional report. I have reviewed Cr Bagster's submissions a further time in preparing this final report. It is true that the construction I have afforded to Cr Bagster's behaviour largely rejects the position advanced by Cr Bagster. This does not mean that I have ignored Cr Bagster's submissions.

⁴ See paragraph 39 of this report.

⁵ See paragraph 40 of this report.

⁶ Paragraph 44 of my provisional report; paragraph 80 of this final report.

⁷ Paragraphs 2 and 5 of my provisional report; paragraphs 38 and 41 of this final report.

⁸ Cf the remarks of Dixon J with the decision of the majority in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 ('[T]he strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary "where so serious a matter as fraud is to be found". Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.' (citations omitted)).

16. I am also satisfied that Cr Bagster's position concerning the allegations is made sufficiently clear in the body of this report. Procedural fairness does not require that I reproduce word for word Cr Bagster's comments in respect of each of the 215 documents at issue.

Substantive response to my provisional views

17. Cr Bagster provided a lengthy response to each of the tentative conclusions expressed in my provisional report.
18. A central and pervading contention of Cr Bagster's response was that my provisional views could not be founded on an objective consideration of the evidence. I do not agree with this submission.
19. Cr Bagster also sought to inform me of the history of his relationship with the various parties and in respect of certain factional divisions within the council. While I have considered this information, it has not caused me to change my views in respect of any of the substantive issues.
20. I have considered Cr Bagster's submissions and addressed them where necessary in the body of this report. I do not purport to set out each and every contention made by Cr Bagster in response to my provisional report. I have, however, considered Cr Bagster's submissions in their totality.
21. Cr Bagster's submissions have not persuaded me to change my views in respect of any of the substantive issues.

Other matters

22. On 4 September 2018 Cr Bagster wrote to my Office to supply some further information concerning his personal circumstances. The information is of a sensitive nature and, at Cr Bagster's request, I have not set out its substance in this report.
23. At this same time, Cr Bagster adverted to recent efforts he had made to resolve the Magistrates Court and District Court actions relating to his conduct. He submitted that these proceedings, and his wider difficulties involving the council, had caused him significant personal and professional difficulties.
24. In referring to the foregoing, Cr Bagster requested that I reconsider my foreshadowed recommendation that the council escalate the present matter to the District Court. Whilst maintaining that he had not contravened Part 3 of the Code, Cr Bagster requested that he instead be provided an opportunity to publicly apologise to 'those who believe that [his] behaviour has caused them concerns.'
25. I have considered this request in light of the personal information included with Cr Bagster's correspondence and in light of the overall substance and history of this matter.
26. Whilst not insensitive to Cr Bagster's position, I do not consider that an apology is sufficient remedy for the behaviour identified in this report.
27. Fundamentally, there is a need to ensure that such behaviour is not replicated.
28. Cr Bagster's submissions have, however, caused me to make some modifications to the subject recommendation. The effect of those modifications is to provide Cr Bagster the opportunity to resign from his position with the council, obviating the need for further court proceedings.

Response from other parties

Response from the council's mayor

29. I supplied a copy of my provisional report to Mayor Parkin in his capacity as principal officer of the council and as a person identified in my provisional report as the subject of bullying and harassment by Cr Bagster.
30. Mayor Parkin responded to my provisional report by way of letter dated 31 July 2018.
31. Mayor Parkin submitted, *inter alia*:
 - he 'concur[red] unreservedly' with my provisional views
 - the communications examined by my investigation amounted to 'only a segment' of the conduct at issue
 - Cr Bagster's conduct has had a significant negative impact upon the wellbeing of council staff
 - existing mechanisms are insufficient to address serious and sustained misbehaviour by elected members
 - he 'strongly endorse[d]' my foreshadowed recommendation to the State Government directed at the review and possible amendment of the Local Government Act and the Work Health and Safety Act
 - the code of conduct regime under the Local Government Act is inadequate and should include powers of early intervention, dismissal and disqualification, as well as the power to impose financial penalties for non-compliance
 - my report should include a recommendation to the State Government to the effect that all council staff and elected members be required to use their official email accounts when transacting council business.
32. As I have not investigated the propriety of Cr Bagster's use of a personal email account to transact council business, I do not consider that a recommendation directed at this practice should necessarily follow this investigation.
33. I have previously expressed the view that such behaviour is likely to run afoul of the *State Records Act 1997*.⁹ I would be supportive of measures to curb this practice within both levels of government.

Response from other parties

34. I supplied a copy of my provisional report to each of the parties tentatively identified in the report as the subject of bullying and harassment by Cr Bagster.
35. Three of these individuals elected to comment on my provisional report. Each expressed agreement with my provisional views and endorsed my foreshadowed recommendation to the State Government.
36. On considering the submissions from the parties, and subject to the comments above, my views remain as expressed in my provisional report.

⁹ Report of investigation concerning the City of Playford dated 13 May 2014; Ombudsman ref. 2013/06992.

Introduction and background

37. Cr Lance Bagster is an elected member of the council, representing the Burnside Ward.
38. It is a matter of public record that the nature, volume and appropriateness of certain of Cr Bagster's communications with his fellow council officers has lately been the subject of significant concern within the council.¹⁰
39. Cr Bagster's alleged conduct has already been the subject of several independent reports commissioned by the council. One such report, dated 30 June 2017, opined that Cr Bagster had engaged in 'a litany of improper conduct' giving rise to valid health and safety concerns within the council (**the Byrt report**).¹¹
40. A second report, produced by a consultant originally engaged to assist in mediating a dispute between Cr Bagster and the council's chief executive officer, opined that Cr Bagster had engaged in 'systemic, high risk bullying behaviour' such that he posed a significant risk to the council and its staff (**the Hines report**).¹²
41. I understand that Cr Bagster's alleged behaviour has caused several [persons] to obtain intervention orders from the Adelaide Magistrates Court[...].¹³ I have directly sighted one such intervention order.
42. Both the Byrt report and the Hines report make reference to a perceived escalation in Cr Bagster's conduct, arising (it is contended) from the imposition of council resolution C11055, which operated to regulate Cr Bagster's ability to communicate with the council's chief executive officer and wider administration.
43. To give context to this investigation, it is necessary to briefly canvass the circumstances giving rise to that resolution.
44. It is also necessary that I briefly comment on the system of local government within South Australia.

Resolution C11055

45. On 13 December 2016 Cr Bagster made a formal complaint against the council's chief executive officer, Mr Paul Deb. The substance of that complaint concerned an email exchange between Cr Bagster and Mr Deb in which Mr Deb was alleged to have made several disrespectful remarks directed towards Cr Bagster; most seriously:

...If you hadn't worked it out already, I'm not subordinate to you – this ain't the army, buddy. Deal with that fact and one day we might get along. Probs not.

*Stop bullying and harassing me publically. You are a very rude man who thinks that you can say anything and get away with it. Are you on your meds now. If not, you should be...*¹⁴

46. I understand that those and other remarks were also the subject of a concerns notice served upon Mr Deb by Cr Bagster for the purposes of the *Defamation Act 2005*.
47. In accordance with its Complaints Procedure, the council commissioned the law firm MinterEllison to prepare a Preliminary Assessment Report in respect of Cr Bagster's

¹⁰ See, e.g., 'Court Hands Down Restraining Order Against Burnside Councillor[...]', *Eastern Courier Messenger*, 20 September 2017.

¹¹ E Byrt, 'Report to the Council of the City of Burnside in Response to Resolution C11228 concerning *Work Health and Safety Act 2012* Responsibilities to Provide and Maintain a Safe Working Environment', 30 June 2017.

¹² T Hines, 'Confidential Mediation Report – City of Burnside', 29 August 2017.

¹³ Court Hands Down Restraining Order Against Burnside Councillor[...]', *Eastern Courier Messenger*, 20 September 2017.

¹⁴ Preliminary Assessment Report prepared by MinterEllison and dated 16 February 2017.

complaint (**the MinterEllison report**). That report, dated 16 February 2017, concluded that the impugned remarks made by Mr Deb amounted to contraventions of clauses 2.3 and 2.5 of the Code of Conduct for Council Employees. By way of remedy, it was recommended that Mr Deb provide a personal written apology to Cr Bagster.

48. The MinterEllison report concluded with the following ancillary comment:

Separately, I have noted that both the Complainant and subsequent email correspondence contain references to allegations of bullying and harassment by other parties. As these may raise separate work, health and safety issues, Council is advised to give consideration to the allegations and whether any separate action may be required.

49. The MinterEllison report was considered by the council during its 28 February 2017 ordinary meeting, at which time the council resolved to pass resolution C11055.
50. Resolution C11055 held that the remarks from Mr Deb identified as the subject of Cr Bagster's complaint had been 'inappropriate and inconsistent with the high standards expected' by the council. It required Mr Deb to provide a formal apology to Cr Bagster. I understand that Mr Deb went on to provide that apology by way of letter to Cr Bagster dated 8 March 2017.¹⁵
51. More significantly, C11055 held that the 'tone and content' of Cr Bagster's communications to Mr Deb had also been inappropriate. It required, *inter alia*, that Mr Deb be 'instructed to cease all correspondence' with Cr Bagster and for council staff to establish a communications protocol directing designated correspondence from Cr Bagster to the council's Executive Group, with the stated intention of eliminating 'future direct correspondence' between Cr Bagster and Mr Deb.
52. The terms of resolution C11055 were amended by subsequent resolutions passed by the council on 28 March 2017 (resolution C11112) and 23 May 2017 (resolution C11200), respectively, such that, by the latter date, all communications from and between Cr Bagster and the council's administration were required to be directed through the council's Executive Group.
53. On 2 March 2017 Cr Bagster was notified of the creation of a new council email address, 'LJBadmin@burnside.sa.gov.au', through which he was requested to direct all correspondence intended for the council's administration.

The system of local government

54. The system of local government within South Australia is established under the Local Government Act.
55. Chapter 2 of the Local Government Act provides that the principal role of a council is to 'provide for the government and management of its area at the local level' by reference to five key responsibilities, including, most relevantly:
- to act as a representative, informed and responsible decision-maker in the interests of its community
 - to represent the interests of its community to the wider community.¹⁶
56. A council is also required to uphold and promote the observance of various principles in the performance of its roles and functions (**the principles of local government**), most relevantly:
- to provide open, responsive and accountable government

¹⁵ Preliminary Assessment Report prepared by Thomson Geer (undated; identified as L0168A in records supplied by council).

¹⁶ Local Government Act, section 6(a) and (d).

- to manage its operations and affairs in a manner that emphasises the importance of service to the community
 - to seek to ensure that council resources are used fairly, effectively and efficiently
 - to achieve and maintain standards of good public administration.¹⁷
57. Chapter 5 of the Local Government Act provides for the membership of a council. Each council is to have a principal member – termed a ‘mayor’ or ‘chairperson’ – and various other members, known as councillors.¹⁸
58. Chapter 5 Part 3 of the Local Government Act assigns particular responsibilities to the mayor or chairperson of a council:
- to preside at meetings of the council
 - if requested, to provide advice to the chief executive officer between council meetings on the implementation of a decision of the council
 - to act as the principal spokesperson of the council
 - to exercise other functions of the council as the council determines
 - to carry out the civic and ceremonial duties of the office of principal member.¹⁹
59. The Local Government (Procedures at Meetings) Regulations also assign various responsibilities to the principal member relating to the conduct of council meetings. The principal member may rule that a question posed by an elected member not be answered if he or she considers the question to be ‘vague, irrelevant, insulting or improper.’²⁰ Similarly, the principal member may refuse to accept a motion brought by an elected member if he or she is of the opinion that the subject matter is ‘beyond the power of the council’.²¹
60. The mayor or chairperson will not ordinarily participate in decisions made by the council’s elected body; the Local Government Act provides that the presiding member does not have a deliberative vote on a question arising for a decision at a meeting of the council but may issue a casting vote in the event of an equality of votes.²²
61. Under Chapter 5 Part 1 of the Local Government Act, a councillor is appointed or elected by ratepayers as representative of the council area as a whole or a particular ward within the council area.²³
62. Each member of a council serves a fixed term of office, running from the date of his or her appointment or election to the conclusion of the next general election.²⁴ General elections are typically held at four year intervals pursuant to section 5 of the Local Government (Elections) Act.
63. Chapter 5 Part 3 of the Local Government Act provides for the specific roles of council members, which are divided into collective and individual responsibilities. As a member of the council’s governing body, an elected member is required, *inter alia*, to participate in the deliberations and civic activities of the council and to ensure as far as practicable that the principles of local government are observed. Each elected member is also individually responsible for representing the interests of residents and ratepayers, providing community leadership and guidance and facilitating communication between the community and the council.²⁵

¹⁷ Local Government Act, section 8(a),(g), (h) and (j).

¹⁸ Local Government Act, sections 51 and 52.

¹⁹ Local Government Act, section 58(1).

²⁰ Local Government (Procedures at Meetings) Regulations, regulation 9(6).

²¹ Local Government (Procedures at Meetings) Regulations, regulation 12(7).

²² Local Government Act, section 86(6).

²³ Local Government Act, section 52(2).

²⁴ Local Government Act, section 53.

²⁵ Local Government Act, section 59.

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64. Chapter 5 Part 4 of the Local Government Act provides for the general duties to be observed by each elected member. A member of a council must at all times act honestly and with reasonable care and diligence in the performance and discharge of official functions and duties, must not make improper use of his or her position or of information acquired by virtue of that position and must not disclose information the subject of a section 90 confidentiality order made by the council.²⁶
65. Chapter 5 Part 4 also provides for the promulgation of a code of conduct (being the Code) to be observed by the members of all councils.²⁷
66. The Code itself is divided into three Parts. Part 1 constitutes an overarching statement of higher principles, which provides, *inter alia*, that elected members:
- have a commitment to serve the best interests of the people within the community they represent and to discharge their duties conscientiously, to the best of their ability, and for public, not private, benefit at all times
 - will work together constructively as a council and will uphold the values of honesty, integrity, accountability and transparency, and in turn, foster community confidence and trust in the system of local government
 - will make every endeavour to ensure that they have current knowledge of both statutory requirements and best practice relevant to their position.
67. Part 2 of the Code provides for a behavioural code for the management of conduct that does not meet the reasonable community expectations of the conduct of elected members. Part 2 is qualified by the observation that robust debate within councils that is conducted in a respectful manner will not breach the behavioural code. Each council is expected to adopt a process for the handling of alleged breaches of Part 2.
68. Part 3 of the Code provides for behaviour of an elected member that constitutes misconduct. A person may report an alleged breach of Part 3 to the council, the Ombudsman, the Office for Public Integrity or, in limited circumstances, the Electoral Commissioner.
69. Chapter 13 Part 1 of the Local Government Act provides for the manner in which complaints against an elected member may be made to the Ombudsman. On the completion of an investigation into such a complaint, the Ombudsman may recommend, *inter alia*, that the council:
- reprimand the member
 - require the member to attend a specified course of training or instruction, to issue an apology in a particular form or to take other steps
 - require the member to reimburse the council a specified amount
 - ensure that a complaint is lodged against a member in the District Court.²⁸
70. The Ombudsman is not empowered to remove an individual elected member from office.
71. Chapter 13 Part 1 also provides for the laying of a complaint against a member of a council with the District Court. If satisfied there is jurisdiction and proper cause to do so, the District Court may make various orders, including that the elected member be suspended or disqualified from office or be disqualified from becoming a member of a council for a period of up to five years.²⁹

²⁶ Local Government Act, section 62(1)-(4a).

²⁷ Local Government Act, section 63.

²⁸ Local Government Act, sections 263-263B.

²⁹ Local Government Act, section 267.

72. Chapter 13 Part 3 of the Local Government Act provides for the powers of the Minister for Local Government to take action in respect of a council upon receipt of information from the Independent Commissioner Against Corruption or a report from the Auditor-General or the Ombudsman. The Minister is not empowered to remove an individual elected member from office.
73. Chapter 5 Part 2 of the Local Government Act provides for the circumstances in which an elected member's office will become vacant, giving rise to a casual vacancy and necessitating a supplementary election. These include circumstances in which the elected member:
- dies
 - resigns by notice in writing to the council's chief executive officer
 - is removed from office by the Governor on the ground of incapacity to carry out official duties satisfactorily
 - is removed from office by the council on the ground that he or she has been absent without leave of the council from three or more consecutive ordinary meetings of the council
 - is declared bankrupt
 - is convicted of an indictable offence punishable by imprisonment
 - is disqualified from office by a court order under the Local Government Act.³⁰
74. Chapter 7 Part 1 of the Local Government Act provides that each council must have a chief executive officer.³¹ The chief executive officer is appointed by the council's elected members and is assigned various functions under the Local Government Act, including:
- to ensure that the policies and lawful decisions of the council are implemented in a timely and efficient manner
 - to undertake responsibility for the day-to-day affairs operations and affairs of the council
 - to provide advice and reports to the council on the exercise and performance of its powers and functions
 - to give effect to the principles of human resource management prescribed by the Local Government Act and to apply proper management practices.³²
75. The chief executive officer is responsible for appointing and managing the other employees of the council in accordance with specific legislative requirements.³³ Under Chapter 7 Part 3 of the Local Government Act, the chief executive officer must ensure, *inter alia*, that 'employees are provided with safe and healthy working conditions'.³⁴
76. Council employees are subject to a separate code of conduct established under Chapter 7 Part 4 of the Local Government Act.³⁵

Approach to the evidence

77. At the commencement of my investigation I was supplied with a considerable volume of correspondence from and between Cr Bagster and various council officers, said to constitute evidence of Cr Bagster's inappropriate behaviour toward others within the council. Some of that correspondence dates back several years.
78. On a provisional assessment of these materials, I determined to focus my investigation on the period commencing with the implementation of resolution C11055 (i.e. 1 March

³⁰ Local Government Act, section 54.

³¹ Local Government Act, section 96(1).

³² Local Government Act, section 99(1)(a), (b), (c), and (i).

³³ Local Government Act, section 103.

³⁴ Local Government Act, section 107(2)(f).

³⁵ Local Government Act, section 110.

2017) and ending with the date of the referral (i.e. 25 October 2017). I reached this determination on a preliminary consideration of the volume and nature of the communications supplied to my investigation relating to this period.

79. On 21 March 2018 I wrote to Cr Bagster to notify him of the referral and to seek a response to the allegations contained within this report. In doing so, I supplied Cr Bagster with a numbered copy of each document authored by him that I proposed to consider for the purposes of the investigation. For the most part, references to individual documents within this report replicate the numbering system used in the bundle of documents supplied to Cr Bagster.
80. Although I have referred to both the Byrt report and the Hines report in these introductory paragraphs, I make it clear that in assessing Cr Bagster's conduct I have had no regard to the conclusions expressed in either report. To the extent that I go on to refer to both documents in the passages of this report that follow, it is to provide necessary context to the communications considered as part of the investigation.
81. It is important that I also note that the communications summarised in the passages that follow do not constitute the whole of Cr Bagster's correspondence with the various parties during the period relevant to my investigation, nor do they constitute the whole of the correspondence supplied to my investigation. They are, nevertheless, largely representative of the communications that were supplied to my investigation.
82. In the course of preparing this report I was faced with the difficult decision as to whether and to what degree I should purport to set out or summarise the communications at issue. That is, I am conscious of the impact my report may have on certain of the parties the subject of Cr Bagster's alleged behaviour. Ultimately, however, I have for the most part elected to set out in full the communications at issue. I have done so because I consider this to be necessary for the reader to properly appreciate the volume and nature of Cr Bagster's communications with the relevant parties.
83. I have also variously set out and summarised certain of the correspondence directed towards Cr Bagster where I consider that this provides greater context to Cr Bagster's behaviour.
84. I should note that the council provided my investigation with copies of its internal communications concerning the communications at issue. I have reviewed that correspondence. I simply observe that the council has sought legal advice in respect of many of Cr Bagster's requests of the administration and mayor. In responding to Cr Bagster's requests, the council appears to have acted in accordance with that advice.
85. I have considered the whole of the documents summarised below in light of Cr Bagster's responses to my investigation and in light of the overall surrounding context, such as may be gleaned from the information before me.
86. In preparing this report, I have also turned my mind to the possibility that Cr Bagster's behaviour could be rendered more explicable upon consideration of documents that have not been supplied to my investigation, or on consideration of the whole of the circumstances preceding Cr Bagster's December 2016 complaint against Mr Deb. That is, and although there is nothing specifically before my investigation to suggest as much, I am conscious of the possibility that the correspondence canvassed below may present an incomplete or distorted view of the relationship between Cr Bagster and the various parties.
87. That being said, I believe the correspondence outlined below speaks for itself.

Communications considered as part of this investigation

88. Cr Bagster was notified of the substance and proposed manner of implementation of resolution C11055 by separate emails dated 1 March 2017 and 2 March 2017, respectively.³⁶

89. On 5 March 2017 Cr Bagster emailed the council's Mayor, Mr David Parkin, to take issue with the terms and nature of the resolution:

Mr Mayor

1. You have confirmed to me (in writing) that those resolutions are effectively a punishment to me in over [sic] an issue that has arisen due to the CEO's indiscretion (bullying and defamation of me) – him doing the wrong thing. That was the unambiguous conclusion of yet another expensive Solicitors [sic] Investigation into the matter.
2. A Confidential apology is not an apology and nor is it appropriate, I cannot accept anything short of a simple public apology. Once made I am happy to bury the hatchet and move on with the job of representing my community unimpeded by these sorts of Council stunts.
3. Being treated differently and in this way is not appropriate and it interferes with my ability to act as an equal to all the other Councillors and my ability to represent my community, it should immediately be rescinded and you should never have allowed it.
4. Though of course I cannot prove it I consider it likely – given your close relationship to the CEO – that you have been unduly influenced or influential in this matter which may have prevented you from either announcing that you were conflicted in the matter or stopping this crazy motion from even being proposed. Please make amends and set about undoing the resolution, else I will be forced to take the issue to the Ombudsman.³⁷

90. I pause to observe that many of Cr Bagster's communications during the period relevant to my investigation make reference to a planned or extant complaint to the Ombudsman concerning the terms and manner of implementation of resolution C11055. Such a complaint, if it was ever truly contemplated, was not made to my Office.

91. Mayor Parkin responded to Cr Bagster's email by separate email dated 5 March 2017 to observe, *inter alia*, that a council resolution results from a motion from the floor, that as Mayor he did not have a deliberative vote in the matter and that, to his view, the role of the council's administration was to implement the decisions of the elected body.³⁸

92. On 6 March 2017 Cr Bagster responded:

- Without Prejudice -

David,

Indeed resolutions do appear to 'result from the floor'. However, on more than one occasion (in fact many) I have seen you 'work the floor' (for example over your ERA Water desires. Let's be realistic shall we!?... [sic])

In addition I have seen a number of motions that were developed by you, and by (or with) the heavy hand of assistance of Council Administration, If the intentions are well meaning and made in good faith I see no problems with that – “probs not” in the words of your good mate.

³⁶ LB003; LB002.

³⁷ LB003.

³⁸ LB003.

I am quite serious WRT complaining to the Ombudsman, Please know that I will lodge a complaint if there is no remediation action forthcoming, Why don't you start by precipitation [sic] a proper and full public apology from your good mate Mr Deb?

The motion should never have been allowed: it is deleterious to me (the successful complainant); it does not facilitate an appropriate apology from the CEO; it unfairly hampers my ability to represent my community; (in your own words) it is specifically designed to be a punitive action against me; it is therefore completely inappropriate.

I am sure that Mr Lines (the SA Ombudsman) will agree with my perspective and I truly do not want to have that view tested via a complaint to them. Burnside can do without the further embarrassment that has been caused by the CEO's errant behaviour (and not mine).

Please help fix this now. How much time do you think you'll need?³⁹

93. On 6 March 2017 Mayor Parkin responded in turn:

All EMs have opportunities to influence their colleagues on matters that may come before council. Their ability to do so depends on many factors, not the least of which are logic and reasonableness.

I would be very happy to speak on your behalf if I were persuaded that you understand the reasons for the restrictions Council has placed on you and were prepared to change you [sic] approach. I have no evidence that you do understand. Given that a rescission motion will require a fundamental change of mind among your colleagues, you will need to do a lot of persuading yourself.⁴⁰

94. On 7 March 2017 Mayor Parkin separately emailed Cr Bagster to inform him of the procedure for requesting a review of a council decision under section 270 of the Local Government Act. Mayor Parkin concluded this email by commenting:

Bear in mind that the review of the Council decision, if it proceeds (I am unsure whether Section 270 applies to council decisions as distinct to decisions of the Administration) will be conducted by Council. In my view, with no new information provided, a review will be a waste of time and resources. Better for you to go direct to the Ombudsman on this course of action.

Better still to reflect on the decision and learn from it.

Whatever you choose, from this point leave me out of the loop.⁴¹

95. On 7 March 2017 Cr Bagster responded to Mayor Parkin in turn:

1. These series of e-mails substantiate my problem with the subject Council resolution.
2. Thank you for agreeing an internal review Mr Mayor, that would be a wise step in protecting the Council's reputation and in not further tarnishing Council's already poor reputation for routinely hiding issues in confidential resolutions.
3. These e-mails are official correspondence and I have already outlined my concern with a Resolution by Council that has been made that the Mayor has confirmed was designed to be punitive to me as a result of a report to council that outlines the CEOs misdemeanour and recommends that he should apologise.
4. Further, I cannot accept a "Confidential apology" from the CEO because that is – in effect – not an apology. It is not fair or reasonable that I should do that. The Mayor should make a concerted effort to encourage the CEO to make a swift, open and public apology to – not only me – but the Burnside community for his infractions. These infractions of his Code of Conduct have put a serious dent in the ability of the Burnside city Council to operate effectively and efficiently and for me to be able to properly represent my community.

³⁹ LB003.

⁴⁰ LB006.

⁴¹ LB005.

5. The CEO made an open comment to the press, "I understand that a complaint has been made against me about this matter and as such no one (including me) may comment publically as it may be a breach of ... [the] Code ...The outcome ... will reveal the facts and extensive history of this matter." No only [sic] was the CEO's public comment in breach of his code (and note I did not complain about this), his inference and assertion that "the outcome will reveal the facts and extensive history of this matter", is that he will be proved right. Now that there is an outcome and it is proved that I have been wronged by the CEO, the CEO has a moral obligation to reveal that outcome, publically apologise and to make up for his misdemeanours. It is neither right nor proper that Council sweep this issue under the carpet and pretend that the CEO has not done the wrong thing and then effectively punish me for the CEO's misdemeanours.
6. If there is a Form One of an appendix for a Section 270 Review that needs to be completed, please attach this and all e-mails and SMSs between me, the Mayor and Mr Cooper to that form and submit it for review with the caveat, "see attached" on it.⁴²

96. Shortly afterwards, Cr Bagster again emailed Mayor Parkin:

Mr Mayor,

1. The problem – as I have already tried to explain to you a number of times now – is that the Burnside Council have placed unreasonable restrictions on me (the wronged party) which you have confirmed are designed to unfairly and unreasonably punish and disadvantage me.
2. Those restrictions unfairly treat me as though I have done the wrong thing – when you have a report to Council which says that it is the CEO who is in the wrong, I am not being treated fairly or the same as other EMs.
3. It is not fair or reasonable for you or Council to punish me as a result of that report. In fact it looks very much like a terrible injustice; coupled with the fact that Council is effectively allowing a CEO to get away with his horrendous breaches of his Code which could see him sacked or at the very least strongly reprimanded.
- 4, You – of all EMs – as the Presiding member should have been encouraging a just and fair outcome and not exacting Mr Paul Deb's revenge and anger against me – the wronged party.
5. You now further write that you "would be very happy to speak on your behalf if I were persuaded that you understand the reasons for the restrictions Council has placed on you and were prepared to change your approach. I have no evidence that you do understand." That is a horrid assertion that I find disingenuous and it simply makes me angry and upset at the scale of its injustice. Let me remind you again: I am the wronged party and the successful complainant, Paul Deb is the perpetrator of a number of breaches of his Code of Conduct and should apologise. The public has a right to know about Paul's wrongdoing. I should not be punished for Paul's breaches and wrong-doings. I should not be blamed.
6. I ask of you to be fair, detached as you can be from Mr Deb over this issue, employ logic and reasonableness.
7. As the Mayor, presiding member and fellow EM you should always have I [sic] would be very happy to speak on your behalf, You have already explained the reasons for the restrictions Council has placed on me and I have offered you my detailed, valid, reasonable reply and reasons as to why they are unfair, place an unreasonable burden and penalty on me (and not Mr Deb).
8. You say that you have no evidence that I "understand". With respect Mr Mayor, I perfectly understand the unfortunate Resolution and I perfectly understand the background to it and its intended deleterious effect on an innocent party. You have given me no evidence that you understand the injustice that council has perpetrated via this Resolution.

⁴² LB005.

9. Please add this to the growing battery of written correspondence that are attached to the Form 1 for the Section 270 review.⁴³

97. On 6 March 2017 Cr Bagster appears to have separately contacted Mr Martin Cooper, the council's General Manager Corporate Services, by SMS to advise that he had requested an internal review of the 'validity of the resolution that is deltarious [sic] to me and my ability to perform as an EM, and which effectively serves to punish me as a result of the CEO's misdemeanours'.⁴⁴

98. On 7 March 2017 Cr Bagster appears to have again messaged Mr Cooper by SMS:

Hi Martin, I should have added that it would not be appropriate for the Council to implement the Resolution until after this review. Also, as I have indicated my intention to submit a Complaint to the Ombudsman, it would also not be appropriate to implement the Resolution before this review has run its course.⁴⁵

99. On 8 March 2017 Mr Cooper emailed Cr Bagster:

Dear Lance

[...]

1. Section 270 Application Procedure

I have reviewed your abovementioned emails and texts for the purpose of assisting you to formulate your section 270 application, as best I can. I have attached the populated draft application Form 1 for your review. Would you please confirm for me, by return email, that I have included on the application form all of the decisions you wish to have reviewed and also all of the reasons as to why you believe a review is warranted. [...] Once I receive confirmation from you on this point your application for an internal review can be processed expeditiously, I will not be in a position to process that application until I receive such written communication from you.

2. Management Measures

I note that you have referred to C11055 as being "punitive" in relation to you. I think it is unfortunate that such terminology is being linked to that resolution, as that does not appear to have been the intention. Further, on an analysis of its operation, and the provisions of the Local Government Act 1999, nor does it appear to deliver a "punishment" to you.

I have spoken with Cr Piggott, as the mover of the motion, to ascertain the motive. I have been advised that the motion did not seek to place punitive measures in respect to you. The motion actioned the recommendations given by the legal report, namely requiring the Chief Executive Officer (CEO) to apologise, in recognition of his inappropriate correspondence and addressed the relationship and possible Work Health & Safety issues between yourself and the CEO.

The motion specifically requires Administration to ensure that the process implemented does not compromise your ability to function as an Elected Member. Clearly the motion incorporates a risk management measure founded from Council's obligations under the Work Health Safety Act. It is in the interests of the Council to ensure a safe work environment for its' [sic] employees and its' [sic] Elected Members. On the face of it, C11055 sets out to place some structure around the communication between you and the CEO. It goes both ways and seeks to protect both of you, whilst still enabling you to perform your respective roles, To that end, I note that the management measure approved does not prevent you from communicating with Administration (via Executive) or receiving responses and actions from Administration (via Executive) in a timely manner. No doubt there will also be further clarity around this measure once the relevant Protocol has been developed and put into practice.

3. Abeyance of Resolution

⁴³ LB006.

⁴⁴ LB004.

⁴⁵ LB005.

The resolution is to be regarded as a lawful resolution of the Council. Council is obliged to implement lawful resolutions. That resolution remains operable unless, for instance, it is quashed by a court or there is a successful rescission motion. So unfortunately the Administration does not have the power to hold the implementation of the resolution in abeyance as you have requested.

4. Formality of Procedure

The concerns you have raised need to be addressed with the due degree of seriousness and formality. The section 270 review process is a formal procedure. For this reason I ask that going forward you please correspond on this issue only by email or letter. Please refrain from using text messages to communicate on this issue. Further, as per Council's records management procedures all such correspondence must be recorded into ECM and for this reason text messages are not an appropriate form of communication for the formal procedure upon which we are about to embark. I look forward to receiving email confirmation from you that you are happy for your section 270 review application to proceed on the basis of the draft application I have attached.⁴⁶

100. On 15 March 2017 Mayor Parkin emailed Cr Bagster to 'follow up on your query on the progress of the "review" with Martin Cooper'. Mayor Parkin advised Cr Bagster that as there had been no response to Mr Cooper's earlier email, 'no review is taking place.' Mayor Parkin concluded:

As you will have learned from our Records Management Policy, text messages are an inappropriate way for EMs to communicate on Council matters, as they are more difficult for Records to capture. Please communicate with me and your fellow EMs by email.⁴⁷

101. On 16 March 2017 Cr Bagster responded by way of email to Mayor Parkin, Mr Cooper and Cr Grant Piggott:

Mayor,

1. Thank you for your e-mail.
2. I would also like to add that in our telephone conversation, your patronising me and attempt to humiliate me on the phone was not appropriate. It was unbecoming of you and your office as the presiding member. I see that behaviour as being unacceptable and I will accept an apology for it.
3. IAW our telephone discussion I hope that you are presently encouraging the CEO to make an open, public and unreserved apology to me at the next Council meeting so that we can put these issues behind us and move on? You may also inform the CEO that if he is able to man-up and apologise to me (openly and unreservedly) I will stand-down on my private claims against him and my claims for associated damages.
4. I also remind you that I am committed to filing a Complaint against you at some stage – but am waiting for an appropriate window which to do this, free of other pressing work commitments, If you were able to apologise to me for your obvious breach of (the Code of Conduct) decorum and the misdemeanours that I have previously cited to you and Martin, then perhaps that complaint won't be necessary.
5. I do re-acknowledge that you do not run the reviews. However, you are the presiding member and a good mate of the CEO's. You pressed for his re-appointment in an unprecedented 5 year contract (to 2020) and he owes you a debt (of at least) gratitude. You of all people can convince him to act right-mindedly and in the best interests of himself, Council and the City of Burnside.

Mr Martin Cooper
General Manager, Corporate Services

Dear Martin,

⁴⁶ LB010.

⁴⁷ LB009.

1. I have made a clear, unambiguous formal request that BCC conduct an internal review of the corrupted and inappropriate Resolution and I have very clearly stated the reason for the review:
 - The Council has passed the subject Resolution that is unjust, unfair and inappropriate.
 - That Resolution effectively lets the 'CEO 'off the hook' for his heinous misdemeanours; and effectively punishes me for the CEO's wrong-doings. It imposes special conditions on me that the Mayor has confirmed (in writing) are supposed to be an effective punishment of me. That resolution was inappropriate and did not address the report that was before Council that outlined only the CO'S breach of his Employee Code of Conduct. I remind anyone who care [sic] to read that code that these breaches are very serious and the Council ought to have been considering whether or not the CEO should be retained or sacked, in lieu of punishing me for his crimes.
 - The Mayor, given his close involvement in the issues and his close personal relationship with the CEO, should not have allowed that Motion to be considered as it was inappropriate and did not relate to the report before Council for consideration.
 - The "Confidential Apology" called for in the Resolution is inappropriate, will not be an apology, and will not be accepted by me as an apology. It is not appropriate that the (supposed and confidential apology) be swept under the carpet and held in secret.
2. Please raise the internal review on my behalf on the basis of this and the recent relevant correspondence on the matter and request the Mayor for a transcript of the relevant SMSs between us to attach.
3. Under the processes we have in Council, my written requests to you (via e-mail) should be sufficient for you to raise or initiate the internal review or another form of appropriate enquiry. Alternatively, you could treat this email and my previous request for review as a complaint and proceed on that basis. Procedure [sic] I am not able to provide you with a copy of the report, or advise on the findings or the recommendations at this time.
4. That review, enquiry or the Complaint investigation (the choice is your [sic]) should pay close attention to:
 - The Confidential Resolution by Council calling for a "Confidential Apology from the CEO to me and for special communications restrictions upon me (which the Mayor has already confirmed in writing are deleterious to me and in-effect punish me);
 - My CoC Complaint against the CEO. Complaint lodged by me against the Council's CEO, Mr Paul Deb dated 13 Dec 2016; and
 - The assessment report (from my Complaint) by Susie Inat, Special Counsel, Minter Ellison Lawyers which outlines the CEO's misdemeanours and breach of the Code of conduct.
5. If BCC is unable to self-initiate a review in this way I shall raise the matter to the State Ombudsman within a month. I will cite that I have requested such a review, enquiry or complaint investigation and have requested all of Council for the rescission of the unjust, corrupted confidential Resolution. I am certain that the Ombudsman will take a particularly dim view of the Burnside Council if it has not made an effort to remedy this egregious situation.
6. The Resolution either deliberately or coincidentally merely acts as retribution against me and my best interests at the CEO having been found to have breached his Code. All I wanted from the original Complaint was for the CEO to make a simple public apology to me. Unfortunately he has chosen to be belligerent and unwilling to do that and to be accountable for his own actions. That inability and lack of action speaks volumes for the integrity and honesty of the CEO and he has therefore permanently lost my confidence and good will towards him.⁴⁸

⁴⁸ LB009.

102. Shortly afterwards, Cr Bagster separately emailed Mr Cooper to acknowledge receipt of Mr Cooper's 8 March 2017 email:

Hi Martin,

1. It looks as though my last e-mail to you (of a few minutes ago) was a little pre-emptive.
2. I have just been going through my backlog and came across your e-mail to me of 8 Mar 17, 4:42PM (below).
3. I have not yet studied [sic] the e-mail or its attachments, or made the connections to what I have just requested of you and BCC in my last e-mail to you of a few minutes ago.
4. I shall need to set aside some time to study and absorb, Please do not let me do this delay any internal review of the corrupted Resolution.
5. Why are you not corresponding to me through the LJB Admin account?⁴⁹

103. On 17 March 2018 Cr Bagster again responded to Mr Cooper's 8 March 2017 email:

Dear Mr Martin Cooper,

1. Regarding the Management Measure, it simply and [sic] only a punitive measure and the Mayor has made that point clearly and unambiguously in writing to me. The resolution is [sic] a measure that a number of my fellow EMs have decided to apply to me alone as a result of the CEO's breach being considered before Council and because the CEO's concerns were expressed through his good friends on Council, especially the Mayor. The Mayor did not excuse [sic] himself from the chamber or the debate over the subject Motion – he was conflicted and has a bias. For this reason alone, and for the others I have previously outlined, the resolution is inappropriate and I believe unlawful.
2. I believe the Resolution is unlawful and should never have been allowed and certainly it should never have been implemented, especially because a review, complaint or ombudsman's submission are involved (and forecast). Though you state it, you have provided me no proof that the Resolution should be regarded as a lawful resolution of the Council or why it should be.
3. I would like the Section 270 application to include all the relevant correspondence on the matter up to and including today's exchanges on the subject.
4. Thank you for your continuing help in this matter. I realise it is not an easy position for you to be in.⁵⁰

104. On 14 March 2017 Cr Bagster received an email from the council's Executive Group via the LJBAdmin email account in respect of his enquiries concerning a council infrastructure project. On 15 March 2017 Cr Bagster responded by way of email to, *inter alia*, the LJBAdmin account, Mr Deb, Executive Group member Mr Barry Cant and the council's elected members:

CEO and Barry,

What is this LJBAdmin post box? My 1st e-mail from this 'unknown appointment' or 'unknown person' appears to be a response from Barry to a query that was never sent to the "Exec Team".

If that is what it is, it is not appropriate that I am treated in a different way to other EMs, This arrangement is not appropriate on so many different levels, is absolutely unfair, undue and is undemocratic.

It obviously impedes my ability to represent my community efficiently and effectively.

⁴⁹ LB010.

⁵⁰ LB014.

Not only does this new arrangement leave me at a grossly disproportionate disadvantage (to me and my roles as an EM), it is insulting and humiliating and treats me differently to all other EMs.

The Mayor has confirmed to me in writing that that Resolution was my fellow EMs punishing me without valid cause or justification.

The corrupted Resolution that (I assume) has led to this arrangement should not have been implemented at all and it should not have even been considered for implementing until after either/or an internal review an [sic] Ombudsman enquiry into the matter.

I am certain that it will be overturned and it will further embarrass a Council prone to hiding its bad news (of your behaviour) behind secrecy. That is not good for BCC and I do not wish that upon Council, but there seems to be reluctance from the Mayor to lead a rescission. I am hopeful that a right-minded EM will still do this before Burnside inevitably gets another piece of bad press and has its hand forced by the Ombudsmen [sic].

The CEO direction to staff (to only correspond to me via this LJB Admin box) represents an atrocious abuse of authority and it is not appropriate.

The Mayor, who was conflicted in the matter, should never have allowed this resolution to go ahead.

CEO,

You should not have implemented that erroneous resolution of Council.

Please reverse the creation of this mail box and revert to previous communication methods. Please reverse the implementation of that atrocious Resolution until after the internal review and /or Ombudsman's inquiries into the matter are complete. I request that the 'Admin' box be immediately removed and that my normal communications methods to the BCC be restored. You also should rescind your perverted instructions to your staff to only communicate with me via the 'Admin' box.

This new arrangement is pre-emptive, punishes me for your wrong-doings and is therefore insulting and unacceptable on so many levels. You know as well as me [sic] that the Resolution calling for this corrupted communications strategy is totally inappropriate.

I will not be punished for your flagrant and confirmed breaches of common decency, decorum and your Code of Conduct. These breaches have been confirmed by a Council paid lawyer's report, which was the only thing Council should have been considering at the time this inappropriate resolution was raised.

The very second you make an open, public apology for your misdemeanours and your confirmed breaches of the Code of Conduct, I shall consider standing down any other actions I have against you and we might be able to move forward for in the best interests of the City.⁵¹

105. On 16 March 2017 Cr Henry Davis responded to Cr Bagster:

My understanding is that the administration is following a resolution from council.

In my opinion you should refrain from exerting any pressure on them, making any demands or threats to them.

I perceive your email to be demanding administration to act in a way which is contrary to a resolution of council. From my reading of the act [sic] you are acting well outside your authority to make such a demand.

If you consider any motion of council unlawful or unjust there are a number of options which are available to you.

I suggest you seek guidance from the administration as to what those options are if you cannot determine them for yourself.⁵²

⁵¹ LB008.

⁵² LB013.

106. On 17 March 2017 Cr Bagster responded by email to Cr Davis:

Cr Davis,

1. Thanks for your new opinion Cr Davis.
2. Your new e-mail (below) is an expression of your own opinion and shows that you obviously have not comprehended the situation or even understood the subject Motion on which you voted 'for'.
3. Your e-mail below is as uncalled for and unwarranted as the resolution; which must be overturned and should never have been allowed as a Motion.
4. The Resolution from Council is invalid and IS the subject of an internal review, enquiry or complaint. It will be the subject of an Ombudsman's submission if it is not reversed and rescinded. I also fear that, not before long, the press and the public will find out about this and that would be a further tragedy for all of us.
5. The Resolution should never have been implemented by Council because it is invalid, unjustified and undemocratic. The Resolution calls for my effective punishment (as confirmed by the Mayor) and the associated directive to staff to communicate with me in a different manner is defamatory, humiliating and degrading to me (personally and as a duly elected Councillor).
6. Let me be clear, if the Resolution is not rescinded, and the enquiry is not concluded to my satisfaction, I intend to take the issue to the SA Ombudsman. You voted for the subject Resolution and you are therefore implicated in this miscarriage of justice.
7. Franky, [sic] your corrupted opinion is part of the problem with this Resolution and I believe that you and the other EMs who voted for this Resolution did so in carry out [sic] (unwittingly or knowingly) some form of retribution at the CEO being embarrassed and ashamed at being found (by a legal firm that BCC retains) to have perpetrated a misdemeanour and significantly breaching his Code. If you read the CEO's code (Employee's [sic] CoC), these breaches should have required the Council to consider sacking the CEO. Instead, you and other decided to punish me and allow the CEO off the hook. Where is the justice in that Cr Davis?
8. There is nothing right, just or appropriate about the Resolution and Council should never have implemented this Resolution. I am hoping that Council administration will reverse the implementation (as it should) pending the outcome of their internal enquiry and pending the outcome of the Ombudsman's recommendations. That would only be the fair and the right thing to do and it is what the collective community would expect of us. But I suspect Administration they won't do this because that is not IAW the wishes of the CEO in whom I have long since lost faith. Additionally I am ever hopeful that you and the other EMs who voted for this dreadful Resolution will see sense and rescind the this it [sic] before we are forced to by the Ombudsman – and then coincidentally sustain all the embarrassment that that will entail.
9. In my opinion, you should refrain from supporting such crazy ideas and start working in the best interests of your colleagues and the community you are supposed to represent. You should also be lending me your full and wholehearted support in exerting any pressure the CEO to make a full, open and public apology for his breach of the Code, his shocking conduct and his attempt to publically humiliate me. his [sic] actions were not just delatarious [sic] to me, they represent a slap in the face to the people and the community I represent. In my view you should be behind me in this issue as a fellow EM, not opposed to me.
10. I really don't care what you perceive Cr Davis. That fact is that I have NEVER demanded anything of Council Administration. I have only EVER requested, coaxed, cajoled anything of or from Admin and made my represented views clear. I am and remain acutely aware of my solemn duty to represent my community and it is not appropriate or warranted that my peers in Council have have [sic] sought to exact retribution on me for me just doing my sworn duty.
11. If you have a Complaint against me please raise it to the presiding member or the CEO.⁵³

⁵³ LB013.

107. On 16 March 2017 Cr Bagster responded to an email from the LJBAAdmin account concerning a matter of council business:

Please do not send me further correspondence from the LJB Admin account.

I have no idea who the previous correspondence is from and I therefore lack the background and context.

The LJB Admin account should be closed immediately and all Council correspondence to and from me should resume as is normal and usual for other Ems.

To treat me differently from other elected members in this way is not fair and it impedes my ability to properly, efficiently and effectively represent my community.

The Council resolution that called for the creation of the LJB Admin account was unethical, inappropriate and is the subject of an internal review and possibly an Ombudsman enquiry. It should never have been run as a motion and it should never have been implemented.

If you have been directed to only correspond to me via the LJB Admin account by the CEO, then that direction was unethical and pre-emptive and you should therefore not follow that direction.

I request that you resume normal and usual direct communications with me until these matters are properly resolved.

Also by continuing to send me correspondence in this way, against my request and wishes, contributes to what I believe is some kind of retribution at me Complaining [sic] against the CEO and in me having that complaint upheld (the CEO being found in breach of his Employer Code of Conduct [sic]).

Therefore, you may unwittingly be taking part in that retribution and wrong-doing, and I would not want you to unknowingly be a part of such a devious and underhanded scheme.⁵⁴

108. On 17 March 2017 Cr Bagster forwarded a copy of the MinterEllison report to the other elected members, commenting:

Fellow EMs,

As a mind jogger, attached is that Prelim Assessment report that was sent to me prior to any resolution of confidentiality.

Please note that there are no caveats of confidentiality on the report or the e-mail on which it was sent.

The CEO's breach of his CoC is therefore a matter of public record.

Despite this, I would encourage you to keep it as 'close hold' and please do not forward it on. Under no circumstances would I want this to be leaked out of the Council.⁵⁵

109. On 17 March 2017 Cr Bagster emailed Mr Cooper to request assistance in formulating a complaint against Mayor Parkin. This email (which was copied to Mayor Parkin) provided, *inter alia*:

Dear Mr Martin Cooper,

1. Because the Mayor has not bothered to apologise over his blatant and recent past breaches of the Code of Conduct for EMs, I wish to proceed with the Complaint that I forecast to you and him previously.⁵⁶

110. On 17 March 2017 Mayor Parkin emailed the elected members of the council:

⁵⁴ LB011.

⁵⁵ LB012.

⁵⁶ LB015.

Dear Elected Members

Cr Bagster has, by way of recent email communication to Elected Members, suggested that I have confirmed with him in writing that resolution C11055 was his “fellow EMs punishing” him “without valid cause or justification.”

Following the Council Resolution on 28th February, in written communication I confirmed with Cr Bagster that Council resolved in the interest of both the Council and the CEO that direct communication between him and the CEO is to cease for a period of time. However, this would in no way impact his ability to undertake his role and responsibilities as an Elected Member as he could continue to work productively with senior Administration.

I also advised Cr Bagster that whilst the resolution could properly be considered an implied censure of his behaviours, I did not at any stage suggest that the resolution was to be regarded as a punishment without valid cause or justification.

Elected Members should be aware that I confirmed with Cr Bagster that I considered his actions had been destructive to Council on many levels for a long period of time and he now had an opportunity to review his approach to his role as an Elected Member. I suggested that his performance would improve dramatically if he approached the tasks before him in a manner that is careful, constructive and considerate to all involved.⁵⁷

111. That same day, Cr Bagster responded by email to Mayor Parkin and the other elected members of the council:

G'day Mr Mayor,

1. A ‘censure’ is, by definition, a criticism and I view it, along with the associated ‘restrictions’ to be a punishment and Council has certainly imposed on my [sic] an unfair, unjust and unwarranted regime that impedes my ability to communicate [sic] in the same way as my peer EMs. The Resolution and the debate leading to it is therefore, and in my opinion, undemocratic and I believe it is unlawful, but I am no legal expert or legally trained.
2. You have termed Council impositions on me as “restrictions”.
3. You have stated that, in this matter, I have being [sic] “illogical” and “unreasonable” and that the ‘censure’ and these ‘restrictions’ are due to me.
4. You have stated that Council has placed “restrictions” on me and that you support these restrictions placed on me until I am “prepared to change [my] approach”. You further state that you “have no evidence that you do understand” – so you patronise and insult me as you attempted to do in our telephone conversation of two days ago.
5. These ‘restrictions’ and ‘censure’ are, by any reasonable definition and interpretation, a punitive measure – a punishment. I view them as a punishment and an unjust one. They are being applied to me and that is my very clear interpretation.
6. I feel very strongly that Council was not correct in imposing these unreasonable and unusual measures against me when that should have been considering the issue before them of the assessment report which I have recently sent to all EMs to refresh their memories. That report should not have precipitated such an immoral and unjust outcome so deleterious to me and yet allow the CEO to have escaped appropriate penalty (including the consideration of his sacking) for his confirmed breach of the Employee CoC and other misdemeanours.
7. I am happy to keep debating this issue by e-mail if you like, but I would counsel that that COA would not be in the best interests of the great City of Burnside, I view your e-mail as unacceptable behaviour and feel bullied by you, I hope that you can the [sic] reasons why I sate [sic] that.⁵⁸

112. Shortly afterwards, Cr Bagster again responded by way of email sent to Mayor Parkin and the other elected members:

⁵⁷ LB016.

⁵⁸ LB016.

Dear David,

1. Just because I do things a little differently than you would prefer and I don't guzzle wine with you and your pals, and I don't go putting my arm around you or the CEO... does not make me any less of a Councillor.
2. I work hard for my electorate, I fight for the causes I believe in and I will fight to the bitter-end to defend my rights, myself, my good name and to do the right thing. You cannot be allowed to trash me for the sake of a corrupted and unjust purpose.
3. As a more recent example, your lack of recognition of me at the Australia Day Celebrations was not just an insult to me; it was an insult to the good people of my Ward, especially given my Ward co-Councillor, graham [sic] Bills. Could [sic] not be there to represent our Ward. I don't want an explanation from you on this or anything else; I just want you to start being reasonable and fair minded, I want to be treated the same way other EMs are treated by you, Council and all of Admin. I can do without being undermined by you on many things.
4. Please start to treat me with respect I deserve and treat me collegially – as you have confirmed at last Council's meeting, EMs are your colleagues and not Council Administration.
5. In this way we might just get on with the important business of governing the City of Burnside.⁵⁹

113. On 17 March 2017 Cr Bagster emailed Mr Matthew Spearman, the council's Group Manager People and Innovation:

Matthew,

Can you please close this LJB Admin account and disable it being seen by anyone on the BCC e-mail server?

It is not appropriate that I be sent e-mails in this fashion and I request that Council Officers send me correspondence directly.

Could you also please send me the (CEO?) directive to all BCC staff members that directs them to correspond with me in this way?⁶⁰

114. On 17 March 2017 Cr Bagster responded to an email from the LJBAdmin account attaching correspondence confirming his request for internal review of resolution C11055:

Is this from Martin I assume?

Martin, please cease and desist from sending me correspondence via the LJB Admin address.

I find the use of this facility to be humiliating, degrading and it is potentially unlawful,

Please treat me in the way and manner you would treat any other Elected Member and correspond with me directly and not through this invalid and unwarranted account.

At the very least you could at least provide me with an indication in the e-mail about the authorship of the email.

Can you please send me the directive or instruction (from the CEO) which requires Council officers to communicate with me in this way?⁶¹

115. Shortly afterwards, Cr Bagster again responded:

Dear Martin,

⁵⁹ LB017.

⁶⁰ LB018.

⁶¹ LB019.

1. Thank you for that letter, I appreciate that the issue may take 21 days to resolve, however, I consider that under the given the [sic] circumstances (that Council made the decision on the subject Resolution) the matter should go straight to an independent reviewer (via council's law firms). Council itself is conflicted in this issue, which is a fundamental point of the original complaint.
2. I have to reiterate, that despite the forecast of the 21 day or longer lead time (and in any case), it is my intention to make a submission to the SA Ombudsman by 17 Apr 17 if this issue is either not then resolved or if it is not resolved to my satisfaction.
3. Over a month is a reasonable and long time to wait especially in such humiliating and arduous circumstances to which I have been subjected by the resolution.
4. Can you please also forward this e-mail to the investigating agency?⁶²

116. On 17 March 2017 Cr Bagster appears to have sent the following SMS messages to Mr Magnus Heinrich, the council's Group Manager City Development & Safety, and Mr Cant, respectively:

Hi Magnus, I'd very much appreciate you sending me the executive order, instrument, instruction that requires all staff (?) to only communicate to me via the LJB Admin account. Doing so cannot be construed as anything other than providing an EM with simple information he's requested. Appreciate it. Thanks in anticipation. Respectfully, Lance⁶³

Hi Barry, as we discussed, I'd very much appreciate you sending me the executive order, instrument, instruction that requires all staff (?) to only communicate to me via the LJB Admin account. You verbally agreed to provide me this. Doing so cannot be construed as anything other than providing an EM with simple information he's requested. Appreciate it. Thanks in anticipation. Respectfully, Lance⁶⁴

117. On 17 March 2017 Mr Cooper emailed Cr Bagster to reiterate that the creation of the LJBAdmin account was in intended compliance with the terms of resolution C11055:

The resolution was lawfully made and it binds the Council Administration, which, in accordance with the Local Government Act 1999, is now required to implement the matters set out under C11055, unless or until, the resolution is amended by Council, for example, by way of a recession motion. Therefore this process will remain in place until such time as the Council directs otherwise.⁶⁵

118. On 21 March 2017 Cr Bagster responded by way of lengthy email:

Dear Martin, and the BCC "Exec Team",

Is the email of Friday, March 17, 2017 4:11 PM (below) from you, Martin Cooper, or the whole Burnside executive team? It came to me from Martin's work email account so I have to assume it's from Martin, but it is ambiguously signed on behalf of the Exec Team.

Does this email constitute the results of the requested Council internal review? If it does, then I am not satisfied with your assertions and propositions in the review. Therefore, I'm reluctantly forced to send the issue out of Council and make a submission to the SA Ombudsman as I have previously stated I'd have to. Contrary to your claims, I am not satisfied that the new LJB Admin account is lawful, warranted, fair or democratic. It significantly hampers me in my role as an elected member. I see its creation and implementation as particularly insulting, humiliating, unfair and unwarranted.

I note the CEO has been found to have breached the Employee Code of Conduct and was asked to apologise to me. The only result of that is the creation of this 'Admin' account and the severe, unwarranted and humiliating restrictions upon me. If the CEO considers that he cannot communicate with an elected member for fear that he might

⁶² LB020.

⁶³ LB023.

⁶⁴ LB024

⁶⁵ LB026.

again breach his Code of Conduct by (for example) making heinous false allegations, by defaming that EM, or otherwise by being a bully or behaving unacceptably – he should not be the CEO and he should resign. But before tendering his resignation he should first make a public apology to the people of Burnside for his his [sic] behaviour.

You have stated, “As you are aware, the resolution is predicated on the recommendations from the report prepared following an investigation in relation to the communication as between you and the CEO.” I obviously have to state that I am not or was not aware of such a report or its recommendations. I have not accessed the Council Confidential papers on this issue because I considered that doing so would not be ethical given that I was the Complainant, conflicted regarding aspects raised in the “Susie Inet” [sic] preliminary assessment report. Please inform me who resolved or authorised the preparation of this separate Council Report?

Note that I recently sent EMs a copy of Susie’s report because that was the report you sent me and I had assumed that it was the only report that Council was considering on the evening of Tues 28 Feb 17. It was sent as a reminder to EMs about the issues and how offensive the Resolution is.

Please note that I have asked Matthew Spearman (BCC ICT Manager) to confirm to you that I have not accessed Council Confidential papers for the Council meeting of 28 Feb 17 or the Confidential minutes of that meeting. I have only seen the excerpt of the Resolution that you sent me. Therefore, I cannot reasonably have known or been expected to know of the Confidential clauses of caveats associated with any Council Resolution of 28 Feb 17. Additionally, it doesn’t make any sense to me (and I do not understand) why such details should have been buried in ‘Council Confidentials’ because these are issues that every resident and ratepayer of Burnside ought to know about. Hiding these important findings in the Confidentials (if that’s what’s happened) is, in my view, immoral, underhanded and unethical. Secrecy affords the CEO protections he does not deserve. Never the less, I had made it very clear that no EM should leak anything from Council. You will note my cautionary note to the recipients in sending the Suzie Inet’s [sic] report which I assumed they already had (and Council have paid good money for).

Regarding sending EMs Suzie’s [sic] report, you had previously sent me that report without having any encumbrances of classification or Confidentiality. I sent the EMs this report in good faith and to remind them about the real issues they should have been debating on 28 Feb 17, instead of considering punishing me for the CEO’s misdemeanours and flagrant breaches of his Code of Conduct. I forwarded that report on in good faith.

You have stated that the CEO has an encumbrance of the subject resolution, “the Chief Executive Officer be instructed to cease all correspondence with Councillor Bagster”. If that’s the case he has already breached those conditions on a number of occasions sending me correspondence directly. Therefore, in addition to his other offending conduct, the CEO continues to act duplicitously and I find these events even more offensive because of that. Why shouldn’t the CEO be censured for these new and other flagrant breach of a Council Resolution? This is a new example of the CEO’s shocking propensity to ‘break the rules’ and deliberately flout a clear directive of Council - to him directly and personally.

You have stated that Clause 5.3 is, “an appropriate Management Protocol is developed to ensure that Councillor Bagster is not unreasonably disadvantaged and is able to fulfil his responsibilities as an Elected Member”. I have already stated to you many reasons why the LJB Admin account significantly disadvantages me. Further, it punishes and censures me (as the Mayor has confirmed) for the wrongdoings of the CEO. The fact that I find it to be undue punishment, the fact that I find it a grossly unjust and significant impediment to my role and work as an EM should speak for the fact that the “Management Protocol” BCC have implemented does, in fact, unreasonably disadvantage me. In case I have not made myself very clear, it impedes my ability to fulfil my responsibilities as an EM. Therefore, it is not appropriate and the implementation should be reversed immediately.

You state that the Resolution section 5.4 states, “That the GM, Corporate Services provide a report to Council of any concerns with the ongoing implementation of this procedure should he consider it necessary,” You now have my detailed concerns clearly laid out here, and from recent prior correspondence. You should therefore report these concerns with the “implementation” of this terrible procedure. In that same report I would

think it appropriate you remind Council that they should have been considering Susie's report, the CEO's misdemeanours and appropriate actions against the CEO – including his dismissal. I believe you should remind Council that the resolution they delivered was not at all delatious [sic] to the CEO, but instead had the effect of disadvantaging me, punishing me, and impeding my role and work as a Councillor. You should state to them my distain [sic] for their corrupted decision making and the obvious disregard they have shown for a fellow EM, a peer and a supposed colleague. In short, the motion leading to the resolution should never have been made and the Mayor (who was certainly conflicted in that debate) should never have allowed it. Please put all of these facts into your report to Council.

You have stated in your email below, "It is our understanding that the Elected Members had concerns regarding the tone and content of both your and the CEO's communication and, accordingly, resolved to put in place responsible and fair measures to provide both support and protections for both you and the CEO." That statement is offensive and somewhat perverted. Where did your understanding of the concerns of tone and content of my correspondence come from? Did it come from the CEO of his 'chummy mate' and drinking pal the Mayor, David Parkin? This statement simply adds to my displeasure and the injustice if [sic] the corrupted Resolution. If such a statement came from the CEO, he is simply adding to the litany of other defamatory statements he's made. Please send me a transcript of exactly what was said, written or implied to have given you and the (ambiguous) "Exec Team" this erroneous view.

Please send me the instruction or directive to BCC Council Officers (including its distribution list in full) that requires Council Officers to communicate or correspond with me ONLY via this "special" account. You have stated that the Resolution, "resolved to put in place responsible and fair measures to provide both support and protections for both you and the CEO." Let me state for the record, that I do not need "protections" from the CEO. Note that I have only ever raised my concerns about the CEO's behaviour and actions in the form of a successful formal complaint. The CEO has been found in breach of his Code and asked to make an apology, which I have not seen or heard yet. The only outcome I ever sought from that complaint was for an apology and for the CEO to change his long standing behaviour – to act reasonably, fair-mindedly in to the future. Though I do have some concerns that he might have been acting this way towards others – especially other BCC employees – I was hoping the CEO's remediated behaviour would flow through all his professional relationships.

Instead of the apology and changed behaviour; it's me who is being punished. I'm being blamed for the CEO's misdemeanours, I'm being made to pay the price, and the CEO gets off Scott-free [sic]. That's what is called an injustice. You state, "The rights and responsibilities that you have and enjoy as a holder of public office with the Council is maintained in precisely the same manner and to the same standards as has always been the case." Respectfully, I absolutely disagree with this statement. The arrangement and associated encumbrances are, in fact, significantly different (versus "precisely the same") from the arrangements for other elected members. It is specifically designed to punish me for the CEO's misdemeanours and I consider it a form of retribution in having successfully complained against that man for his atrocious [sic] behaviour.

In your email below, you state, "Of course, the Council is also required to be extremely careful to take its obligations under the WHS Act 2012 seriously and is required to ensure a safe work environment for all of its employees, including its CEO, as well as Elected Members. The resolution gives effect to these obligations without in any manner placing impediments of inappropriate constraints upon either yourself or the CEO." Frankly, I have never encountered read [sic] such poppycock since I read "Yes Minister". In my opinion, this is such a self-serving, patronising motherhood statement of obfuscation. It is silly in the extreme to suggest that the heinous and proven misdemeanours of the CEO and your imposition of this grotesque and punitive measure against me, somehow has anything to do with protecting me or the CEO with respect to a safe working environment. You cannot be serious!?

So, in other words: please reverse the implementation of this terrible scheme; please encourage the CEO to do the right thing in publicly apologising to me, Council and the people of Burnside; or please encourage the CEO to offer his resignation to Council

because evidentially [sic] he's not up to the job and lacks the necessary personal integrity and skills needed in the job.⁶⁶

119. On 21 March 2017 the council's Executive Group emailed Cr Bagster to clarify that the MinterEllison report had previously been supplied to him by email preceding the 28 February 2017 ordinary meeting, that no other investigation into the matter had been conducted and that his request for section 270 review would be presented to the elected members at the 28 March 2017 ordinary meeting. In this email, Cr Bagster was also invited to meet with Mr Cooper 'to discuss your concerns and to clarify and explain the current administrative process.'⁶⁷

120. Cr Bagster responded by email later that day:

Dear Mr Martin Cooper,

Thanks for the offer to meet with me. I really do appreciate the offer. However, I do not understand what could be gained from such a meeting. So unless you can suggest an agenda and some kind of aspirational outcomes of such a meeting, then I do not see any value in that for either of us.

Regarding my other concerns not addressed by your most recent reply, I would prefer, under the present circumstances in which I am subject to this communications impediment, to have a written response. I'm particularly interested in your answer regarding Mr Deb's transgression of the Resolution's requirement he no longer directly communicate with me. Can you please take this email to be a further formal complaint against the CEO for his having flagrantly contravened the Council Resolution?

I reiterate my request for the directive or instruction that has been sent to Council Officers instructing them to ONLY correspond with me via the LJB Admin account. When can I expect it?

In addition to securing that directive, I request you provide me with the voice recording of the Confidential debate of 28 Feb 17 that led to the subject Resolution, I want to understand the allegations made that has led to Council punishing me in such a way as a result of the CEO's misdemeanours and his breaching his Code of Conduct.

Unfortunately the fact that an internal review that may precipitate following the 28 March 2017 Council Meeting, this [sic] will only deliver a report with [sic] a minimum of 21 days (most probably longer, as you have indicated), That's most certainly not going to deliver me a result (a rescission or implementation reversal) by 17 Apr 17. So, as I have foretold I will reluctantly be forwarding an SA Ombudsman submission in any case prior to 18 Apr 17. If there is an acceptable outcome prior to the completion of the Ombudsman's review, then I can always write to the Ombudsman and seek to withdraw the submission.

Thank you for your reassurance that Council was given only a copy of Susie's report to consider at the time this subject and offensive Resolution was made. The fact that no other material was provided simply adds to my concerns that, during the debate, I must have been defamed and that false and misleading allegations were put to Council regarding my behaviour towards the CEO. Again, I kindly and respectfully request that you reverse the implementation of the subject resolution and cease communications with me in this indirect manner (via the "LJBAdmin" account and from the "Exec Team"). I view that your continuing to do so is insulting and humiliating to me. It is therefore inappropriate. If you feel you are somehow legally and morally obligated to and by the CEO to continue to act in this manner, you could do me the common courtesy of at least providing your name and appointment and writing to me in the first person.⁶⁸

121. Later that day the council's Executive Group responded:

It is noted that, to date, you have not used the LJBAdmin email address for any of the communications from you to the City of Burnside Administration.

⁶⁶ LB026.

⁶⁷ LB027.

⁶⁸ LB027.

In the development of the administrative process, it is important for you to articulate to Administration the manner in which the Council resolution and its implementation by the Administration, will impede your ability to perform your functions as an EM, as you assert. It is therefore highly recommended that you meet with Martin to explain your concerns and/or provide tangible examples of any problems experienced.

We acknowledge your rejection of the proposal to meet with Martin Cooper.

Regarding your request to raise a formal complaint against the CEO for contravening the Council Resolution, please find a copy of the Chief Executive Officer Code of Conduct Complaint Handling Procedure attached for your reference. In accordance with Clause 4, please provide written details of the specific alleged transgression and identify the provisions of the Code which has been breached together with as much supporting evidence as possible to assist the investigation to Martin Cooper.

In the email from the Executive Team of Friday, 17 March, 2017 at 4:14 PM it clearly stated the resolution was lawfully made and it binds the Council Administration which, in accordance with the Local Government Act 1999, is now required to implement the matters set out under C11055, unless or until, the resolution is amended by Council, for example, by way of a rescission motion. Therefore this process will remain in place until such time as the Council directs otherwise. As such, please desist from repeating your requests for additional information.⁶⁹

122. Cr Bagster responded by email sent later that evening:

Dear Martin,

I assume it is you and not the whole "executive team" to a [sic] whom I am replying!?! You (?) state, "Its [sic] noted that, to date, you have not used the LJBAdmin email address for any of the communications from you to the City of Burnside Administration." In response I can only say that I did not realise that was a part of the process or "protocol". I thought that, given the authorship of messages from "LJB Admin" (as the "Exec Team") that the recipients would include the venerable CEO because he is a part of the "Exec Team". Additionally, I have received emails from the "Exec Team" whose authorship is definitely not from the executive level. It would appear that ALL Council Officers have been required to communicate to my [sic] ONLY via this corrupted new platform.

You have not sent me the directive to Council Officers to only communicate to me via this corrupted system. Please send it to me at your earliest convenience or provide me with an indication of when you will do that. I am concerned that that directive is defamatory and I need it for my Ombudsman submission. If you cannot provide me that directive, please explain why you won't provide it.

You write that you acknowledge my rejection of the offer to meet you. However, that was in fact me saying that there appeared to be nothing to gain from such a meeting. I did not reject the idea outright, but offered you an opportunity to explain what might be gained from such a meeting. Please meet with me at my house tomorrow morning at 8am and you can state your renewed case in an impromptu meeting. My address is [address omitted].

You have stated, "it is important for you to articulate to Administration the manner in which the Council resolution and its implementation by the Administration, will impede your ability to perform your functions as an EM, as you assert. It is therefore highly recommended that you meet with Martin to explain your concerns and/or provide tangible examples of any problems experienced." In response I'm not sure how I can make myself any clearer. I have already highlighted the many difficulties I have already encountered in communication with Council Administration. These have imposed many disadvantages in terms of my understanding of various communications, and the efficiency and effectiveness in simple terms. These burdens are undue, not applied to any other elected member. I reiterate my strong request that the implementation of this dreadful and unwarranted Resolution be reversed and the CEO be encouraged to make a clear, public apology to me as he has been caught out at being abusive to me. This "protocol" is not an appropriate mechanism as it stymies me and significantly hinders my ability to function and act as a duly and democratically elected member.

⁶⁹ LB028.

Regarding my request to raise a formal complaint against the CEO for contravening the Council Resolution: I thought that I already had unfettered access to his Code of Conduct Complaint Handling Procedure. I note that Council Administration should accept any Complaint in writing, and from my previous email to you, you already have the written details of the alleged transgressions. It is not necessary for me to provide you with the exact section or part of the Code which has been transgressed because failing to comply with a Council Resolution specifically designed for him makes that transgression self-evident. If you need me to, I will forward to you (only) the emails that the CEO has sent to me directly since the Resolution. Please proceed with this new Complaint.⁷⁰

123. At 7:42am the next morning Cr Bagster appears to have sent the following SMS message to Mr Cooper:

Martin, hi I don't know if you caught my proposal to meet me at 8AM today at my house? It's at [address omitted]. L⁷¹

124. That afternoon, the council's Executive Group emailed Cr Bagster:

Dear Cr Bagster

As your email was sent at 9.55pm, we were unable, of course, to coordinate a meeting with you at 8am this morning. I am sure you can also understand that any meeting will need to be held at the Council Administration offices, and not at a private residence, unless there were compelling reasons for that to occur, probably around an inability to travel. Please let me know your availability for the remainder of the week and we can re-schedule a meeting to discuss your concerns with regards to the communication protocol.

With regards to your request to make a complaint against the CEO under the Code of Conduct Complaint Handling procedure, please provide Martin Cooper with any documentation or communication you may have that supports that allegation and he will arrange for the matter to be dealt with in accordance with the Chief Executive Officer Code of Conduct Complaint Handling Procedure.

125. Cr Bagster responded by email dated 24 March 2017:

Dear Exec Team,

1. I have no idea to what you are referring to (re: your last).
2. I never agreed nor asked to meet with the Exec team at 8 a.m. or on any day, what are you talking about?
3. What craziness is this?
4. Proof regarding the CEO's flagrant breaches to follow shortly... But perhaps after the Grand Prix!?
5. Please provide me with the directive to staff requiring them to communicate with me via the LJBAAdmin account ASAP.
6. Please cease and desist from replying or sending me e-mails without a person (an individual) shown as the author). I find such correspondence offensive and humiliating and it lack context and provides me less context. Who dreamt this madness p!? [sic]⁷²

126. On 20 March 2017 Cr Bagster appears to have sent the following SMS message to Mr Spearman:

Hiah Matthew,

1. Can you please confirm that from the EM Dropbox folder you can see who has accessed each document (pdf) and when? Can you please confirm to Martin Cooper

⁷⁰ LB028.

⁷¹ LB004.

⁷² LB035.

my access and accessing to all Council confidential documents over the last month. It's a little bit of a priority for me that Martin gets this information soon, so I'd appreciate you being able to do this at your earliest convenience.

2. I'm also hunting the CEO's staff directive which requires all correspondence to me to be sent via the LJB Admin account.
3. I'm changing my email contact for all Council matters to Lance.bagster@gmail.com. Could you please make these changes and put a forwarding on my Council account to my Gmail address. It'll have to be this way until Council and Paul Deb stops playing silly buggers with me and Paul apologises.

Cheers, Lance⁷³

127. The council's Executive Group responded by way of email dated 23 March 2017 to advise, *inter alia*, that conducting council business by personal email addresses was not permitted under the council's Records Management Policy and was in purported contravention of a past resolution of the council.⁷⁴

128. By email dated 24 March 2017 Cr Bagster responded, *inter alia*:

Again, hilarious. By all means keep records of all e-mails to and from the lbagster@burnside [sic] account, but please arrange to forward them onto [sic] me as I have indicated.

[...]

I have indicated that I do not recognise the corrupted LJB Admin account that is a poor excuse to hide the fact that the CEO has been found guilty of a significant breach of his Code Of conduct [sic] and should at least issue a public apology to me and Council. I do not intend to have the council e-mails cancelled; I just require my e-mails forwarded[.] Keep all the records you want of e-mails ghat [sic] flow in and out of the Council server. Please arrange for the forwarding of all (@burnside) e-mails to me to lance.bagster@gmail.com.au.⁷⁵

129. On 23 March 2017 the council's Executive Group emailed Cr Bagster:

Dear Cr Bagster,

In your SMS to Magnus Heinrich on Friday, 17 March, 2017 you requested that he send you the executive order, instrument, instruction that requires all staff (?) to only communicate to you via the LJB Admin account.

You may recall the Executive Team has already responded to this request.

Kindly direct all future requests to Administration staff to LJBAAdmin@burnside.sa.gov.au [...] to facilitate an expeditious response.⁷⁶

130. On 24 March 2017 Cr Bagster responded by email to the council's Executive Group, various council staff and Cr Piggott:

Dear Exec Team,

I have not been given any indication from BCC as to whom the LJBAAdmin account goes and I do not understand to whom I would be sending an e-mail in reply... Al [sic] very crazy.

Surely I cannot be expected to use some system that is unexplained and I fear significantly corrupted.

Is the LJBAAdmin account something that goes to the Exec team that appear [sic] in the signature block of the emails?

⁷³ LB025.

⁷⁴ LB033.

⁷⁵ LB033.

⁷⁶ LB032.

Is Magnus now part of your Exec Team?

What the heck is this system and who keeps sending me this stuff?

Who is LJBAAdmin? And what is going on?

Why cannot I be treated as all the other members of the council are treated?

Can you please confirm that I am being punished for having successfully complained against the CEO for his flagrant and deliberate breaches of the Employee Code of Conduct?

Please stop sending me e-mails without any indication of who wrote it and to what the issue refers. If you do, I shall consider such conduct a flagrant violation of my rights as an elected member and community representative and hold you personally responsible for partaking in an illegal and unethical action.

Please send me the directive of Council that requires you to communicate with me via this LJBAAdmin account.⁷⁷

131. At 10:58pm on the evening of 23 March 2017 Cr Bagster appears to have sent the following SMS messages to Mr Spearman:

Matthew. Mate I don't appear to be getting an emails forwarded from lbagster or LJBAAdmin @burnside to my Lance.bagster@gmail.com account. What is going on? Cheers, Lance

Also I still need the CEO's staff directive on the LJBAAdmin account. Could you possibly send me that... Even if it has to be via the LJBAAdmin account. I'd really appreciate it. L⁷⁸

132. On 24 March 2017 Cr Bagster emailed Mr Cant and Mr Cooper:

G'day Martin, Barry,

I am still waiting on my now long-standing request for a copy of the instruction or directive requiring staff to submit me all correspondence to the LJBAAdmin account.

Can you please tell me how this LJBAAdmin methodology is democratic, lawful and complies with good governance of this little local government?

Does it make you proud to be a part of personal retribution of an individual who have [sic] been found guilty of a significant breach of the Employee's Code of Conduct?

I think you would be acting ethically and morally correct to reverse this erroneous decision (before the Ombudsmen does it compulsorily). Please don't be a part of this treacherous procedure. I ask of you to act rightmindedly. If you can do this now, I will appreciate it and take it into consideration in any future actions I will be pursuing WRT this vendetta.

Happy to meet both of you tomorrow so you can explain your behaviour to me... let's try for before lunch time shall we!? but before we meet, I require the directive thanks.⁷⁹

133. On 24 March 2017, in response to an email from the LJBAAdmin account concerning a constituent enquiry, Cr Bagster emailed the council's Executive Group, various council staff and Mayor Parkin, *inter alia*:

Hi Exec Team,

The e-mail below is from god-knows-who... probably Magnus????

For a start please stop sending me these ridiculous e-mails via this corrupted LJAdmin [sic] site and pls send me the Admin instruction that requires you do so.⁸⁰

⁷⁷ LB032.

⁷⁸ LB029.

⁷⁹ LB036.

⁸⁰ LB031.

134. On 24 March 2017, in response to a separate email from the LJBAAdmin account concerning a council infrastructure request, Cr Bagster emailed Mr Cooper and various council staff and elected members, *inter alia*:

Dear Martin,

Thank you for providing me with the courtesy of revealing the originator of the last e-mail. I very much appreciate you doing that as the e-mail makes a little more sense to me because of that. That is one less thing that I will be holding against Council Administration for its illegal, unethical and immoral implication of a corrupted Council Resolution that should never have been implemented IOT protect a recalcitrant CEO who has flagrantly breached his CoC and been found to have significantly breached his Code and conducted a misdemeanour.⁸¹

135. On 24 March 2017 Cr Bagster appears to have sent the following SMS messages to both Mr Cooper and Mr Spearman:

Hi Martin, Matthew.

1. For Martin. Could you please confirm that you have forwarded me the directive or instruction to Council Officers regarding the use of the LJBAAdmin account? If you have, are you in a position to meet with me before midday today to discuss/explain the situation with the implementation of the subject protocols and procedures.
2. Martin sent me a Council Resolution number (C???????) and explained that Council would not be able to forward my emails to my Gmail account or change my listed email address because of that Resolution. If there is nothing obligatory in that Resolution (e.g. the words “must” or “will only”, etc.) then I repeat my request for Council to act IAW my original request in that regard. Could you please send me the full text (and date) of that Resolution.

Respectfully,
Cr Lance Bagster⁸²

Hi Martin and Matthew,

I should also have added:

3. Should you be in a position to confirm that you have already forwarded me the directive or instruction to Council Officers to communicate to me only via the LJBAAdmin account, then would you please confirm that by replying to this message (by a reply SMS and phone call, as well as to the the [sic] dreadful LJBAAdmin account to which you appear to be obligated to use). I won't have an opportunity to check the LJBADMIN account again for some time. Oh, there's another example of how it impedes my duties as an EM. Please log that for a reply to the Ombudsman.
4. To provide you some more insight as to why I made a request for forwarding to my Gmail account— I'm a local government councillor, an elected member. I'm not part of Council Administration. I am part of the community dealing with local community issues. The use of Pvt emails is in keeping with EM community engagement, and consistent with our separation from Council Administration.

Regards,
Cr Bagster⁸³

136. On 24 March 2017 the council's Executive Group emailed Cr Bagster:

Dear Councillor Bagster,

It is to be noted that clause 2.6 of the Code of Conduct for Council Members (see attached) requires Elected Members to comply with “all Council polices, code and

⁸¹ LB034.

⁸² LB037.

⁸³ LB038.

resolutions". If you fail to comply with council resolution C11055, then you will be in breach of the Code of Conduct for Council Members ("the Code").

In addition, your use of sms and a private email account to transact Council business is in breach of clause 8 of the Council's Records Management Policy (see attached), which will also constitute a breach of clause 2.6 of the Code, (as well as arguably the State Records Act).

For noting, the link to the Ombudsman's report in relation to a similar matter at the City of Playford is below (from page 21);

[hyperlink omitted]

Likewise, in our opinion, the sheer number of sms and emails from you in the past two (2) weeks or so could also be considered to be in breach of clause 2.11 of the Code, that you "not bully or harass Council staff" on the basis that:

- (a) Administration are simply implementing the lawful resolution of Council;
- (b) Martin Cooper has offered to meet with you on a number of occasions to explain and develop the new protocol with you; and
- (c) you are continuing to ask, and agitate, the same matters which have already been answered and dealt with. To continue to repeat these requests, including by sending messages at 2.44am and 2.59am constitutes "harassment" of Council employees.

Please immediately desist from such action in order to avoid breaches of the Code and escalation to the SA Ombudsman.⁸⁴

137. On 29 March 2017 Cr Bagster responded by way of email to Mr Cooper, Mayor Parkin and the council's Records division:

Dear Mr Martin Cooper,

Can you please inform me who wrote this e-mail from "The Executive Team"? I need to know who authored it and I intend to add this detail to my forecast Ombudsman submission.

I have sought legal advice on the allegations contained within the last "Exec Team" e-mail (Friday, March 24, 2017 1:59 PM) and I believe that it is threatening [sic] and inappropriate to have been written by a Council Officer to an elected representative. I consider that this e-mail from an anonymous Council officer is a cowardly, threatening and totally inappropriate [sic]. There has been nothing I have written, that has deliberately breached the Act and I find whoever wrote this drivel is (himself or herself) lining themselves up for some considerable trouble. Further, I find the assertion that I may have "bullied or harassed Council staff" is false and contrived and exactly the same type of drivel that got the CEO into such hot water in the first instance and eventually found him in breach of his Code of conduct. Please discourage the person who wrote that from restating it, and please inform me of the originator of these claims.

If you find that I have breached my Code, please be very specific about where that has occurred and perhaps stick one of those charming complaints in against me, I look forward to defending myself against such hurtful allegations and insults.

Please also confirm whether it was written with the benefit of legal opinion, or whether it was merely someone in the Exec Team (which apparently includes many council officers not on the Exec Team) letting off steam.

Perhaps before answering this, it might be advisable to seek and legal [sic] opinion in response.

I will accept a swift apology from the person (and not the 'Exec team') who wrote the subject email.⁸⁵

⁸⁴ LB042.

⁸⁵ LB042.

138. On 29 March 2017 Cr Bagster separately emailed Mr Cooper, Mr Spearman and Mayor Parkin to formally raise a complaint in respect of Mr Deb's alleged contravention of resolution C11055. This email went on to provide:

On another (but related) issue, I again request that you forward me the staff directive requirement [sic] council Officers to communicate to me only via the corrupted LJBAdmin e-mail account. There certainly is such a directive (or instruction) – even if it is or was merely verbal. If it was verbal only and you cannot send me the text of that directly, please confirm the details of what was conveyed to Council staff in that directive. I request this information that will enable me to submit a more comprehensive submission to the Ombudsman as I have committed to doing so by 17 Apr 17.

Dear Martin, on a personal note, if you have any pull with Mr Deb as a friend or respected colleague, can you please appeal to his sense of rightmindedness – perhaps try to convince him it would be in his best interests and the City's if he were to make a public apology to me and the City for his flagrant and proven breaches of his Code, Then we might all get past this lunacy and go back to acting like adults and singing 'kumbaya' again. I truly find the current arrangements insulting, humiliating and I will always consider that they have been imposed on me unjustly and as a significant punishment for Paul's many (secretly hidden) misdemeanours – for which he refuses to be called to account. It is wrong on so many levels. If that apology can happen before the Ombudsman sets about imposing an external fix – that'd be good for Paul and good for Burnside.⁸⁶

139. On 30 March 2017 Cr Bagster emailed Mr Cooper, Mr Cant, Mr Spearman, Mr Heinrich and Mayor Parkin:

Dear Mr Martin Cooper, and other apparent 'Exec Team' members, or To Whom It May Concern,

WRT your last (Thursday, March 23, 2017 4:51 AM) I do apologise, but I have no recollection at having received the response or the actual directive, order, instruction (etc,) that requires all (?) staff to only communicate to me only via the LJB Admin account.

I have directly asked all the Council Officers cc'd here to provide me with this directive and they also have responded to my recent queries through the generic LJBAdmin account. So I am a little uncertain and confused about who is in and who is out of the 'Exec team' (I assume it is every Council Officer).

As I have previously stated, I need this ASAP as a key addition to my Ombudsman submission.

You will appreciate that the Mayor and a number of EMs that voted for the Resolution leading to the imposition of this humiliating and repulsive protocol consider it a punishment. I need it removed ASAP IOT allow me to continue my work as an elected community representative unimpeded and unpunished for the CE's misdemeanours.

Can you please resend it to me or at least point to the DTG that that was sent.

Further to the above, please add this request to requested correspondence for the Council papers and Pls acknowledge that I would like the following QON answered at the next council meeting and to be in the publically available papers:

QONs:

1. What is the text and substance of a directive, order, instruction (or the like) that requires BCC staff to only communicate to Cr Bagster only [sic] via the LJB Admin account?
2. How was this directive disseminated within Council Administration and to whom?
3. What was the date and time of the directive's publication and who authorised it?
4. Can you please attach the directive to the answers to this QON?

Thanks in anticipation.⁸⁷

⁸⁶ LB041.

⁸⁷ LB043.

140. On 30 March 2017, following a protracted and heated exchange between Cr Davis and Cr Bagster and a general warning from the council's administration as to the need to maintain civility, Cr Davis emailed Cr Bagster:

Dear Lance,

I used to consider you a friend and I very much enjoyed your company.

More recently, you have sent me hurtful and deeply offensive emails about me and especially my family.

I note your email below where you feel I have made personal comments about you.

In the interest of working together over the next two years, I would like to offer my apologies for any communication which you feel has been personal in nature or offensive.⁸⁸

141. On 31 March 2017 Cr Bagster responded by way of email copied to each of the elected members and the council's Executive Group:

Dear Cr Henry Davis,

Thankyou, I accept your apology.

I am sorry if my replies to your unsolicited views and dreadful opinions or my 'sagely advice' caused you genuine distress.

Respectfully and again, please do not contact me unless it is to do with a Council matter that you simply cannot confine to the Council chamber.⁸⁹

142. It appears that sometime on or around 30 March 2017 Cr Bagster implemented measures to prevent emails from the LJBAAdmin account being received through his council email address. At this same time, Cr Bagster activated the following 'Out of Office' autoreply in respect of his council email account:

G'day and thanks for your e-mail. Due to a corrupted and compromised ICT protocol at Burnside Council I am currently not directly receiving e-mails to my Burnside Council e-mail addresses.

If you have intended your e-mail to be sent to Cr Lance Bagster and to ensure that I receive it, please re-forward your e-mail to lance.bagster@gmail.com[.]⁹⁰

143. On 30 March 2017 the council's Executive Group emailed Cr Bagster to caution him that the autoreply arguably contravened various clauses of the Code and to advise that both the autoreply and block had been removed by council staff.⁹¹

144. It appears that on or around 3 April 2017 Cr Bagster implemented the following autoreply:

Due to a temporarily corrupted ICT System your message may not be received by me for some time if at all.

Your e-mail is important to me, so if you need me to read it sooner rather than later, please re-send it to me at lance.bagster@gamil.com [sic] [...] or contact me via my mobile.

Written correspondence can also be sent to me via [address omitted].⁹²

145. By email from the Executive Group dated 4 April 2017 Cr Bagster was advised:

⁸⁸ LB044.

⁸⁹ LB044.

⁹⁰ LB048.

⁹¹ LB048.

⁹² LB048.

The Administration has once again removed the offending Out of Office Reply and have limited some functions on your Council webmail account. Administration can assist you with an appropriate Out of Office Reply at your convenience should you require one at any stage going forward.⁹³

146. On 13 April 2017 Cr Bagster responded by way of email to the council's Executive Group and Mayor Parkin:

Dear Martin or Matthew,

Please inform me which individual wrote the Tuesday, April 4, 2017 10:20 AM e-mail to me? Who authorised it and who made the allegations of a breach of my code?

If the "Exec Team" insists on using the 'LJB Admin' account to communicate with me, none of those communications should be anonymous, I consider it cowardly and grossly offensive for any Council Administration officer to his [sic] behind the anonymity of this 'LJB Admin' account and make heinous and baseless allegations against me.

If you are unable to answer my questions with facts and details I have asked for in an e-mail reply, please put these questions (along with the e-mail string and the allegations and questions) up as Questions On Notice.

Lastly please do not change my personal e-mail settings as I consider that doing so is a breach on [sic] my privacy and the [sic] breach of the BCC ICT policy.⁹⁴

147. On 6 April 2017 the council's Executive Group emailed Cr Bagster in respect of his proposed Questions on Notice:

It is to be noted that your Questions on Notice below are directly related to resolution C11055 (as supplemented by C11112), which are confidential resolutions of Council made in accordance with sections 90 and 91 of the LG Act. Accordingly, despite your assertion that you want the responses to be in the "publically available papers" that would, of course, constitute an offence under the LG Act and as such, the questions and answers will be dealt with in confidence at the 11 April Council Meeting.⁹⁵

148. On 13 April 2017 Cr Bagster responded in turn by email to Mr Cooper, Mayor Parkin, Mr Cant and Mr Spearman:

Dear Mr Martin Cooper,

Did you write the e-mail below? If not, who did? If you cannot directly answer this question with your name on the bottom of an e-mail, please also put this e-mail string and my questions (here) up as QONs. I want to know who wrote, and authorised the sending of, the last e-mail.

Whoever wrote this, I find that the attitude contained in that e-mail is completely inappropriate for a Council officer to have written to an EM. It offensive [sic] and patronising. For example, it unnecessarily reminds me of a resolution and claims that I made an assertion when I did not. Please see that in the e-mail trail (which is fortunately left on) I wrote, "that I would like the following QON answered at the next council meeting and to be in the publicly available papers". Therefore it was my desire, not my assertion, that the QONs be "publicly available".

I am finding these anonymous e-mails sent to the LJB Admin account more and more offensive as time progresses.

Again, I kindly request that if any more cowardly or inappropriate allegations or assertions are to be made towards me using this atrocious LJB Admin account, they are at least accompanied with the name of the author and the approver of the e-mail.

⁹³ LB048.

⁹⁴ LB048.

⁹⁵ LB047.

Lastly, exactly who is the “Exec Team” that signs off the e-mails to the LJB Admin account?

Mr Mayor,

Was it you or Mr Paul Deb that wrote that disgusting Motion that Grant Piggott put up – precipitating this so called ‘protocol? [sic]

You must know that I hate it, it is offensive and I hold you and the Councillors that voted for it and supported it in very low regard.

It is about time you encouraged Mr Deb to man-up and make an open apology to me, to Council and the people of Burnside!

I note that the 17th of April is quickly approaching.⁹⁶

149. On 13 April 2017 Cr Bagster emailed Mr Cant in response to an email from the LJBAAdmin account:

Dear Barry,

[...]

Can I kindly ask you not to send me any correspondence through the LJB Admin account? I find receiving anonymous correspondence (without the e-mail string and history) through that account deeply offensive and insulting. It also impedes my ability to properly represent my community and degrades my situational awareness.

Can you please provide me with the directive or instruction (presumably from the CEO) that requires that you do so? Alternatively, if no such instruction exists, please cease and desist from this deeply offensive practice which treats me differently from other elected members and (as the Mayor has confirmed) unjustly punishes me for the CEO’s previous offensive behaviour towards me.⁹⁷

150. On 13 April 2017 Cr Bagster emailed Mr Spearman and Mr Cooper:

Hi Matthew,

Please don’t interfere with my e-mail account settings, or allow your staff to make such changes.

I consider that any Council officer doing that, or requiring my personal settings to be changed is in breach of the privacy provisions.

Please be careful with this, and if you are again instructed to do so, you should point out to whomever is making that request that this is not permitted.⁹⁸

151. On 17 April 2017 Cr Bagster emailed Mr Cooper and Mayor Parkin the following list of ‘questions on notice’ for inclusion in the agenda for the council’s next ordinary meeting:

Preamble 1. Please see the attached email train. WRT the email dated Friday, March 24, 2017 1:59 PM:

1. Who (individual’s name and appointment) wrote the text of that email?
2. Who (individual’s name and appointment) authorised or approved the sending of that email?
3. Was the CEO involved in the authoring or approving of that email?
4. What are the specific basis of the allegations of ‘bullying and harassment’ that are contained in the email?
5. Did the author of that email seek legal counsel in making those allegations? If so, who was the lawyer and from which legal firm?

⁹⁶ LB047.

⁹⁷ LB045.

⁹⁸ LB046.

6. Is the author of this email going to send me an apology for these false and hurtful allegations and assertions?

Preamble 2. With regards the protocol established via the LJB Admin account a number of Council Administration officers, including a GM have confirmed to me that they have been directed to communicate to me only via a directive to staff. Though I have proposed two separate meetings with Mr Cooper, I have not had the protocol explained to me and I have had to make assumptions about how it operates. Despite the Council Resolution prohibiting direct communications from the CEO I continue to receive multiple communications directly from him.

- 6.[sic] Was the CEO involved in the establishment of the protocol? That is; did he design, approve, agree to the establishment of the protocol? If so, what was his involvement? If not, who else (name/s and appointment/s) designed, approved, agreed the protocol? (I seek an exhaustive list together with the scope of their involvement).
7. How many Council Officers were directed to communicate to me via this protocol and provide their names and appointments?
8. Please provide (as an attachment to the answers) the directive or instruction to staff (requiring them to only communicate with Cr Bagster via the LJB Admin account and anonymously).
9. How does this protocol or directive (to communicate to me only via the LJB Admin account) assist me or the CEO comply with a Council Resolution, prohibiting direct communications between Cr Bagster and Mr Deb?
10. What special protocols have been established that effect the CEO's efficient and effective communications with other Council Officers or other Councillors?
11. Many of the communications (emails) I have received via the 'LJB Admin' account (addressed to Cr Bagster) have been sent anonymously or simply signed from, "the executive team". Who authorised the sending of anonymous emails to me and exactly who (names and appointments) constitutes "the executive team".
12. Please send me the directive or instruction to those staff sending me these cowardly and anonymous emails requiring them to be sent without details of their names and appointments.
13. Under this protocol, why is it appropriate that the CEO continue to communicate directly to me in violation of the resolution prohibiting him doing so?

Preamble 3. I consider this protocol to be unwarranted and unjust punishment and an admonishment from Council at having successfully complained against the CEO - him being found to have significantly breached his Code Of Conduct - offences for which the Council should have considered the CEO's dismissal. The Mayor has also confirmed that this arrangement is a form of censure against me. The protocol hinders me effective and efficient communications with the Burnside Council. I have made multiple requests to Mr Martin Cooper (who appears to have had the task of implementing the protocol) to dismantle the protocol and the LJB Admin account. I have explained how it hinders my ability to function as an elected member. However, I continue to be sent both signed and anonymous emails via the protocol.

14. Please explain how this protocol assists me in my role as an elected member?
15. Please explain how I am not disadvantaged or punished by the protocol for the CEO's misdemeanours?
16. Please provide me with the implementation plan for the protocol and explain how the protocol complies with any Council Resolution - the protocol appears to require all senior BCC Administration officers to communicate exclusively and anonymously through it to me. I am certain I have not seen a Resolution with this requirement on it, but I may have missed one!?

17. Please provide an update of the progress of the BCC internal review of the subject Resolution and its consideration of the 'protocol'. When are the relevant reports to be released?⁹⁹
152. On 19 April 2017 Mayor Parkin emailed Cr Bagster to advise that he had determined that the majority of Cr Bagster's questions were not appropriate for inclusion in the council's agenda, owing to various grounds. Cr Bagster was otherwise advised that his 'question on report timeframes will be placed on the agenda' and was again encouraged to meet with Mr Cooper to discuss his concerns regarding the communications protocol.¹⁰⁰
153. Shortly afterwards, Cr Bagster responded to Mayor Parkin:
- Did someone else write this reply for you Mr Mayor!? It certainly looks that way to me, because your usual self-generated correspondence does not have this drone-like quality about it. I suppose that you have the administrative assistance of Mr Dabrowski (and by extension through your good mate Paul... the rest of Council Admin) at your disposal!? Oh to have some willing assistance in an elected role from Council admin. I trust you feel very privileged.
- That you now do not write your own correspondence to your colleagues and peers or are prepared to have them written for you by Council Administration is offensive to me and very disappointing.
- The questions DO relate to functional strategic and policy issues: official correspondence; the implementation of C11112 (and its various amendments); and a so-called protocol of communication between Council Administration and elected members.
- The QONs are valid, appropriately made in good faith and for the right reasons IAW our policy and all the guidelines. The QONs stand in need of an answer and they must therefore be promptly answered. They must be properly and comprehensively answered in the Agenda of the 27 Apr 17.
- You must understand that I have made several offers to meet with Mr Cooper to meet me [sic] at my convenience, but on all occasions he has declined or not responded in time. The offer is still on the table if Mr Cooper decided he can explain this "protocol" to me at my convenience into the future, But please note that, since you declared C11112 and any associated activities to be an unjust censure (and therefore a punishment) of me by my peers – I am not sure I can ever accept its legitimacy. Further, I expect that the Ombudsman will very soon call it for what it is and for what the Council has done.
- WRT C11112 and its amendments and associated issues please answer the following queries for my personal understanding;
1. Can you please tell me frankly and directly if you, the CEO or any Council Administration staff drafted the Motion and the amendments?
 2. Did you excuse yourself from the debate around C11112 or did you contribute to it?
 3. Have you encouraged your good friend and drinking buddy, the CEO to form a public apology to me, Council and the ratepayers of Burnside for his proven misdemeanours and breaches of his Code? Or is he preparing to simply resign? If he resigns I will very gladly offer to referee for him in any new role he attempts to get.¹⁰¹
154. Approximately one hour later, Cr Bagster emailed Mayor Parkin and Mr Cooper to again take issue with Mayor Parkin's determination, to restate his request in respect of the previously-submitted questions on notice and to raise the following additional matters:

Regarding the amendment to C11112 and the associated debate:

17. Who proposed and seconded the amendment?

⁹⁹ Document identified as L023A in records supplied by council.

¹⁰⁰ LB055.

¹⁰¹ LB055.

18. Was the vote divided and, if so, please list those Councillors voting for it?
19. Was the amendment suggested to Council only as a result a recommendation or report to Council and who wrote that report?
20. Was that report approved or agreed to by the CEO?
21. Did the Mayor and the CEO excuse themselves from the debate for this amendment?
22. How could Council seriously believe it appropriate to deliver a Resolution that further so offends me and punishes me for the CEO's misdemeanours, when they should have been considering sacking the CEO?
23. What restrictions and limitations has the CEO incurred to his correspondence as a result of his misdemeanours and breaches of his Code of Conduct?¹⁰²

155. It appears that sometime on or before 18 April 2017 Cr Bagster implemented the following autoreply in respect of his council email account:

G'day,

Due to temporary difficulties with a corrupted protocol imposed by the Burnside Council on my email account, you [sic] message to my @burnside account may not be received or read by me.

If you consider your matter urgent and in need of my attention, please re-forward your e-mail to me at lance.bagster@gmail.com or contact me on [mobile telephone number omitted].¹⁰³

156. On 18 April 2017, in response to an email from the LJBAAdmin account concerning a council infrastructure project, Cr Bagster emailed Mr Cant, Mr Cooper and Mayor Parkin:

On the issue of this last communication, which must have come from you; can I again kindly ask you to cease and desist from sending me correspondence through the "LJB Admin" account. I have already made my points very clear. There is no resolution that requires ANY Council Officer to communicate with me in such a manner.

I find this scheme insulting, humiliating and unnecessary, I kindly request you not to be a part of such an atrocious and devious scheme. Can you please send me the Council directive that requires you to use the LJB Admin account and write to me anonymously?

If you keep participating in this devious and corrupted protocol, without having been specifically been [sic] directed to and against my direct request for you not to, I have to consider you complicit and I will hold you in low regard because of it.

Who is the "Executive Team"?¹⁰⁴

157. On 18 April 2017 the council's Executive Group responded:

Regarding your query about the LJBAAdmin account, we refer you to confidential Council Resolution C11112 dated 28 March 2017:

1. That the Report be received,
2. That the Council resolves to amend paragraph 5.2 of resolution C11055 to read:
Administration implement a system to direct all correspondence from Councillor Bagster to Administration, to the Executive group, and to Councillor Bagster from Administration, via the Executive group.
3. That the General Manager Corporate Services keep the Council informed by way of confidential report of any material developments in this matter.

¹⁰² LB052.

¹⁰³ LB049.

¹⁰⁴ LB050.

The 'Executive Team' consists of our two General Managers, Martin Cooper and Barry Cant. Please note that Barry is currently on leave until the 26th April, with Michelle Kennedy acting as GM Urban Services in his absence.¹⁰⁵

158. On 18 April 2017 Cr Bagster responded by way of email to Mr Cant, Mr Cooper and the council's elected members:

Dear Martin,

Regarding the amendment to C11112, I had no idea (until now) that the Councillors (my peers) who voted for the Resolution C11112 in the first place had run an amendment to that Resolution. Thanks for this new information, Can you please now address the following RFIs in line with this:

- When was the date of the Resolution Amendment?
- Who proposed and seconded the amendment?
- Was the vote divided and can you please list those Councillors voting for it?
- Was the amendment suggested to Council as a result a [sic] recommendation or report to Council and who wrote that report?
- Was that report approved by the CEO?
- Why was that recommendation, motion, considered necessary?
- Did the Mayor and the CEO excuse themselves from the debate for this amendment?
- How could Council serious [sic] believe it appropriate to deliver a Resolution that so offends me and punishes me for the CEO's wrongdoings, when they should have been considering sacking the CEO for his atrocious behaviour and misdemeanours?
- What restrictions and limitations has the CEO incurred to his correspondence as a result of his atrocious misdemeanours?
- Did your report consider a recommendation that your boss be sacked to [sic] Council? (that's a rhetorical question BTW)

Martin, since you're obliged to report to Council on these matters as they develop, I kindly request that you inform Council that I regard their treatment of me in this manner (by exception) as undemocratic, unfair, unconscionable, and unwarranted. The protocol you have created is unprecedented, degrading, hurtful and unreasonably disadvantages me. I appeal to Council's sense of right-mindedness to repeal this atrocious protocol that I can only assume you, the Mayor and the CEO have devised. I hold any of the Councillors who voted for the original Resolution and the amendment in particularly low regard. They have deeply offended and upset me. They should only treat me with the respect that I am due as their peer and an elected member who has done nothing deserving of such degrading treatment. If the recommendation to implement such a scheme came from Council Administration (as you say it did) then that is doubly offensive, because Administration is an unelected body that is now delivering and complicit in unjustly punishing me when I have done nothing wrong. Indeed I am being punished for the wrong-doings of the CEO. Your recommendation that precipitated this amendment was therefore completely inappropriate. I remind you that you work for the CEO.

Please indicate when the internal review on the subject will be delivered to Council as this has a bearing on my Ombudsman submission over the issue.

You must know that I am determined to right this dreadful injustice, and please believe me when I say that I am prepared to seek justice to the bitter end. A viewing of the movie "the Revenant" might be educational for this purpose.

Please make Council aware of all of my Concerns in regard to Resolution C11112 and its various amendments.¹⁰⁶

159. On 19 April 2017 Cr Bagster emailed Mayor Parkin to request a temporary leave of absence. That request included the following comments:

¹⁰⁵ LB050.

¹⁰⁶ LB050.

Also my current tussles with Council and Administration over the undemocratic Resolution C11112 have taken their personal toll on me and I am struggling to cope with the censure and humiliation caused by the associated actions and the unjust and unfair punishment and defamation that has resulted.

I am very keen to know if the CEO is considering making a public apology and explanation to me that would have made all this anxiety go away a long time ago.¹⁰⁷

160. On 19 April 2017 Cr Bagster met with Mr Cooper to discuss the implementation of resolution C11055. My investigation was supplied with a transcript of that meeting. I simply note that it appears that Mr Cooper went to considerable lengths to acknowledge and respond to Cr Bagster's grievances with the communications protocol and that Cr Bagster in turn appears to have expressed a willingness to consider the manner in which his communications were impacting upon council staff.¹⁰⁸

161. Shortly after this meeting, Cr Bagster appears to have sent the following SMS message to Mr Cooper:

Thanks for meeting with me Martin. I can live with the LJBADMIN account so long as I no longer receive anonymous emails and if the original author and email chain is clearly indicated.

However, if it isn't to be anonymous, what's the point of it and how does it comply with the original intent of C11112? You see?

Also, Please let your staff know that I never intended to cause them stress or anxiety. But my aim to dislodge a cancerous growth from Council will remain. I'll try and be more considerate of the feelings of Administration staff. I did hear you.¹⁰⁹

162. Mr Cooper appears to have subsequently responded:

No problem Lance. All LJBAAdmin emails to you will be signed off by either Barry or I. Thank you for agreeing to work with this process and for acknowledging the impact recent events have had on Administration staff.¹¹⁰

163. Later that same evening, Cr Bagster appears to have responded:

And I also still require the originators detail [sic] and the email [sic] chain history. I will work with it – under protest Martin. I still see it fundamentally as undemocratic, unlawful and an undue censure. It had no basis of legitimacy in C11112 and your recommendation for an amendment was inappropriate and underhanded.

But it is what it is.

I have an appointment with Griffins Lawyers tomorrow regarding the review.

Please be frank and fearless in informing me if I am causing you or your staff unreasonable stress. I don't want to harm anyone's careers – with one key exception. Call me anytime.¹¹¹

164. Shortly afterwards, Cr Bagster emailed Mr Cooper:

Dear Martin,

Please note that I am meeting with Greg Griffin and Ian Rice tomorrow at 09:00 AM as part of their assistance of Council in the Internal Review.

FYI, so that BCC has some reasonable time to consider its actions, I am now holding off on the submission of my complaint to the SA Ombudsman until the Review is complete.

¹⁰⁷ LB051.

¹⁰⁸ Document identified as L0216A in records supplied by council.

¹⁰⁹ LB056.

¹¹⁰ LB056.

¹¹¹ LB056; LB057.

I believe that Griffins short [sic] have access to all relevant confidential documentation. Because they are confidential documents I cannot access and forward them on. However, these documents are centrally relevant to their determinations.

At your earliest convenience, and if you have not already done so, can you please provide Griffins with the following:

1. the Motions, Reports and transcript of Council debate that lead to Resolution C11112;
2. the Resolution C11112;
3. the Motions, Reports and transcript of Council debate that lead to the amendment to Resolution

C11112 on 28 Mar 2017;

4. The motion for Amendment to Resolution C11112 on 28 Mar 2017.
5. Your reports to Council; and
6. All relevant e-mail correspondence on the BCC server governing the development and implementation of your communication protocols (especially correspondence between and amongst the Mayor, myself, Cr Piggott, all BCC's General Managers, Magnus Heinrich and Matthew Spearman.

Lastly, so as I can expedite the SA Ombudsman submission, can you please send me Griffins [sic] preliminary report to Council, as this will trigger my future intended course of action?¹¹²

165. That afternoon, Cr Bagster emailed Mr Rob Dabrowski, Executive Officer, in response to an email distributed to all elected members:

Hi Rob,

Re you last, Mr Martin Cooper has confirmed that you (and all Council Admin Officers) are supposed to only be corresponding with me via the LJB Admin account,

Could you please seek his clarification on the processes of doing that.¹¹³

166. On the afternoon of 27 April 2017 Cr Bagster submitted the following 'motion on notice' to the LJBAdmin account for inclusion in the agenda for that evening's ordinary council meeting:

That:

1. any briefings or instructions of legal firms or legal counsel used by the Burnside City Council, external to the Council, be only in written form and countersigned as "developed" or "vetted" by the BCC Principal Governance Officer and "approved" by the CEO;
2. prior to the payment of any legal fees, each delivery of that legal service be vetted and agreed by the BCC Principal Governance Officer and the CEO – such agreement is an acceptance of the validity, veracity and quality of the legal work undertaken; and
3. Council Administration retain a register and a file of the written briefings or instructions and a register and a file of written agreements and that both these registers and files be accessible to elected members for inspection upon request to the CEO or any General Manager.

Justification.

This Motion is designed to ensure Council has appropriate checks and balances in place when requesting or receiving legal advice, including: the validation of that legal advice and counsel. These measures will ensure that ratepayers are receiving value for money

¹¹² LB060.

¹¹³ LB054.

for the legal services they are paying for. This [sic] Resolution of this Motion may prevent frivolous, trivial or vexation legal action on the part of BCC, or the perception of those things.¹¹⁴

167. On 4 May 2017 Cr Bagster was supplied with the proposed agenda for the upcoming ordinary meeting. Item 14.3 of that agenda constituted a report prepared by Wallmans Lawyers concerning a complaint made by Cr Bills against Cr Bagster. On 9 May 2017, Cr Bagster emailed the LJBAAdmin account, together with Mr Cooper, Mayor Parkin and Cr Bills:

Martin,

Under item 14.3, who's [sic] idea was it to include the whole CoC complaint handling procedure Billsie's complaint (version 2 without version 1) and my 'offending e-mail' in the non-confidential part of the agenda? Is that unprecedented? Did Paul Deb direct that that occur? Why did Admin not further elect to provide Council with all the ensuing paperwork, including my presentations (and Billsie's) to Council?

Is there any precedent for Council Administration acting in this way? That is, putting confidential material in the normal part of the agenda?¹¹⁵

168. Shortly afterwards, in response to information from Mr Cooper advising that, per the terms of the Code, a report concerning a breach of the Code 'must be the subject of a report to a public meeting of the Council', Cr Bagster responded:

If that is the case, the CEO's breaches of the Behavioural Code should be mirrored in his procedures. Are they not?¹¹⁶

169. Later that evening, Cr Bagster sent the following email to Mayor Parkin under the subject line 'QONs for 23 May 17 Council Meeting':

Questions regarding-item 14.3 of the Council Meeting of 9 May 17:

1. Mr Mayor, under item 14.3 of the 9 May 17 agenda, Council Administration has included Confidential material in the public agenda. Whilst I'm delighted that there appears to be a new spirit of openness and an abandonment of the previously secretive nature of the Council, is there a precedent for doing this? In other words has the Council ever released confidential information to the public just because an erroneous Council Procedure [sic] calls for it?
2. Is the release of this confidential information in breach of any other council policy or procedure?
3. In the spirit of this new openness, can Council Administration also publish all other Complaints, and reviews undertaken in the last 12 months for public consumption, including the CEO's recently being found to have breached his Code of Conduct and breached [sic]¹¹⁷

170. On 11 May 2017 Mr Cooper provided a lengthy response, observing, *inter alia*:

Your proposed "questions on notice" do not meet the criteria of a "question" either as a sentence in an interrogative form addressed to a particular person or, of particular relevance, for the purposes of regulation 9 of the Meetings Regulations and so will not be placed on the agenda.¹¹⁸

171. On 20 May 2017 Cr Bagster responded:

¹¹⁴ LB058.

¹¹⁵ LB062.

¹¹⁶ LB063.

¹¹⁷ LB066.

¹¹⁸ LB083.

Great, I hope that these questions and answers will be put in the next agenda?¹¹⁹

172. On 9 May 2017 Cr Bagster was provided with a copy of a provisional report prepared by Mr Greg Griffin of Griffins Lawyers pursuant to Cr Bagster's request for review of resolution C11055 under section 270 of the Local Government Act. That report, while recommending that certain amendments to C11055 be made, did not uphold the gravamen of Cr Bagster's complaint concerning the resolution.
173. On 10 May 2017 Cr Bagster emailed the LJBAAdmin account, together with Mr Cooper and Mayor Parkin:

Dear Martin and the 'Exec Team',

Given last night's meeting and Council's clear and unambiguous Resolution not to hold the subject item in confidence, Council Administration is now expected to swiftly make the previously 'Confidential' Item available to the public. In line with this can you now please quickly move to:

1. amend the publicly available agenda (online) to include the previously confidential item and all relevant papers and attachments?
2. provide a transcript and the audio of the Item 18.1 debate – especially the CEO's now public comments and allegation that Council has (in not holding the item in confidence) breached its [sic] Code of Conduct – to all Council EMs?
3. Ensure that the minutes of last night's meeting are published with Item 18.1 comprehensively covered (in full)?
4. Provide a written statement of the CEO's public statement to justify the reasons he believed Item 18.1 should have been held in confidence.
5. Update the Council's webpage, front page to include and highlight (advising) that the ERA Board meeting minutes of 21 Mar 17 are now no longer held in confidence and are also available in the Minutes and the amended agenda (and provide a hyperlink to these).¹²⁰

174. Shortly afterwards, Cr Bagster emailed, *inter alia*, the LJBAAdmin account, together with Mr Cooper and Mayor Parkin:

Dear Martin and the Exec Team,

I trust that you are resilient enough to deal with these direct and candid requests and they do not cause you undue stress or anxiety. Please know that it is not my intent at this stage to undertake any adverse action against you. You have my best regards or sympathies in doing a difficult job.

Could you please provide me and all Burnside Elected Members:

1. all recent written (since Dec 16) correspondence between Council Administration and the Mutual Liability Scheme (MLS);
2. confirmation that the CEO has been provided with a recent assurance from the MLS that he would be given free financial assistance and legal support in the event he is sued (privately) for damages;
3. an indication whether Council Administration will also make representations (requests) to the MLS for free legal and financial support to Council Members who request similar support to act as plaintiff and defendant in matters of private claims for damages;
4. if the CEO has secured such support from the MLS; an explanation as to how the CEO is entitled to this comfort, support and protection when clearly his private libelling, vilification, defamation, malfeasance have nothing to do with his CEO role; and are not required of him in his line of duty as the CEO;

¹¹⁹ LB083.

¹²⁰ LB067.

5. a copy of the CEO's most recent employment contract and highlight any triggers that the Council has to secure his dismissal (such as a successful Motion of 'No Confidence');
6. a copy of the transcript of the meeting between Cr Bagster and Mr Martin Cooper of the 19 Apr 17, and whether that was provided to Griffin Lawyers for their work towards delivering their recent 'internal review' report into C11055;
7. a printable copy of Resolution C11055 and the associated Confidentiality Resolution (especially for inclusion in my Ombudsman submission, following the recent Griffin Lawyers' "internal review" report); and
8. a copy of the directive, instruction, procedure provided to a number (if not all) Burnside Council Administrative staff requiring them to comply with the communications regime designed to carry out the intent of Resolution C11055, which the Mayor has highlighted was designed to admonish me.

Could you also please turn the above requests into QONs, with answers and requested attachments available to Council for 23 May 17 – the next Council Meeting of 23 May 17.

Thankyou in anticipation.¹²¹

175. On 11 May 2017 Cr Bagster was advised by Mr Cooper, *inter alia*, that his questions would be disallowed as not conforming to the requirements of the Local Government (Procedures at Meetings) Regulations. Mr Cooper's email went on to provide:

However, I can advise:

- as to the information you have requested in paragraphs 1 and 2, I would be pleased to provide the Council with a confidential update in relation to this matter, if the Council so resolves;
- as to paragraphs 3 and 4, the Council has already received legal advice at its meeting of Tuesday 11 April 2017 in relation to the receipt and management of a claim pursuant to sections 39 and 121 of the *Local Government Act 1999*;
- with respect to the CEO's contract of employment, please contact me to make a time to view this document;
- in relation to the meeting referred to at paragraph 6, you were provided with a copy of the meeting transcript by way of email dated 20 April 2017. I confirm that the matters discussed during that meeting were conveyed to Mr Greg Griffin as part of his internal review;
- you have already been provided, on several occasions, with a copy of confidential Council resolution C11055, as requested in paragraph 7; and
- by way of email dated Thursday 6 April 2017, I provided you with a response to the matters raised in paragraph 8.¹²²

176. On 10 May 2017 Cr Bagster emailed, *inter alia*, Mayor Parkin and Mr Cooper to request the following motion on notice for inclusion in the agenda for the council's next ordinary meeting (Mellor Olsson having prepared the original Preliminary Assessment Report recommending investigation of the complaint made against Cr Bagster by Cr Bills):

That:

1. Council immediately remove the legal firm Mellor Olsson – Lawyers & Solicitors (80 King William St – Adelaide) from the short list of lawyers used for a period of 5 (five) years.
2. The Burnside Council seek a refund of legal fees for the development of an erroneous preliminary assessment report.

¹²¹ LB068.

¹²² LB075.

3. any briefings or instructions of legal firms or legal counsel used by the Burnside City Council be only in written form and countersigned as “developed” or “vetted” by the BCC Principal Governance Officer and “approved” by the CEO.
4. prior to the payment of any legal fees, each delivery of that legal service be vetted and agreed by the BCC Principal Governance Officer and the CEO – such agreement is an acceptance of the validity, veracity and quality of the legal work undertaken.
5. Council Administration retain a register and a file of the written briefings or instructions and a register and a file of written agreements and that both these registers and files be accessible to elected members for inspection upon request to the CEO or any General Manager.

Justification.

- A. It has become apparent that the legal firm Mellor Olsson (MO) has provided erroneous and substandard legal work (provision of advice from a CoC Preliminary Assessment report, MO reference AK:M161342 of 5 July 2016). That advice was subsequently found invalid by subsequent review by another legal firm (Wallmans Lawyers of 26 Apr 17). Please see the two attached (relevant) reports (note to Council Administration, please attached the two reports of relevance to this MON). During the time of the MO legal work, I flagged that I would run this Motion if substandard advice was provided to Council as it was.
- B. The other sections of this Motion are designed to ensure Council has appropriate checks and balances in place when requesting or receiving legal advice, including: the validation of BCC’s seeking legal advice and counsel. These measures will ensure that ratepayers are only receiving value for money for the legal services they are paying for.¹²³

177. On 22 May 2017 Mr Cooper emailed Cr Bagster to advise that Mayor Parkin had disallowed Cr Bagster’s proposed motion on the basis that it was non-compliant with the Local Government (Procedures at Meetings) Regulations. In doing so, Mr Cooper provided a lengthy explanation for Mayor Parkin’s decision, relevantly observing that Cr Bagster appeared conflicted in respect of the matter. By email dated 23 May 2017, Cr Bagster responded:

The fact that decisions have been made and taken WRT MO are historic.

I am a democratically elected member of Council, it matters not whether I am justifying or supporting a Motion based on my opinion. I am entitled to do so and I am elected to do so. I am allowed to have an opinion and put that to Council.

I have no material conflict of interest in having MO removed from the short list; the motion is put forward to benefit Council into the future from erroneous or dubious advice - in short to save BCC money and get proper, valid and sound legal advice.

You, as a council administration officer (and proxy for the CEO) are not supposed to be interfering the [sic] political or democratic processes of Council. If you want to you should put yourself up for election at next year’s local government elections due in Nov 2018.

I can remove the justification components and talk to these. You have no right (nor does the Mayor) to prevent this Motion from being considered by Council.

The Mayor has no right (and is not entitle [sic]) to judge or declare ‘ultra vires’ and not ‘accept’ the MON which was proffered for distribution for tonight’s meeting IAW our policies and the Act.

Please remove the ‘justification’ component’ [sic] and put the motion up for the 2nd meeting in June as a MON and have it available electronically for tonight.

I need not provide ‘evidence’ to you, the motion itself (in its various sections) does not contain allegations.¹²⁴

¹²³ LB069.

¹²⁴ LB101.

178. On 29 May 2017 Mr Cooper responded to briefly reiterate the substance of his previous email. On 30 May 2017 Cr Bagster responded in turn:

Have you obtained legal advice WRT subject proposed motion?

I don't believe that I am not obliged to have to justify my Motion to Burnside's Administration.

The Mayor has no valid power to claim or determine this MON or any Motion "ultra vires".

Please forward me any legal advice you have obtained so that I can understand why I, as a duly and democratically elected member of Council, am unable to put up a valid MON and how the MON is beyond the power of Council.

In the absence of contrary legal advice, please put this MON on notice for the second ordinary Council meeting in June or the 1st in July - whichever is more convenient for Administration.¹²⁵

179. On 30 May 2017 the council's Executive Group responded:

Yes, the City of Burnside Executive has obtained legal advice on this matter.

This advice has been provided to you in the three (3) emails below (dated 18 May 2017 at 5:00 PM; 22 May 2017 at 5:44 PM; and 29 May 2017 at 1:08 PM)[.]¹²⁶

180. Shortly afterwards, Cr Bagster responded:

I think you mis-understand me. I request to see the original legal advice and see the originator of that advice.¹²⁷

181. On 11 May 2017 Cr Bagster emailed, *inter alia*, Mr Cooper, Mr Cant, Mr Heinrich and the council's elected members to again request that various questions on notice be included in the agenda for the council's 23 May 2017 ordinary meeting. Much of those questions repeated matters that had previously been disallowed by Mayor Parkin. The final question appears to have been amended to include further gratuitous insults directed at Mayor Parkin and Mr Deb:

Has the Mayor, Mr David Parkin, encouraged his good friend and drinking pal, the CEO, to form [sic] a public apology to Cr Bagster, Burnside Council and the ratepayers of Burnside for his proven misdemeanours and breaches of his Code? Or is he preparing to simply resign? (note: If the CEO voluntarily resigns Cr Bagster – and others – will gladly offer to referee for him in any new role he attempts to secure).¹²⁸

182. Shortly afterwards, Cr Mark Osterstock emailed Cr Bagster and the various recipients of Cr Bagster's email:

I note the following questions. In my view many are inappropriate, and possibly in breach of council confidentiality resolutions, and resolutions in general on the topic/s raised.

In addition, I strongly suspect that a significant number of the queries will be addressed when council formally considers Cr Bagster's section 270 review due on the 23rd.

On the issue of Cr Bagster's section 270 review, will the report include the costs to the ratepayers of the request for review?¹²⁹

183. Shortly afterwards, Cr Bagster responded by email to Cr Osterstock and the other recipients:

¹²⁵ LB136.

¹²⁶ LB139.

¹²⁷ LB139.

¹²⁸ LB070.

¹²⁹ LB071.

I note your comments and assertions which are most certainly incorrect and inappropriate.

There is nothing asked in the QONs that are [sic] in breach of the Council Confidentiality Resolution (which you do not quote). If need be Council Administration may have to put some of the answers to the QONs into the 'confidential' section of the agenda. However, I hope that is not the case - given Burnside Council's new spirit of openness and transparency.

You should probably keep your suspicions and assertions to yourself, given that you are (yourself) on the boundaries of acceptability of appropriateness and potentially in breach of the Code of Conduct and definitely in breach of acceptability of collegiality.

I have seen an advance copy of the Griffin lawyers [sic] review (done on behalf of Council, WRT Resolution C11055) and it does not answer the subject QONs. Therefore, separate answers from Council Administration are required.

Thanks for your continued interest in this case and your partisan support of the CEO and the Mayor. Have they provided you or Grant with the draft Motions of rescission for last Council Meeting's resolutions, intended to be run on 23 May 17? Best you ask for them soon!¹³⁰

184. Approximately one hour later, Cr Bagster sent the following email to, *inter alia*, Mr Cooper and Mayor Parkin:

Motion on Notice

For Council Meeting of 23 May 2017

Alcohol Policy, Consumption and Purchase – Burnside Council

That:

1. Council no longer purchase alcohol for the consumption of Council Officers or Elected Members for any reason, including all Council related functions – except by the ad hoc and express approval of Council for a special and specific purpose on each occasion where alcohol consumption cannot effect [sic] decision making;
2. Council Officers no longer consume alcohol during working hours or times of duty;
3. Except for specially declared occasions or events, approved by Council, the consumption of alcohol or having a blood alcohol reading above zero be expressly prohibited.
4. The penalty for consuming alcohol or having a blood alcohol reading above zero for any Council Officer or employee (during working hours or whilst on duty) be: one formal warning of 12 months; then immediate dismissal.
5. Outside of the Mayoral Chamber (purchased at his own expense), alcohol not be stored or consumed within the Burnside Civic centre by Council Officers or members.

Justification.

- A. The National Local Government Drug and Alcohol Committee (NLGDAAC) together with the Australian Drug Foundation (ADF) recognise that local government have little control over the main drivers of problematic alcohol consumption, yet collectively spend millions of dollars a year protecting their communities from preventable alcohol-related harm and dealing with the aftermath of violence, property damage, litter and waste. It is past due time that the Burnside Council takes an appropriate stand and leads by example WRT alcohol consumption.
- B. We are no longer living in the 1950s and it is no longer appropriate that Council Officers or Elected Members be given significant quantities of alcohol – all paid for at public expense. It is no longer acceptable that decisions regarding important matters of local government are made or discussed under the influence or effects of alcohol.

¹³⁰ LB071.

- C. The business of running, administering or governing a local government is a serious business and not a social occasion. The people of Burnside expect their Council, and elected members to act with integrity and sobriety. They do not expect that Officers and members be consuming alcohol at their expense.
- D. If the Mayor wants to consume alcohol in his chambers with selected or invited guests; this should be at his expense (utilising his Mayoral allowance) and in a situation in which important matters of Burnside's governance and policy are not discussed under the influence of alcohol.
- E. It is time that the Burnside Council acted by example and in line with contemporary community standards.

Policy:

There are no adverse Policy implications associated with the Motion. Policy formulation can only be advantaged by thorough and sober consideration.

Risk:

There are no risks identified with this Motion. Risks to Council's reputation and the number of pieces of correspondence found to be in breach of Member and Employer [sic] Codes of Conduct will most probably reduce with reduced alcohol consumption.

Legal:

There are no legal implications associated with the Motion.

Financial:

There are only cost benefits to be gain through the Resolution of this Motion. Cost savings from the purchase and consumption of alcohol can be used to offset the already sunk costs.¹³¹

185. On 18 May 2017 Mr Cooper emailed Cr Bagster to advise that his proposed motion was considered non-compliant with regulation 12(7) of the Local Government (Procedures at Meetings) Regulations and had accordingly not been accepted by the Mayor.¹³²
186. On 20 May 2017 Cr Bagster emailed Mr Cooper and Ms Rebecca McAulay, the council's Principal Governance Officer:

Dear Martin and Rebecca,

I would like a legal explanation as to how the proposed Motion is beyond the power of Council.

I would also like a legal explanation regarding the Mayor's powers to authorise you to exclude the Motion from a Council meeting.

Can you please provide this to me by COP [sic] Monday 22 May?

Assuming that the Motion most certainly is within the powers of Council, until you can prove otherwise, I will run it as a MWON on the 23 May 17.

Please have it available for that event.¹³³

187. Several minutes later, Cr Bagster again emailed Mr Cooper and Ms McAulay:

Dear Martin and Rebecca,

Again I need a legal explanation as to how this proposed Motion is beyond the power of Council.

It looks to me very much like this is fairly and squarely in the Council ball court.

¹³¹ LB073.

¹³² LB081.

¹³³ LB081.

Please have the text of the Motion here available for me to run as a MWON at the next meeting -- in the absence of a valid legal opinion.

I does not seem appropriate that the Mayor has the option to pick and choose what his peers see fit to put up as a Motion in Council. It is not appropriate that you have not put this Motion in the Agenda pending appropriate legal advice.¹³⁴

188. On 22 May 2017 Mr Cooper emailed Cr Bagster to provide a further explanation as to why the proposed motion had been disallowed by Mayor Parkin.
189. On 23 May 2017 Cr Bagster responded by way of email to Mr Cooper, Ms McAulay and the council's elected members, *inter alia*:

This Motion is not a big ask! It is in line with contemporary standards and expectations and similar rules are already in place in many State and Federal government departments and agencies.

If Council Administration Officers, in their own time want to get 'stonkered' they should go for it! But they should not be getting 'tanked' on Council time, nor at the expense of the public purse and the long suffering people of Burnside (who probably do not realise that this has been going on for a very long time).

Yes, the Motion does seek to remove some inherent discretion of individual matters. That is the intent of the Motion. I am sorry the Mayor does not like it and am sorry if you do not like it. It is Council's right. There is NOTHING in the Motion that offends both legal and good governance principles and the requirements that the Council act as an informed and responsible decision maker in the interest of the community.

You and the Mayor cannot rule that this MON is 'ultra vires'. The Mayor has no legal right not to accept the MON.

Please make this available to be run tonight as a MWON or put it up again for the 2nd meeting in June 2017 as a MON.¹³⁵

190. On 29 May 2017 the council's Executive Group responded to reiterate that the proposed motion would not be accepted by the Mayor in accordance with his discretion under regulation 12(7) of the Local Government (Procedures at Meetings) Regulations.
191. On 30 May 2017 Cr Bagster responded:

You have said that Council has obtained legal advice WRT subject proposed motion.

Please forward me that legal advice so that I can understand why I, as a duly and democratically elected member of Council, am unable to put up a valid MON and how the MON is beyond the power of Council.¹³⁶

192. On 30 May 2017 the council's Executive Group responded to direct Cr Bagster to the summary of the council's legal advice contained within Mr Cooper's 22 May 2017 email. Shortly afterwards. Cr Bagster responded:

Respectfully, the 22 May 17 [sic] does not contain the original legal advice from its original source.¹³⁷

193. On 18 May 2017 Cr Bagster emailed Mr Cooper, together with Mr Cant, Mayor Parkin and the elected members:

Dear Martin,

¹³⁴ LB082.

¹³⁵ LB096.

¹³⁶ LB137.

¹³⁷ LB137.

Still no word on the CEO's gigantic breach of council Resolution (C11055) and my associated Coe [sic] of conduct complaint!?

Is it still in train!? Does Paul have any limitations or restrictions to his comms from a separate protocol that I have not heard about? Are you giving Grant Piggott or Mark Osterstock any new Resolutions to rum=n [sic] at next Council meeting? Be handy to know!? Why not try [Cr Helga Lemon] as an alternative next meeting?

With due respect,

Cr Lance Bagster

PS Is [Cr] Helga [Lemon] talking to anyone any more?¹³⁸

194. On 12 May 2017 Mr Cooper responded to request an apology in respect of Cr Bagster's previous email, before observing:

Please note, that I do not intend to respond to any further communications from you of this nature. They will simply be saved to the Council's Electronic Documents and Records Management System.

I also take this opportunity to remind you of your role and duties as an Elected Member of Council pursuant to sections 59 and 62 of the *Local Government Act 1999*, as well as your requirements to observe the Code of Conduct for Council Members in accordance with section 63.¹³⁹

195. Cr Bagster responded by email the next day:

Dear Martin,

Here's an apology:

"I am sorry if you are upset by my assertive stance on the recent issues that have effected [sic] me so terribly. I believe that you are incorrect to state that my assertions WRT the CEO are "baseless, unfounded and offensive". They are nothing of the sort. They are in fact true and proven, I find your defence of your immediate superior officer and supervisor quite admirable, but if I were you I would not accept, at face value, that he is 'lily white and pure and new fallen snow' in respect of these matters, I do not believe you have acted (by yourself) inappropriately. I only seek to get to the bottom of the issues involved and to find the true [sic] as to who wrote those horrendous allegations against me and who proposed C11055 to Cr Piggott, I thought that Cr Piggott was a deal more circumspect than that—therefore I believe that he was asked at short notice by the Mayor or Council Administration (led by 'You-Know-Who', no... not Valimort [sic]) to run such a wacky and illegal Motion."

How's that for an immediate apology!?

Please don't bother reminding me of anything – lest I start quoting slabs of your own employee code to you!

Please encourage your boss to make an apology to me for his offensive behaviour (malfeasance, vilification, libel, breaches of the Code of Conduct, breaches of very specific Council Resolution [sic]).¹⁴⁰

196. On 13 May 2017 Cr Bagster emailed, *inter alia*, Mr Cooper and the elected members (emphasis in original):

Dear Martin and the Exec Team,

Please send me the Audio recording (as an electronic audio file) of the last Council meeting. I am especially in need of the QWONS and the part of the meeting which was initially set in the agenda as 'confidential' REGARDING ERA WATER and the CEO's claims at this time (IN THE PUBLIC MEETING).

¹³⁸ LB074.

¹³⁹ LB077.

¹⁴⁰ LB077.

I have not seen the ERA Water items appear on the publicly available website yet. What is going on? Where's my priority (I think you called it a 'premium' service) service gone WRT the LJB ADMIN ACCOUNT?¹⁴¹

197. Shortly afterwards, Cr Bagster again emailed, *inter alia*, Mr Cooper and the elected members:

Dear Martin,

I am still waiting on, and expect, the transcript of our meeting regarding the communications protocols put in place by Resolution C11055 and an answer regarding who wrote the in-ascribed [sic] e-mails to me.

You must know that I lament the fact that none of this angst would have been necessary if your boss had simply done the 'righty' by the City and met with me as he said he would, apologised for his atrocious conduct and perhaps offered his resignation to Council – which I would now enthusiastically embrace.

Please don't get too attached to him!

A fish rots from the head.¹⁴²

198. On 18 May 2017 Mr Cooper emailed Cr Bagster to provide a lengthy explanation as to why the 23 questions on notice submitted by Cr Bagster on 17 and 19 April 2017 had been largely disallowed by the Mayor as not conforming to regulation 9 of the Local Government (Procedures at Meetings) Regulations. This email concluded:

There are, therefore, only two (2) questions that are, on a proper construction, within regulation 9. These will be included in the Agenda, but it is recommended that they be dealt with on a confidential basis as they refer to confidential Council resolutions[:]

1. Can you please provide an update of the progress of the BCC internal review (by Griffin Lawyers) of the subject Resolution (C11055) and its consideration of the 'protocol'?
2. When are the relevant reports into the implementation of Resolution C11055 to be released to Council and released to the public?¹⁴³

199. On 21 May 2017 Cr Bagster responded:

Dear Martin and Rebecca,

I absolutely disagree that the attached QON do not relate to the functional, strategic or policy issues Council now face.

I require answers to all the QONs in the attached.

Please put them up at the next available opportunity.

I also request separate answers to these questions directly to me.¹⁴⁴

200. On 22 May 2017 Cr Davis responded to Cr Bagster's email:

Dear Lance,

You have been given a comprehensive answer to your question and the administration have made it very clear.

Asking the same thing expecting different results is just a waste of time.¹⁴⁵

201. On 22 May 2017 Cr Bagster responded to Cr Davis:

¹⁴¹ LB078.

¹⁴² LB079.

¹⁴³ LB085.

¹⁴⁴ LB085.

¹⁴⁵ LB092.

Dear Henry,

Can you pls confirm that you have been on the Australian electoral role [sic] as living at [address omitted] since before the November 2014 elections?¹⁴⁶

202. That same day, Cr Bagster sent the following email to Mr Cooper, Mayor Parkin and Cr Piggott, with the subject line 'QON – Legitimacy of Cr Henry Davis' 2014 Election to the Burnside Council':

It has come to my attention that Mr Henry Hewitson Davis (aka Cr Henry Davis) is on the SA Electoral roll as residing at [address omitted]. That residential address is in the Federal Division of Pt Adelaide; the State Division of Cheltenham; and in the City of Charles Sturt (Woodville Ward).

I understand that Mr Henry Davis has never been an enrolled resident of the Burnside City, and has never paid rates to the Burnside City Council.

Questions on Notice:

1. How was Mr Henry Davis legitimately allowed to contest the November 2014 Council elections as a candidate for the City of Burnside as a non-resident and a non-ratepayer?
2. If Mr Henry Davis could not legitimately [sic] have contested the 2014 elections as a Burnside City candidate, can Mr Davis continue to serve in the capacity as an elected member (Councillor) on the Burnside Council now?
3. If Mr Davis cannot continue to serve as a Burnside Councillor, is he required to repay his elected member allowance to the people of Burnside since his appointment as a Council member?
4. If Mr Davis was not legitimately elected as a Burnside [sic] Councillor, what is the status (or validity) of Burnside Council Resolutions in which Mr Davis has voted?¹⁴⁷

203. This was followed by an email from Cr Bagster later that same day:

Regarding these QON, it may be that our very own Cr Henry Davis is actually not the same as Mr H.H. Davis. Possibly our very own Cr Davis is actually Mr R.H. Davis. If the later [sic] us [sic] the case, then I will withdraw the QONs, I'll go back to check the SA Electoral roll again.

Could you please forward me a copy of Cr Davis' application for candidacy in the November 2014 elections?¹⁴⁸

204. This was followed by a further email from Cr Bagster dated 23 May 2017, copied to Cr Davis:

Please disregard the subject QONs; they are withdrawn. I have been informed that Cr Henry's full name is Robert Lloyd Henry Davis. Cr Davis' current electoral enrolment is indeed within the City of Burnside.

Is it still possible, please, to be provided a copy of Cr Davis' candidacy application for the November 2014 election?¹⁴⁹

205. On 21 May 2017, after apparently coming to believe that his email account had been removed from the council's 'Elected Members' distribution list, Cr Bagster emailed Mr Cooper and the council's elected members:

Dear Martin,

¹⁴⁶ LB092.

¹⁴⁷ LB091.

¹⁴⁸ LB093.

¹⁴⁹ LB093.

I take it from you reforwarding me other Councillor's e-mails that the elected member e-mail list now excludes me.

So you have finally done it!? I'm officially off the elected member list? Have you also informed the electoral commission?

Please confirm that the CEO or you authorised my removal from the elected member mailing list and that you now have replaced me with yourself on that list and are now vetting what e-mails to re-forward to me?

I must say that, if these are facts, that this is an atrocious and intolerable situation; how dare you remove me from the list of other elected members! That is an insulting and a most egregious development in this sorry saga!

What right do you have to scan mail from other elected members and determine what I can and cannot see from my peers on Council? Have you informed other Elected Members that you are reading mail that was not intended for you?

Please explain to me what new limitations you intend to impose on me into the future and what you are also doing to the CEO's e-mail correspondence to (how does the Mayor put it!?) punish him for his misdemeanours for which he has paid absolutely no penalty. Why am I continuing to pay the price for the CEO's 'crimes'?

Please immediately reverse this travesty.¹⁵⁰

206. Later that day, Cr Bagster again emailed Mr Cooper, together with Mayor Parkin:

I note the most recent changes to my email account, I note that you have, without informing me and without my permission, removed me from the the [sic] elected members group email account and are now vetting emails for Thier [sic] applicability to me and forwarding on what you consider to be relevant to me.

Can you now please confirm that you have;

1. removed the CEO, Mr Paul Deb from the executive DG group email account;
2. You have created a new account for the CEO similar to the LJBAAdmin account (perhaps it is called 'CEOAdmin');
3. That you have vetting emails to the executive group address and are forwarding emails that you consider appropriate that he receive;
4. That you have raised a directive to all Burnside Council Administration staff that no one is to correspond directly with the CEO because of vague concerns over 'OH&S' issues,

I think that the implementation of items 1 to 4 above might be a fair and equitable measure and regime to apply to the CEO.

Please reply to these concerns and raise these as QON for the next meeting after 23 May. If you cannot transcribe them into questions, let me know and I'll restate them as 'questions'.¹⁵¹

207. On 22 May 2017 Mr Cooper emailed Cr Bagster:

Thank you for your email below and for bringing this matter to my attention.

This has been an unintended consequence of Administration's attempt to prevent you receiving 'direct' communications from the CEO when, [sic] he is simply discharging his duties, communicating with Elected Members using the EM_DG Email Distribution list (as required by the Implementation of the procedure in resolution C11055, 28 February 2017 (as amended by C11112, 28 March 2017)).

Administration will remove the EM_DG Distribution list until a workable solution can be determined.¹⁵²

¹⁵⁰ LB084.

¹⁵¹ LB087.

¹⁵² LB100.

208. On 23 May 2017 Cr Bagster responded in turn:

Please confirm if, before the Elected Member DG list was removed, that you had replaced me with yourself on that list and were vetting what e-mails to re-forward to me?

Please explain to me what new limitations you intend to impose on me into the future and what you are also doing to the CEO's e-mail correspondence to (how does the Mayor put it!?) punish him for his misdemeanours for which he has paid absolutely no penalty.

Have you also removed the Exec-DG e-mail address to prevent me or other members from inadvertently [sic] sending the CEO mail? Have you also raised a CEOAdmin account for the CEO?¹⁵³

209. On 21 May 2017 Cr Bagster emailed Mr Cooper and Mayor Parkin:

I note Council Administration's reluctance and unwillingness to put my legitimate motions and questions to Council through the correct procedures that I have employed.

I note that, last year, Mayor Parkin ruled on one of Cr Ford's rescission motions. It was subsequently determined by proper legal advice that Council does not have the power to rule a matter ultra vires!

Please do me the courtesy of raising an amendment to the agenda and answers to my QONs for the next Council meeting; or provide me the means and time to have these MONs run on the night and provide supplements to Council (including me) if you are too embarrassed to put them in the minutes.

For Martin, can you please address all future correspondence to me using my appropriate title of Councillor.¹⁵⁴

210. On 22 May 2017 Cr Bagster emailed the following statement to the council's Corporate Communications Advisor for proposed inclusion in the council's quarterly resident newsletter:

As you are reading Focus – congratulations! By definition, you're one of the few residents who has an evidentiary interest [sic] in what is actually going on in Council. Great stuff! Good for you! The trouble is, there aren't enough folks like you who take an interest in what is going on to [sic] Council; what Council Administration are doing with you [sic] hard earned rates; and (more importantly) what value you are getting for your rates. We need more people like you!

Please keep taking a interest [sic]; why not come down to Council meetings; contact your local Ward Councillor with your questions and concerns? Why not ask your friends and neighbours to start taking an interest too. You might be amazed or even gobsmacked like I frequently am to find out what's actually 'going on'.

It's your Council – the Burnside Council should be working hard to provide you with the best possible urban environment and services possible. It should be there to serve you and your interests.

As I routinely say, I'm seeking recruits to become the next generation of Elected Members (Councillors) for the elections at the end of 2018 – closer than you think. Burnside needs fresh blood: people interested in community and in getting the best value and service from Council. Could this be you!?

Your City needs you. I need you. Come over and fight the good fight! Keep Council on track and help get rid of the bad eggs and dead wood.

You know the drill - please email or call me at anytime [sic] if you need help with a Burnside Council issue.

Be good; or be good at it!¹⁵⁵

¹⁵³ LB100.

¹⁵⁴ LB086.

¹⁵⁵ LB089; LB090.

211. On 22 May 2017 Mr Cooper responded to Cr Bagster to request that the phrase 'help get rid of the bad eggs and dead wood' be deleted on the basis that it was considered derogatory of the council's elected members, to which Cr Bagster responded on 23 May 2017:

I am not referring to Elected Members. Alternatively it refers to elements of Council Administration and I could give you specific examples and the reasons as to why they should be removed and replaced.

Martin, this is politics.

Please do not adjust my words. They were written for a specific intended purpose. It is my place (my right and my duty) to ensure that there is integrity and right-mindedness in the Burnside Council.

The terms "bad eggs and dead wood" are not obscene or offensive; and they are common vernacular designed to convey a specific image and an idea.

I find that you allegation [sic] that my words are "inappropriate and unacceptable conduct" to be hurtful and offensive.

Your assumption that I refer to other EMs is a poor one.

I am happy to accept an apology from you.

You obviously have not watched 'The Revenant' yet!?

Can you please tell me why most Council Administration Officers have been directed most to [sic] come to tonight's meeting?¹⁵⁶

212. On 23 May 2017 Cr Bagster emailed Cr Piggott:

What I really want to know from you is: Did you propose Resolution C11055 all by your lonesome; or were you put up to it by David Parkin or Paul Deb? In other words, did they give you the suggested wording of the motion or suggest to you that you put it up?

You must know that I have found the imposition of those horrendous communications restriction on me and the concocted allegations of me bullying and harassing anyone to be totally unacceptable. I really hate dealing with this Council at the present time.

In terms of my priorities on Council ATM are to:

- expose the CEO's misdemeanours and breaches of the Code and his other various offences;
- Get C11055 rescinded and the CEO acting right-minded and in the interests of the people of Burnside (and working with all the EM in a fair and equitable fashion);
- Finalising the Ombudsman's submission regarding C11055 (this will depend on Council's response to the; [sic])
- Getting footpaths built where pedestrians forced to walk on the road are getting injured;
- Getting the planners to act IAW the planning policies as set.

[...]

Also be aware that the CEO has decided to direct most Council staff not to attend tonight's meeting. Do you know about that?¹⁵⁷

213. On 23 May 2017 Cr Piggott responded to Cr Bagster:

I am remiss in not responding to this question earlier.

¹⁵⁶ LB095.

¹⁵⁷ LB094.

The Motion was authored by me and I asked Martin for feedback in respect to the wording ahead of time (my normal practice). Neither Paul & [sic] David were involved with its production.

I had observed excerpts of communication between you and Paul (those emails where I was copied in) over a number of months and believe that the only workable way forward was to eliminate any communication between the two of you. The relationship had deteriorated beyond repair. The raising of the issue within the Report provided the catalyst for doing so.¹⁵⁸

214. On 23 May 2017 Cr Bagster, in an email copied to Mayor Parkin, responded in turn:

Thank you so much for bravely answering me that, I had been worried that it'd been a set up [sic] from Council Admin or David. I have seen them do that before. My problem now and real concern is that in asking Administration to vet your words and make suggestions for that Motion (C11055), they were ALL conflicted. Remember that all the Burnside Administration staff work for the CEO; and the CEO and David Parkin have a very cosy relationship.

You cite excerpts of comms between me and [sic] the CEO. At the genesis of each of those excerpts is me as an elected member simply requesting the CEO to act in the best interests of my community. That's my job! That's what he's paid to do. He even takes offence when I compliment the guy. I couldn't win!

Let me tell you that reports from Mr Deb that his and my relationship have 'irrevocably broken' down were simply to cover up for the fact that he was found to be significantly in breach of his Code of Conduct and also that that coincided with my claim for damages against him (vilification, defamation, misfeasance). He has also concocted the most horrible tales that I am now a 'bully' and I 'harass' him and his staff. Do you remember him making the claim to Craig Cook in the Advertiser that no one was allowed to comment and then he goes on to proffer his opinion that it will all come out. Well now that it has 'come out' to Council, apparently no one's allowed to learn the truth, because it does not suit Mr Deb. In fact the truth goes significantly against the poor chap. For crying out loud [sic] mate. It was Paul's breaches of his Code that Council should have been considering when you ran C11055 (with wording helped along by Mr Deb and his staff, maybe even the Mayor, who wanted me punished). Instead of the truth coming out and justice being done, I end up being punished. That's crazy! Go back and have a look at the report, Council should have seriously been considering sacking the CEO, not punishing me.

This is a most unsatisfactory situation. All I ever wanted from the CEO was that he acts [sic] in the best interests of the Council, elected members and staff (and thereby in the best interests of the people of Burnside). I have only ever asked for the CEO to make an open and public apology to me and the people of Burnside and things would have been fine, I would have dropped my claims and turned the other cheek; getting on with the business of Council.

You simply would not believe me if I was to state it, but I have been holding back on Paul in the hope that he turns around and does the right thing. I seriously have a number of very wealthy Burnsideans lining up; offering me their SCs and barristers to file an action against Paul. There is a big and growing discontent in our community mounting and I am resisting calls for his head on a platter, I just want that apology and the Bullshit around the comms stuff removed.

The effect of C11055 is that I have been punished and further degraded in my ability to properly carry out my duties as an elected member. None of Resolution C11055 has made any appreciable difference to the way that Paul operates... it's been all 'down side' for me. Meanwhile the CEO escapes without a scratch, without making a proper apology and continues to vicariously vilify and denigrate me – impeding my ability to function efficiently and effectively as an elected member.

Even tonight, you'll notice that Paul Deb has excluded most of the Council Staff from the meeting. I have no doubt that there'll be the claim or inference that it is because of that nasty Councillor bagster [sic]. "Can't have him stressing my staff", Mud sticks! And the

¹⁵⁸ LB103.

result will be that my good name and reputation will be further and unfairly tarnished and degraded – all effectively at the CEO's hands.

It's contrived and concocted BS. I really hate coming to Council. It is me that [sic] is being bullied, defamed and made to feel humiliated by a recalcitrant CEO and a Council who appear to have sided with the wrong party. It is me that is very much aggrieved by the actions and the inaction of the CEO.

I am certain if justice is to prevail, that this will all come out in the wash and – if the SA Ombudsman can be bothered to look at it, I will be vindicated. Meanwhile, Burnside has to suffer more humiliation and loss of reputation just to protect that man who should not be protected.

Can you also believe that the Mutual Liability Scheme has agreed to cover Paul's backside in a private damages claim!?! Since when was it in Paul's duty statement or part of his role to humiliate, vilify and defame elected members? Do you think that the MLS should help me pursue Paul too!?

I hope that you are in a position to help me and help the City of Burnside mate. That bloody Resolution that the Mayor has written was designed to punish me has got to be rescinded. Perhaps, even now, if you could somehow encourage Paul Deb to gather up the courage to apologise in public... these present problems will disappear. Then we can all just get back to work.

In the meantime I am really very upset and offended with the current circumstances which have been solely of the CEO's making.

Trust me Grant, I am not getting back in my box on this issue; I am going to keep up a campaign until there is some justice here. Please be on the right side of history! Please work with me and not against me.¹⁵⁹

215. On 22 May 2017 Mr Cooper emailed Cr Bagster to provide a line-by-line response on behalf of the council's administration to each of the 23 questions on notice proposed in Cr Bagster's 17 and 19 April 2017 emails. In making that response, Mr Cooper observed that certain of Cr Bagster's questions were 'offensive' and not warranting of an answer. On 23 May 2017 Cr Bagster emailed Mr Cooper, Ms McAulay and the council's elected members in response:

I thank you very much for the more complete answer set, I am very grateful, I won't be asking them again.

You could perhaps tone down your allegations that my questions are 'offensive'; you will understand that these questions are part of an 'information campaign' and I have a political imperative in operation. You really should watch 'the Revenant'; it's such a good movie.

I appreciate that I am not ever going to get an unambiguous answer to exactly who wrote the 'bullying and harassment' allegation anonymously, No need now! In any case, I am delighted to see that I no longer receive anonymous e-mails and any cowardly and false allegations have since ceased.

Regarding your claim that sending messages in the early hours of the morning is harassment, I would ask you to consider the fact that I may not have been in the same time zone as you. Also I regularly receive e-mails from Council Administration at all sorts of odd hours. Should I now claim to have been harassed by Council for these early morning e-mails? Can I suggest that you turn your phone off when you sleep or perhaps turn off all alert notifications. I believe that alleging that I have harassed you because you received out of hours SMSs from me is a little 'contrived' and not at all a fair assessment. I am genuinely sorry that you have been upset by getting early morning SMSs, but this was not 'harassment' on my part nor was it my intent to harass [sic] you, I will accept a swift apology from you and a retraction of that allegation.

Please be assured that you (personally) are not on my 'target list'. I think that you are handling a difficult situation as best you can and you are between a rock and a hard place (or a belligerent and a bad egg).

¹⁵⁹ LB103.

Thank you for these answer [sic] and your continued hard work doing a very difficult job.

Please pass on my sincere thanks to your staff at this difficult time; it should all be concluded (eventually) once the Ombudsman brings down his findings regarding C11055 or if the CEO finds the intestinal fortitude to make a public apology to me and the good people of Burnside.¹⁶⁰

216. On 23 May 2017 Cr Bagster emailed Mr Spearman:

G'day Matthew,

Can you please confirm who authorised the taking and who took my rights and privileges to send correspondence to my fellow Elected Members?¹⁶¹

217. On 23 May 2017 Mr Cant emailed Cr Bagster to provide an update in respect of several matters of council business and to request that future requests for information from Cr Bagster be sent by email rather than SMS message. Shortly afterwards, Cr Bagster responded:

Thanks Mr Barry Cant,

Better late than never.

[...]

Regarding the use of the LJBAAdmin account, you must know that I hate the thing and can never accept it as a legitimate or valid tool. I won't and cannot accept being punished for the misdemeanours of your boss. That is just an atrocious and undemocratic state of affairs.

I still stand in need of the staff directive (or instruction) that obliges staff to use the LJBAAdmin account. Can you please send this to me soon?

Why have staff been directed not to attend tonight's council meeting?¹⁶²

218. On the evening of 23 May 2017 Cr Bagster emailed Mayor Parkin, together with several of the council's elected members:

This e-mail is to offer my late notice apology for the Council meeting of 23 May 2017. I have cc'd other councillors here in case this e-mail slips your mind or you do not receive it in time for the meeting.

I have become extraordinarily busy with work and think may not be in a position to make it to Council tonight; but we shall see how things go in the next couple of hours.

I note that the agenda for tonight has me erroneously listed as being on a 'leave of absence'. This, as you well know, is incorrect because Council, in an unprecedented move in April did not approve my validly requested leave. Further, that leave Motion was considered and debated in Confidence – another unprecedented move by the Burnside Council.

Can you please see that the record (of the current Council Agenda for 23 May 17) is corrected also that I am not shown to be on a leave of absence.

I would also very much like to know whether, during the debate over my 'non-approved' leave, that you joined the debate or whether Council Administration supported voices calling for my leave not to be approved, Why were the Motion and Resolution for my leave of absence considered and then held in confidence? Who made that decision? Why do I have to be treated differently to other Councillors?¹⁶³

219. I understand that during the council's 23 May 2017 ordinary meeting Mr Cooper addressed the council's elected members to provide a summary of Cr Bagster's

¹⁶⁰ LB098.

¹⁶¹ LB098.

¹⁶² LB099.

¹⁶³ LB102.

communications with staff and to express concern on behalf of the Executive Group at the nature of Cr Bagster's behaviour. I understand that Mr Cooper ended this presentation with a 'personal impact statement', which I set out in full:

When I took on the GM role I understood it's not a 9 to 5 job. Like my peer Barry, I am totally committed to performing my role contentiously [sic] and to the best of my ability. That said, nothing can prepare you for this type of scenario. My ability to perform my job has been profoundly impacted by Councillor Bagster's behaviour over the last 2.5 months. The sheer volume and nature of his communications has clearly absorbed a huge amount of my time. I have had to engage lawyers to provide me with legal advice at a significant cost to Council (\$19,110 excl gst 28 Feb to 15 May inclusive) as well as liaise with the Mayor and Elected Members on these matters. It's fair to say that I am constantly on edge in anticipation of the next round of communications from him and how he might react to me providing a response that perhaps he isn't happy with. I feel harassed, threatened and quite frankly unsafe. I find myself having to work every evening and at weekends in order to catch up with all of the priorities from my day job, this clearly affects the amount of quality time that I have with my family. I believe these matters have directly affected my sleeping pattern and this is not sustainable.

I will not, under any circumstances, agree to meet with Cr Bagster again in the future. For clarification, I intend to make a stand against his shocking behaviour and submit a code of conduct against him at the earliest opportunity that I sincerely hope will one day be available to the general public.¹⁶⁴

220. Between 22 and 24 May 2017 Cr Bagster appears to have sent the following SMS messages to Mayor Parkin:

Message sent on 22 May 2017 at 5:13pm:

More schadenfreude coming to a chamber near you!?

Is your good matey Paul ready to make a public apology to the City of Burnside?

Message sent on 23 May 2017 at 10:22pm (following the conclusion of the council's 23 May 2017 ordinary meeting):¹⁶⁵

You made a terrible allegation.

I have no respect for you now David.

You should retract that lie and make good the damage you have caused!

Message sent on 24 May 2017 at 11:30pm (possibly in reference to an article appearing in *The Advertiser* newspaper referring to the contents of the MinterEllison report, published that same day):

How's that for schadenfreude? Do you really want me as an enemy?

Because at your stage David I would have thought you'd be trying to keep the friends you had.

Gimme a call when you have the balls.

Message sent on 24 May 2017 at 11:35pm:

The Revenant [hyperlink omitted]¹⁶⁶

221. Between 23 and 24 May 2017 Cr Bagster appears to have sent the following SMS messages to Mr Cooper:

¹⁶⁴ Document identified as L0161B in records supplied by council.

¹⁶⁵ Cr Bagster's conduct during this meeting was the subject of a separate investigation by my Office; Ombudsman ref. 2017/07226 refers.

¹⁶⁶ LB104.

Two messages sent on 23 May 2017 at 10:28pm:

Martin, I request all of the reports that you have made to the mayor and any Elected Member alleging that I have bullied or harrassed [sic] Council Administration staff. I request them within 7 days. Thanks in anticipation.

Additionally I want to have any briefings you provided to Griffin Lawyers alleging that I have bullied and harrassed [sic] staff.

Message sent on 23 May 2017 at 10:28pm:

The Revenant [hyperlink omitted]

Seriously, this is a great little movie.¹⁶⁷

222. On the afternoon of 24 May 2017 Cr Bagster emailed Mr Cooper the following letter, said to constitute a concerns notice for the purposes of the Defamation Act:

Re: Repeated Defamatory Accusations and Allegations of Bullying and Harassment constituting Defamation and Malfeasance

At last evening's Burnside Council meeting (23 May 2017) the Mayor, Mr David Parkin made the atrocious allegation to the meeting that I had been bullying and harassing Burnside Council administrative staff. Mayor Parkin did this in front of the gathering of all the Council and some Council Administrative officers (including you, Mr Barry Cant, Mr Matthew Spearman and others). Mayor Parkin attributed his accusation to information provided by you.

It became evident during the course of the Burnside Council meeting (23 May 2017) that a number of my peer Councillors (especially Councillors Davies, Davis, Lemon and Osterstock) have also adopted the same position and belief as the Mayor in that they now also believe I have bullied and harassed council staff. This is because during the Council meeting, especially as I was leaving, these Councillors verbalised and echoed the same words, sentiments and belief - stating that I am a "bully". Cr Henry Davis went as far, in his debate in the chamber, as to repeat the allegations that I have behaved in an unacceptable fashion and that I have bullied and harassed staff. Cr Henry Davis attributed these allegations to Council Administrative executive staff. Since the Council executive presently only includes you, Mr Cant and the CEO - and Mr Cant and the CEO have not been involved in [sic] briefing Council on the (so called) 'communications protocols and issues surrounding Council Resolution C11055 -1 can only reasonably assume that these allegations came from you alone.

Further, from last night's Council meeting I now understand the context in which and why Mr Greg Griffin (of Griffins Lawyers) has made reference to "OH&S issues" in his 'internal review', "independent report" and in other correspondence to me of 10th May 2017. Please see the attached correspondence between me and Griffin Lawyers. You will notice that Mr Greg Griffin makes only circuitous and ambiguous reference to "OH&S issues" and deliberately avoids directly inferring or accusing me of bullying and harassment. More specifically, Mr Greg Griffin (at paragraph 8. 8 of the independent report) notes that (in paragraph (h) of the Preliminary Assessment Report) the only direct reference to allegation of "bullying and harassment" are my claims that the CEO has made a FALSE allegation and that I have made reference to the CEO bullying and harassing me. I believe you have erroneously raised the "OH&S issues" as concerns to council and have inferred that it is me (and not the CEO) who has bullied and harassed Council staff. You have done this in your briefing to Council in my absence. I reasonably conclude that you have made this assertion to the whole of Council, a number of Council Administration staff and to outside parties, most notably to Griffin Lawyers.

In my non-answered Questions On Notice (QONs) to you (see attached) I included an e-mail I received (please see the attached email train) regarding the email dated Friday, March 24, 2017 1:59 PM. That e-mail was sent to me via the Council's 'LJBAdmin' email account and contains an allegation, without specifics, that I have carried out 'bullying and

¹⁶⁷ LB105.

harassment'. You have since confirmed that the e-mail could only have been written by either you or Mr Barry Cant (GM Urban Services). I have fair and reasonable grounds to believe that those allegations were made (and that e-mail written) by you and not Mr Barry Cant, because Mr Cant has not been directly involved in implementing the so-called communications protocols surrounding the 'LJBAAdmin' email account, which was the subject of the e-mail chain; whereas you have. Additionally you have confirmed to me that material and e-mails sent to me via that account can only come to me via you or Mr Cant.

Your false allegations and statements to Burnside Council members, Burnside Council staff and other individuals I have perpetrated bullying and harassment upon you or any other Council Administration officer are offensive, hurtful and defamatory. These false allegations have had a significantly deleterious effect on me, my reputation and good name and on my ability to efficiently and effectively conduct my work as a duly elected member of the Burnside Council. I have provided you significant evidence here to demonstrate that you have not just [sic] made these allegations in an 'off the cuff' fashion, but you have delivered this allegation in a routine and systematic fashion over a prolonged period of time. The imputations and allegations are defamatory and may even constitute malfeasance.

In last night's council meeting, on my way out of the chamber, I very clearly stated that the Resolution C11055, its various amendments and associated protocols (which the mayor has confirmed are designed to punish me) are therefore "based on a lie". That lie has been repeatedly made by you and it is now evident to me that the lie has been perpetuated, uttered and is shared (as a 'fact') by the majority of Council.

Rather than [sic] head immediately down the path of legal action I now invite you to make good some of the damage you have caused by doing the following:

- **Make an open and unreserved written apology to me and a statement.** The apology should be addressed to all of the Burnside Council members, all of Council Administration staff and to any outside agencies or individuals involved, especially Griffins Lawyers. The statement should retract or entirely withdraw the false allegations you have made. Ideally, this statement would be best as a joint statement with both you and the Mayor both signing it, since the Mayor, as the Presiding Member, has levelled the same false allegations against me. I request that you electronically submit a draft of your clear and unqualified apology and statement to me by 3:00pm on the 30th May 2017. Your apology, statement and retraction should be published (in full) in the public (non-Confidential section) of the next Council meeting agenda for the 13th June 2017 or as an alternative in the Messenger newspaper or the Advertiser by NLT 13th June 2017.
- **When next you provide an update to council on the implementation of C11055:**
 - provide an unambiguous account of the false allegations and that you unreservedly apologise and retract all allegations and inference that I have bullied and harassed Burnside Council staff.
 - Provide Council with my clear view that, regarding the intrinsic inferences in Resolution C11055 (and its various amendments) and associated protocols and the remarks made by my peers in Council on the evening of 23 May 17, I find:
 - them offensive, inappropriate and unlawful; and
 - that the Resolution C1 1055 prohibits the CEO and myself from undertaking our Council duties and obligations and should immediately be rescinded.

Please treat this letter as a preliminary notice of concerns for the purposes of the Defamation Act. In the absence of a reply and the requested outcomes I will instruct my lawyer to write more formally to you on a path to commence proceedings against you. In the meantime I reserve my rights.¹⁶⁸

223. It appears that on or before 26 May 2017 Cr Bagster implemented the following autoreply in respect of his council email address:

¹⁶⁸ LB107.

Due to abnormalities in Burnside Council's e-mail system and change in communications protocols, the Council's e-mail processes are not functioning correctly for me. Therefore, I may not get your e-mail for some time, if at all. Please re-forward your e-mail to me at lance.bagster@gmail.com (please be sure to include your name, address if appropriate and your return contact details) or contact me via the phone number below, Be good or be good at it!¹⁶⁹

224. On 25 May 2017 Mr Deb sent the following email to the council's elected members, together with the council's leadership team:

Dear Members

Cr Bagster, in an email dated Tuesday, 23 May 2017 3:49 PM (refer attached), sent to Martin Cooper and carbon copied to all Elected Members and Rebecca McAulay, stated "*I have a political imperative in operation.*", "*You really should watch 'the Revenant'; it's such a good movie.*" and "*Please be assured that you (personally) are not on my 'target list'.*"

Furthermore, Cr Bagster sent a text message to Martin Cooper last night at 11.36 pm (refer attached image).

Cr Bagster has advised, in writing, that he has a "target list". He has also made four direct references to the film, *The Revenant*, which is an R rated film "*for strong frontier combat and violence including gory images, a sexual assault, language and brief nudity*" (as stated on IMDB).

You would all be aware that under the provisions of the *Local Government Act 1999*, and in particular, section 99, that the functions of the Chief Executive Officer, amongst other things, include giving effect to the principles of human resource management prescribed by the Act and to apply proper management practices.

Further, section 107 of the *Local Government Act 1999* requires that I, as the CEO, must ensure that employees are provided with safe and healthy working conditions.

Section 19(1) of the *Work Health and Safety Act 2012* sets out the primary duty of care required of the City of Burnside. This duty states, that the City of Burnside must ensure, that so far as is reasonably practicable, the health and safety of workers engaged by the organisation while the workers are at work in the business. Further and more specifically, this duty includes the provision and maintenance of a work environment without risk to health and safety. As Officers of the City of Burnside, the Executive is duty bound by Section 27(1) of the Act to exercise due diligence to ensure the organisation complies with all of its duties or obligations. To not ensure compliance exposes not only the Officers individually and collectively but also the organisation to be found to be in breach of the Act.

In exercising due diligence, this includes taking reasonable steps to ensure the organisation has available and uses appropriate resources and processes to eliminate or minimise risks to health and safety from work carried out as part of the conduct of the business.

On the basis of Cr Bagster's statement that he has a 'target list', his continual reference to the film *The Revenant* and his text message to Martin Cooper last night, and consistent with my duty of care and due diligence under both the *Local Government Act 1999* and the *Work Health and Safety Act 2012*, I, as Chief Executive Officer, in order to protect all staff that I have responsibility for and the organisation I lead, and following consultation with the City of Burnside Leadership Team, have chosen to address this issue by refusing to have all staff, except me, attend Council meetings in future.

Furthermore, in order to protect all staff that I have responsibility for and in accordance with my legal and moral obligations, I will immediately invoke a protocol that eliminates staff contact with Cr Bagster except through the established LJBAAdmin email account. This additional protocol will remain in place until I am satisfied that I can provide safe and healthy working conditions for all staff that I am responsible for.

¹⁶⁹ LB108.

I am currently seeking advice from relevant authorities and reserve my right to invoke any further protocols regarding Cr Bagster to protect all staff that I have responsibility for.¹⁷⁰

225. By separate emails to the council's elected members and administration dated 25 May 2017, Crs Davis and Osterstock each expressed concern at Cr Bagster's behaviour and support for the course adopted by the council's administration.

226. On 25 May 2017 Cr Bagster sent the following email to Cr Osterstock:

This communication to the CEO is inappropriate and unbecoming of you both as a fellow Councillor someone [sic] who purports to know the law.

Please immediately retract your comments and your statement!

I would counsel [sic] you to butt out of this as your current Courses of Action are leading to lie [sic] on the wrong side of history.¹⁷¹

227. On 26 May 2017 Cr Bagster sent the following email to Cr Davis:

I do wish you would not interfere in this matter and offer your very wrong interpretation of what I meant by my reference to terms and movies. You would have been better not to get involved and stir the pot. Please butt out and cease offering your incredibly biased and baseless assessments. I think your [sic] 'startling the troops' young Henry. Whilst you are entitled to have an opinion, you should be mature enough to understand that there is [sic] two sides to any story.

In this particular case, Council Administration have a totally wrong impression of events, references and intents. Now Henry, do you just suppose that Mr Deb might just have his own personal agenda at play here? Mmm? Any reason you might care to consider? You know as well as me that I am neither violent nor have I made a single threat against anyone. I have only ever asked of Council Administration to do the right thing and assist me and Council deliver the best possible return to Burnside for the their [sic] rates.

Henry, I am not even sure what you are doing on Council. I pay rates, you do not. I want just to represent my community and be assisted in that role by a co-operative, friendly Council Administration. You would appear to want to be engrossed in petty political fights and illogical argument.

Come on mate! Fair's fair!¹⁷²

228. Cr Davis responded by email dated 26 May 2017:

I have witnessed your behavior [sic] and I consider it to be totally out of control.

Do not message me. Do not send emails to my private email account. Do not come to my house or my place of work.¹⁷³

229. Cr Bagster responded in turn by email that same afternoon:

They're my words to you. Is that an echo?

Can you please clarify what you mean by my "behaviour being out of control"?

If you are going to may [sic] ambiguous allegations, please have the courage to specify what you mean and make the direct allegation in writing. What are you specifically alleging?

Please also note that e-mails on the Burnside Council system are public documents.

And yes, to repeat your words, you are most definitely never welcome at my home and if I could I would gladly have nothing more to do with you. I really only want to work with folks

¹⁷⁰ LB109.

¹⁷¹ LB112.

¹⁷² LB109.

¹⁷³ LB112.

who have the best interests of Burnside at heart. I really don't believe that that is you right now.¹⁷⁴

230. On 26 May 2017 Cr Bagster sent the following email to Mr Cooper, copied to the council's elected members and various officers within the council's administration:

Dear Mr Martin Cooper,

I have heard on the grapevine that you consider I had threatened, bullied and harassed you.

As I understand it you thought my use of the term "target list" and my reference to the movie "The Revenant" was particularly threatening. I am somewhat surprised as I had and have no wish to threaten, bully or harass you or indeed anyone else. You have unfortunately misinterpreted or misheard what I said.

The movie, "The Revenant", stars Leonardo De Caprio [sic]. In that movie, De Caprio [sic] plays a character that is wronged, robbed, sees his son murdered and who is left for dead by his former friends and colleagues. In the movie, his character goes to extraordinary lengths to seek justice and to right wrongs. My suggestion and reference to that movie was to explain my determination to seek justice and to right wrongs that have befallen me by my unfortunate involvement with certain people. I most definitely was not suggesting that I intended to become violent or do anything unlawful or improper to you or to anyone else.

The term "target list" derives from my military background. A "target list" is a list of priority targets for attention, not targets to shoot at. I was simply saying at the time that you were not on my target list and that Mr Paul Deb was the focus of my attention. I most definitely was not suggesting that I intended to become violent or do anything unlawful or improper to you or to him. I am surprised how you could see it otherwise.

Martin, I really hope that you are able to begin to work with me rather than against me. I am sympathetic to your difficult role on Council and that I have not been making your life easy.

However, you can believe me when I tell you, as I have routinely tried to explain - my present problems on Council were previously nothing to do with you. I hope you now may be in a position to help fix relationships rather than assisting others in destroying them.

For your benefit and information, I thought that I had to clarify what I meant by these terms and the reference and to reassure you that I literally have made no threat against you in using these terms or making reference to a movie. Certainly, no threat was ever intended.¹⁷⁵

231. On 26 May 2017 Cr Bagster sent the following email to Mr Deb, copied to the council's elected members and leadership team:

Dear Mr Paul Deb,

Until now I have deliberately and consciously not sent you any direct e-mails. However, you have sent me many and in direct contravention of Council Resolution C11055 requiring you not to do so.

Given your absolute and open disregard of Council's requirement of you, I consider it only fair that I now send this communication directly to you.

I hasten to remind you that your duty does not extend to carrying out a personal vendetta and retribution.

I hope that you will again begin to act only in the best interests of the City of Burnside and within the law.

I have not threatened, bullied or harassed your staff and I find any such allegations contrived, false and hurtful.

¹⁷⁴ LB112.

¹⁷⁵ LB111.

You continue to do yourself, your staff and the City of Burnside a significant disservice.

I do not intend to stand idly by and watch you make heinous and false allegations against me nor besmirch my good name and reputation.

Please immediately correct these mischievous actions, withdraw your false allegations and apologise.

Beyond that, I hope that you can do the courageous and the honourable thing.¹⁷⁶

232. On 26 May 2017 Mr Deb emailed the council's elected members to circulate a proposed media release repeating certain of the matters set out in his email sent the previous day. Shortly afterwards, Cr Bagster emailed Ms McAulay:

Dear Rebecca,

Can you please advise me (and hopefully the CEO) on whether this statement is in fact highly defamatory?

I believe it is, but I am not legally trained like you... so I have asked for legal opinion from my lawyer.

I find that this release is offensive and I am disgusted with the Burnside Executive (or whoever is proposing this).

Surely the publication of this would be significantly defamatory and constitute an act of malfeasance?

Can you please talk sense to Paul Deb and Martin Cooper? I most certainly haven't threatened, harassed or bullied anyone. So putting this garbage in a media release is most unfair, unwarranted and I feel it may also be unlawful. It is mischievous and mean spirited on the part of the CEO. I have had enough of a beating from that man already.

You are an experienced lawyer, understand local government and I believe you have a level head and a good heart; can you please help me out?

Are you able to prevent its publication and save the Council for further embarrassment and further legal action? Can you please get back to me soon?¹⁷⁷

233. On 26 May 2017 Cr Bagster appears to have sent the following SMS message to Mayor Parkin:

Hi David, now what is the Presiding Member going to be doing to help me out of this terrible situation that your pal Paul has created? Is he considering resignation?¹⁷⁸

234. On 28 May 2017 Cr Bagster sent the following email to Mayor Parkin and the council's elected members, subject 'QONs':

1. Did any Council Administration staff draft Motion (C11055) and the amendments?
2. Did the Mayor excuse himself from the debate regarding C11055 or did he contribute to it?
3. Has the Mayor encouraged the CEO to make a public apology to Cr Bagster, the Council and the ratepayers of Burnside for his proven misdemeanours and breaches of his Code?
4. Is the CEO preparing to resign?
5. What are the available mechanisms that Council has available to force the CEO to resign or terminate his contract?¹⁷⁹

¹⁷⁶ LB114.

¹⁷⁷ LB118.

¹⁷⁸ LB120.

¹⁷⁹ LB123.

235. On 28 May 2017 Mr Deb advised the elected members that he and Mayor Parkin intended to brief the Minister for Local Government on the issue of Cr Bagster's conduct in the coming fortnight. On 29 May 2017 Cr Bagster emailed Mr Deb:

CEO,

I request that I be invited to attend that meeting with the Minister for Local Government.¹⁸⁰

236. When that request was denied, Cr Bagster emailed the council's Executive Group:

Dear Exec Team,

What is the date and time that the CEO and the Mayor have arranged to meet with the Minister of Local Government?¹⁸¹

237. On 29 May 2017 Cr Bagster appears to have sent the following SMS message to Mayor Parkin:

Hi Dave. I'm getting UNBELIEVABLE letters, emails, phone calls of support. Are you sure that you want to go to the Minister (to whom I have already written) and further build upon Paul's dematory [sic], vilifying and self incriminating comments!?

If I was you I'd be backing as far away from [sic] this issue... Letting Paul drown in his own excrement. Am I making myself clear?¹⁸²

238. On 29 May 2017 Cr Bagster sent an email to a member of the public that included the following comment:

So sorry for my tardiness in response. I have been very tied up with small minded politics and legal issues with Council recently – you may have seen some of the stuff I'm dealing with in the paper of last week!? See attached.

You are always welcome to call me at any time – unless you fear that I might put you on my 'target list' and go all 'Revenant' on your ass,.. maybe even shoot you with my laser smurf gun!¹⁸³

239. By email dated 29 May 2017 the council's elected members were advised that Mayor Parkin had called a special meeting for the following evening to discuss of the matter of Cr Bagster's concerns notice to Mr Cooper and to consider a verbal briefing from Mr Deb. Cr Bagster responded by email to the council's elected members and leadership team dated 30 May 2017:

Dear Mr Mayor,

It is not appropriate that Council meet with the express purpose of having the CEO brief Council over these matters in which he has a significant conflict of interest.

Further, I call upon you to request, on behalf of Council, that Administration immediately takes down defamatory, vilifying and inappropriate material from the Council website.¹⁸⁴

240. Mayor Parkin responded later that afternoon:

- 1 The meeting will not be deferred.
- 2 you have an unequivocal conflict of interest with both matters and it would be inappropriate for you to attend.
- 3 The CEO will brief the council on Administrative actions he has taken. He has no conflict in this matter.

¹⁸⁰ LB124.

¹⁸¹ LB126.

¹⁸² LB129.

¹⁸³ LB130.

¹⁸⁴ LB132.

- 4 you have not yet advised me of the dates of your periods of absence and so no leave of absence has been approved.¹⁸⁵

241. Shortly afterwards, Cr Bagster responded in turn:

1. The only conflicted persons who plan on attending are you, Mr Martin Cooper and Mr Paul Deb. In all of these matters, as with Resolution C11055, none of them (if you care to remember) is supposed to disadvantage me, or cause me to be materially worse off. I am therefore interested in the matters to be debated, but I don't believe that I have a material conflict of interest.
2. I have never bullied, harassed or threatened anyone. Mr Deb's and your open allegation (that I have) is inappropriate and totally untrue. That you plan to meet (along with Mr Deb) the Minister of Local Government and perpetuate and repeat these horrendous allegations is inappropriate, hurtful, and defamatory. Your planned meeting with the Minister was proposed without mandate from the Council. Neither you nor Mr Deb should attend tonight's meeting because you both are compromised and conflicted.
3. The CEO most certainly should not brief Council in this matter, he is conflicted.
4. The dates for my leave are unchanged (until end of July) – the same as the previous leave period but from end of tonight's meeting. I could not have anticipated that there would be a Special Meeting called for. Please pass onto your proxy (or the presiding member for tonight) the task of reproposing my leave or offering my apologies if I cannot make the meeting tonight.¹⁸⁶

242. On 1 June 2017 Cr Bagster appears to have sent the following SMS message to Mayor Parkin:

G'day David.

Please let me know when SAPOL and Safe Work SA have dealt with Paul and your allegations against me. One [sic] they're decided that they cannot in anyway [sic] be reasonably interpreted as threats, bullying or harassment; I'll expect you absolute [sic] support; you to personally to [sic] apologise to me in public; and you to call for Paul's resignation. Can you please do these things!?

I think you now owe me these things.¹⁸⁷

243. On 2 June 2017 Mr Spearman emailed each of the elected members to request that they forward to him a copy of any correspondence they requested be considered as part of an independent review and report that had been commissioned into Cr Bagster's behaviour.¹⁸⁸

244. On 2 June 2017 Cr Bagster sent the following email to Mr Spearman, copied to the council's administration and elected members (forwarding a copy of his 26 May 2017 email to Mr Cooper):

Hi Matthew,

So I see that "special meeting" held on 30 May 2017 includes the following excerpt from Resolution C11228:

"3. That Administration present a report to the 13 June 2017 meeting of Council setting out the conduct matters giving rise to the Chief Executive Officers verbal update to Council regarding the Council's responsibility to ensure a safe work place."

¹⁸⁵ LB134.

¹⁸⁶ LB134.

¹⁸⁷ LB142.

¹⁸⁸ LB146.

You have called for emails which “fall into scope of the above that you believe should be considered” and forward [sic] them to review@burnside.sa.gov.au. What is that? A hate list repository!?

Here’s a really important one from Friday, May 26, 2017 3:11 PM (see below). I hope that it makes sense!?

I think that it shows how ridiculous this whole mess is.

Have you any idea just how offensive this is!? So now the CEO is attempting to gather “evidence” is he?

I hope that you find the smoking gun soon.... If you don’t I will deserve more than the apologies that are overdue to me.¹⁸⁹

245. Shortly afterwards, Cr Bagster forwarded to Mr Spearman a copy of his 24 May 2017 concerns notice to Mr Cooper with the following comments:

Hi Matthew,

This one’s also pretty pertinent for the review and witch hunt.

It was sent on Wednesday, May 24, 2017 3:18 PM. Please also note the letter attached.

I hope that Council can vet that for anything threatening, bullying or harassing. I do actually make reference to those in the letter.

When Council actually discovers, or comes to the realisation, that it’s me as the victim of bullying and harassment, can this please be reported to Council by the CEO at the next Council meeting?

Again, I deserve and expect an apology from the CEO, Martin and the Mayor.

Please have a good scan of the attached; maybe you might care to remind Mr Martin Cooper that I requested he electronically submit a draft of his clear and unqualified apology and statement to me by 3:00pm on the 30th May 2017. I also note that that time has now passed. I am still hopeful that I will receive the draft before the apology, statement and retraction is to be published (in full) in the public (non-Confidential section) of the next Council meeting agenda or as an alternative in the Messenger newspaper or the Advertiser by NLT 13th June 2017.¹⁹⁰

246. On 5 June 2017 Cr Bagster emailed the following statement to the council’s Corporate Communications Advisor with the request that it be uploaded to the council’s website and published in the council’s resident newsletter:

The Burnside Council CEO, Mr Paul Deb [aka McDeb], has mischievously contrived and orchestrated terrible and false allegations against me to cover up his own misdemeanours. Mr Deb has already been found to have contravened his code of conduct. He has now contravened the Local Government Act and is 100% conflicted in his current actions. Mr Deb actions [sic] against me are purely motivated by self-interest, retribution and revenge. I am the innocent victim of childish, unlawful bullyboy tactics.

I encourage Burnside’s Mayor, David Parkin, to show some leadership and discipline CEO Deb for his breaches of his Code and the Act, and to keep meetings relating to such matters in the public arena rather than running away from open council meetings and meeting in camera. What does BCC have to hide?

I only ever want to just get on and represent my great electorate. I have only act [sic] in the best interests of the community and the City of Burnside. This is what everyone on Council should be doing. The Mayor and the rest of the Council should be helping me in that important role, not obstructing me.

Mr Deb has asserted that the allegations have been reported to agencies including SAPOL and SafeWork. It is however my understanding that SAPOL have determined the

¹⁸⁹ LB143.

¹⁹⁰ LB144.

claims baseless and will not be investigating. I truly welcome the involvement and agency that can shine a bright light on the issues at the Burnside Council and Mr Deb's antics.

The CEO of any City Council has a big and difficult job to do, especially when it comes to dealing with a many staff and managing the requests and expectations of 13 elected members; all with different agendas. I'm sympathetic to Mr Deb's position. However, CEOs are paid handsomely to do a difficult job. CEOs need to be honest, courageous and resilient. We all make mistakes, but it takes courage to admit them, fix them and get on with the job at hand. I hope that Mr Deb rediscovers that courage, strength and integrity which might then allow Council staff to just get on with business as usual ... and this Elected Member to get back to the job of representing my community. I hope that Mr deb [sic] can bury the hatchet and apologise; then we can all move on from this sorry chapter.

I wish Mr Deb every success in whatever role he tackles in the future. I hope that he is able to do the courageous and proper thing by his long suffering staff, by the Council and, more importantly, by the people of Burnside.

To the hard-working and dedicated staff of the Burnside City Council I would like to offer my thanks and support. Thank you for your ongoing support to me and the other Elected Members at this difficult time for Council. Hang in there; I'm optimistic that help and changes are on the way!¹⁹¹

247. On 6 June 2017 Mayor Parkin responded to Cr Bagster:

The matter of your complaint against the CEO has been dealt with by a resolution of Council. It is over. You have a material conflict of interest and it is not appropriate that you continue to raise the matter.

Council has a media policy. Only the CEO and the Mayor are authorised to raise matters with media. What goes into Focus and on to the website is the responsibility of the administration. Your correspondence with Jenny Barrett is inappropriate.¹⁹²

248. It appears that on 19 June 2017 Cr Bagster was notified that the Local Government Association Mutual Liability Scheme (**LGA MLS**) had been instructed to respond to his concerns notice to Mr Cooper, causing Mr Bagster to email Mr Cooper and Mr Cant:

Burnside City Council Administration,

Please make available to me and all members of Council all correspondence between BCC Administration and the LGA MLS raised between 1 Jan 2017 and 19 Jun 2017.¹⁹³

249. Between 20 and 23 June 2017 Cr Bagster appears to have sent the following SMS messages to Mayor Parkin:

Message sent on 20 June 2017 at 5:49pm:

Oh... and have SafeWork SA called bullshit [sic] like SAPOL yet? Perhaps I have to write to them? Are you ready to help your colleagues on Council Mr "Ultra Vires" Parkin?

Message sent on 22 June 2017 at 10:52pm

Hiah David. Any suggestions on QONs or MWON for next meeting?

Anything else that you might deem Ultra Vires? I'll have a few. Is Mark sitting up with the grown up people or will his resignation have taken effect by then? Cheers, Lanceloto[.]

Message sent on 22 June 2017 at 10:54pm:

Oh. Catching up with the Hon John Darley tomorrow. I'll be sure to give him your regards. Any message you have for him? Cheers, [sic]

¹⁹¹ LB145.

¹⁹² LB147.

¹⁹³ LB171.

Message sent on 23 June 2017 at 1:59pm:

Hi David. I just met John Darley. Great man! Have you ever met the man? Lot's [sic] of honesty and integrity. You could take a leaf. How's Paul Deb's resignation coming along?

Message sent on 23 June 2017 at 5:29pm:

Hi mate, who's writing all your Council emails? Aren't you embarrassed by that? If you also resigned with Paul, we might be able to clean up Council Administration and BCC culture by the next election. You, Paul and the three dickheads.. Mark, Helga and Henry. Could you also please seek Grant's departure too!?¹⁹⁴

250. On 24 June 2017 Mayor Parkin sent the following, private email to Cr Bagster:

Hi Lance

I requested you some time ago to desist in sending text messages to me and I now repeat my request. Text messages are not appropriate on Council matters. I will respond to email messages from you that in my opinion are respectful and constructive.

I note that you attempted to telephone me last night but I was otherwise engaged. I advise however that given the nature of your recent messages to me I will not take a call from you.

It is disappointing that our relationship has degenerated to this. In our last constructive conversation some months ago I told you that I was concerned that you were spiralling out of control and I offered again to assist if you were prepared to accept my help. Your response was that no one can help you.

I did not understand at the time. To be honest I still don't.¹⁹⁵

251. On 27 June 2017 Cr Bagster responded by way of email copied to the council's elected members and administration:

Dear Mr Mayor,

Okay, for your gratification and to aid in your understanding; here's the nub of some the problems with you:

1. your "spiralling out of control" comment exemplifies your poor attitude to me and your supposed other colleagues (elected members);
2. your continuing false allegations of my alleged bullying, harassing and threatening behaviours are wrong, hurtful and insulting. Further, they have inspired other councillors and Admin staff to mimic you... at least those that still have some faith in you ... which I have long since lost;
3. You are lazy and allow Admin to do all your work for you including writing responses to me on your behalf;
4. you never seem to allow any of my valid motions to be put to Council and you illegally and immorally declaring them "Ultra vires". In fact I don't even think it's you thinking about them and making that declaration. I think it is Admin doing it on your behalf;
5. You are supporting a deliberate campaign to discredit me, defame me and promote false allegations against me for your own deviate [sic] and distorted purposes;
6. you allow unprecedented Council actions to occur against me and the best interests of the city (such as the ridiculous briefings Martin was giving to justify the illegal C11055 resolution). That Resolution that punishes me for Paul Deb's misdemeanours (breaches of the Act, his Code, and his employment contract) and you have confirmed that it is a punishment in writing;

¹⁹⁴ LB149.

¹⁹⁵ LB162.

7. You oversaw (or at least permitted) Council admin to author C11055 which was handed to Cr Piggott to run as a successful motion. That Resolution and it's [sic] various amendments are insulting, hurtful and completely misguided. I think that they are illegal. You then confirm in writing that it is designed to punish me;
8. your not [sic] encouraging Paul Deb to do the right thing by the City, his staff, me and the council and at least apologise for his multiple breaches of his code, the act and his employment agreement. You know that I have already made the case for more than just his apology; but he refuses even to make this token gesture which could have done so much if it was made early and was genuine.
9. I have a genuine request and need for a leave of absence, yet you encourage and allow an obstructive and unprecedented motion and resolution that effectively makes it so difficult for me to comply with (at a time over which I was to have taken leave or expected to have it). Beside this, I had already complied with that Resolution - giving you the dates over which I requested it and the reasons. That is more than you could expect from me.

These are just a few (a short list) of the problem I could identify in the past 15 minutes. If I could be bothered wasting an hour of my time on you the list might tally 40 good reasons [sic].

I believe you sly, conniving and unfair to me and a number of other right-minded, community-minded councillors. You play favourites and you thumb your nose at the democratic processes of local government - processes the people of Burnside are counting on you (of all people) to uphold.

You say "to be honest"... are you really Mr Mayor? are [sic] you being honest with me and the people of Burnside?

I hope that you can stop your own downward spiral.

I really am trying to keep Burnside out of the pooh. but you seem hell bent on me raising the issue with the Ombudsman and actioning my claims for damages. I have been holding back. Do you think it's time I didn't?

I don't agree that you and I have ever had a constructive conversation. Is your definition of 'constructive' one in which you get your own way?

Does this help you understand Mr Mayor?¹⁹⁶

252. On 20 June 2017 Cr Bagster appears to have sent the following SMS message to Mr Cant:

Thanks for your time Barry. I'm keen that me [sic] and Council are sent a soft copy of the CEO's contract. From what I read; Council is entitled to it. Please don't stay too attached to Deb; you don't owe him anything and I think that it's perilous to be pinning your flag to his mast right now. You won your GM roll [sic] by merit, not by favour from Deb. My advice is you should keep being Switzerland!¹⁹⁷

253. On 27 June 2017 Cr Bagster appears to have sent the following SMS messages to, *inter alia*, Mr Cant, Mr Spearman and Cr Osterstock:

Message sent on 27 June 2017 at 11:35pm:

Gents, what kind of meeting was that at the Robin Hood? After the Council meeting ended. Very strange! Matty Spearman, Cr Mark, Barry, Cr Henry, Mr Paul Deb. Looked interesting! Don't know why you couldn't hang around when I showed up!? Will it feature in the CEO's report? You poor buggers! Remember.. be Switzerland. You don't have to agree to lick Paul's arse! I'm sure it's very bitter and will soon be necrotic!

Matty, please make sure this makes it to the review inbox! Also please ensure that Henry telling me to "fuck off" gets in there. I felt very threatening [sic] by that!

¹⁹⁶ LB162.

¹⁹⁷ LB150.

Message sent on 27 June 2017 at 11:35pm or shortly thereafter:

Guys, Don't tie you [sic] flag to his mast if a sinking ship [sic]. Shocking stuff. You should learn to recognise necrosis when you see it.

Matty, please make sure this makes it to the review inbox! Also please ensure that Henry telling me to "fuck off" gets in there. I felt very threatening [sic] by that! How offensive!

Message sent on 27 June 2017 at 11:35pm or shortly thereafter:

Guys, where do we meet after the next Council meeting? I'm keen to buy first drinks and discuss the issues that are causing the necrosis. Happy to give you some sagely advice. Good night.. late night huh!?

Message sent on 27 June 2017 at 11:35pm or shortly thereafter:

Mark, what did you mean by that comment, "have you still got a job?"?

Very keen to learn the origins and motivation behind your comments. Have you still got a job!? You're in the licencing branch of SAPOL aren't you!?¹⁹⁸

254. At 1:34am on 28 June 2017 Cr Bagster appears to have sent the following SMS message to Mr Spearman:

Matthew, how come I cannot send you emails from my Gmail account to your Burnside Council account. Were you instructed to block my emails? Please send me the directive to my Gmail account. I promise not to reveal that you provided me this information. I need to get rid of Paul Deb. He's my only target.¹⁹⁹

255. On 22 June 2017 Cr Bagster emailed Mr Dabrowski to request that the following be included in the delegates' report in respect of the upcoming council meeting:

On Friday 23 Jun I met with Hon. John Darley MLC at the SA Parliament House in an effort to facilitate the SA Ombudsman to revisit the Burnside Council's activities.

On Tuesday 20 Jun I met with Mr Barry Cant to view the CEOs Employment agreement in an effort to determine the parts of his agreement he has recently breached IOT facilitate his dismissal.²⁰⁰

256. On 23 June 2017 Cr Bagster sent the following email to Mr Cooper and Mr Cant, copied to various elected members and council staff:

Dear Gentlemen,

I got back from a productive meeting with Hon John Darley, MLC to find my regular fortnightly blue satchel "surprise package" containing the BCC Agenda for the next meeting. It's a real heart stopped [sic] as per usual.

I have found a number of glaring deficiencies which I'm sure will be rectified by you before the meeting:

1. My approved leave of absence is not annotated;
2. My QON and answers are missing;
3. My MON regarding Drug & Alcohol testing, alcohol consumption and blood alcohol limits is absent;
4. My MON regarding the Council's obtaining, validation and payment of legal advice is absent; and

¹⁹⁸ LB151.

¹⁹⁹ LB151.

²⁰⁰ LB163.

5. The CEO's employment contract is absent from Elected Members' Confidential Documents.

All of the above were submitted within the prescribed time period and are valid. Their absence from the agenda and from the meeting represents a serious breach of the Act and even our Council policies.

Please arrange to rectify these deficiencies prior to the next meeting.²⁰¹

257. On 26 June 2017 a member of the council's Executive Group responded to observe that the council's administration considered each of the matters raised in Cr Bagster's email had already been addressed in previous correspondence. This email otherwise noted that Cr Bagster's leave of absence had been made conditional upon him submitting certain information to Mayor Parkin and that this had not occurred.

258. Shortly afterwards, Cr Bagster responded:

Barry, et al,

Exactly! Are you deliberately trying to be patronising? My point in asking (within the RFIs) was that my leave of absence was approved for 24 May - 24 July 17.

However, the leave is not annotated on the agenda. I have not attended a Council meeting over this period, therefore the leave should show on the agenda? What have I missed? Why did you have to send me the Resolution again?

The leave is such a trivial issue and I only raised it to ensure that Admin had not accidentally cancelled the approved leave. You have not rectified the non-trivial issues. What on earth happened to my valid QONs and MONs? Who's playing "interference" [sic] now that Martin's not there to hold hands?

Has anyone submitted their resignations yet? I had heard on the grapevine that there's three Councillors threatening to. I haven't seen that in the agenda either; hoping that these may have been missed in the agenda too.²⁰²

259. Shortly afterwards, the council's Executive Group responded in turn:

Cr Bagster,

I can assure you that nobody is attempting to be patronising in the responses to you. You asked a question, and we attempted to respond.

The reason for the quoting of the Resolution, is because it seems that you may have missed the relevant wording. Apologies if this is not the case.

The Leave of Absence is to be granted, 'Upon the Mayor's receipt of the information requested in point 2.....'

It is my understanding that this information has not been received by the Mayor, and therefore there has been no Leave of Absence granted.

I will not be caught up in the other issues/claims raised in your email below, and have responded to the questions as asked over the weekend in the previous email.²⁰³

260. Shortly afterwards, Cr Bagster responded:

You'll note my consternation with these anonymous emails. Mr Martin Cooper assured me that I would not be sent anonymous emails because these had been the catalyst for false bravado, and cowardly accusations.

Now I get a new anonymous response to tell me that "I will not be caught up... ". Who the hell are you??

²⁰¹ LB152.

²⁰² LB153.

²⁰³ LB153.

Now whoever you are; I can assure you and confirm that the Mayor was properly and duly informed of my leave request and dates. How else did these dates appear on the Resolution. My concern, as I have clearly annunciated [sic], is the the [sic] approved leave does not appear in the current agenda and could not be cancelled. I was merely pointing out that it's a deficiency.

Whoever you are, I remind you that I am an elected member of the Burnside Council. As a responsible and deligated [sic] Officer of Council Administration you are replying and acting on behalf of the CEO. Your tone and language in your last correspondence to me was completely inappropriate.

Please reveal yourself and apologise. Additionally, please address the issues that I have raised below.

What has happened to the "premium service" Mr Martin Cooper assured me that I would be getting through this LJBAAdmin account? I'm beginning to believe that it really is the undue punishment that the Mayor said it was. A punishment for Paul Deb's misdemeanors [sic].

It's making increasingly difficult to do my job as a Councillor.²⁰⁴

261. That afternoon, Mayor Parkin emailed Cr Bagster to respond:

On 29th May I sent you the following email:

"The draft minutes of the meeting 23/5 will inform you that you have been granted leave of absence for the periods when you know you will be unable to attend council because of your pending medical procedure and your absence on holiday. Please advise me of the relevant periods.

With respect to the matter of leave of absence terminating if you appear at council during the approved leave, this is a matter of Regulation and council has no power to change."

You received the email and you responded immediately on the latter matter but failed to address the former matter. You have not provided to me the dates requested and no leave of absence has been approved.

The matter is closed and please do not continue to harass staff and elected members.²⁰⁵

262. On 29 June 2017 Cr Bagster responded, in an email copied to the council's elected members and administration:

I did provide you with the dates of my absence and the various reasons, prior to the Resolution.. I therefore complied with the requirements of the Resolution. and [sic] the leave of absence should have been put on the agenda and recorded.

How dare you again accuse me (again) of harassing your staff: I was only seeking to have them do their job and to properly record my leave which should have been approved.

You never cease to shock me with your rudeness, laziness and ineptitude.

Please apologise.²⁰⁶

263. On 26 June 2017 Cr Bagster sent the following email to Mr Cant, copied to Mayor Parkin and various members of the council's administration:

Dear Barry,

I can only assume that it's you I am engaging because Karishma can't possibly yet be contaminated by the contagion and hystoria [sic] gripping the Administration's Executive yet and she isn't a gullible or stupid woman by any means.

Please have the balls to identify yourself and own up to words you write; into the future.

²⁰⁴ LB154.

²⁰⁵ LB160.

²⁰⁶ LB160.

Regarding leave.. As I have indicated, I provided the appropriate dates to the Mayor over which I requested leave and the reasons for my request. This satisfied the highly irregular Resolution in terms of granting me leave. I provided these to the Mayor even before the crazy Motion. Those dates coincide with the requested leave dates. Therefore the leave should be approved and in the agenda.

Have you seen the CEO's resignation letter yet? I haven't seen it in the Confidential agenda. It doesn't make sense. What about the resignations of the three recalcitrant Councillors? They're not there either! Can this be right?

I am happy with you remaining as Switzerland. Martin Cooper was playing Italy in this campaign, which was a bit silly. You should hold firm to your position. But whatever you do, keep a box of matches and a blanket handy. Don't put your eggs in the wrong basket.

You know that I will be on the right side of history.

I'll pray for you.²⁰⁷

264. On 27 June 2017 Cr Bagster sent the following email to Mayor Parkin, copied to Mr Cant and various members of the council's administration:

Dear Mr Mayor and the "Executive Team",

I am again getting anonymous and unacceptable correspondence from the "Executive Team".

I am rather confused and bewildered by this turn of events and from whom correspondence originates. Mr Martin Cooper assured me that I would not receive any more correspondence from anonymous sources, yet here we are again. In the past I am aware that the authorship of some of the anonymous correspondence was from Martin Cooper, Barry Cant, Matthew Spearman and Mangus [sic] Heinrich. Then when Mr Martin Cooper agreed to sending no more anonymous emails he explained that the only correspondence would be from himself or Barry Cant. For a time all the LJBAAdmin correspondence to my had [sic] either Martin or Barry's signature blocks on them.

Here's some reasonable questions I would please like you to answer:

1. Who now forms the "Executive Team" on the emails now sent to me?
2. Is the CEO able to access emails to or from the LJBAAdmin account?
3. Why am I again being sent anonymous and cowardly emails?
4. When will you consider that I have received enough punishment by having to endure this cruel and unusual communicatiin [sic] protocol which was a Resolution written by Council Administration staff for Cr Piggott and confirmed by you to be a punishment from my peers as a result of the CEO being found in breach of his code of conduct?

For your due consideration and hopefully a prompt answer.²⁰⁸

265. Shortly afterwards, Cr Bagster sent the following email to Mayor Parkin, copied to various elected members and council staff (emphasis in original):

Dear Mr Mayor,

On the strength of recent legal advice I will not be able to receive or address written correspondence from or to anyone other than people with names who are prepared to put their names to their correspondence.

*Cr Lance Bagster*²⁰⁹

266. That afternoon, Cr Bagster sent the following email to Mayor Parkin, copied to various elected members and council staff:

²⁰⁷ LB155.

²⁰⁸ LB156.

²⁰⁹ LB157.

-without prejudice-

The Mayor
Burnside City Council

Dear Mr Mayor,

Despite some Councillors' contrived and laughable consternation at sitting beside or near me in the Council chamber and their threats to resign, I am more than happy for those new seating arrangements to continue. I also understand that the CEO was more than happy to enable this arrangement against the policy and protocol that these members fought so hard to keep. These facts should be made well known to the electorate. They stand as a stark reminder of, and go to reinforce, the CEO's false and ridiculous claims against me. Mark Osterstock, a uniformed police officer, cowering in his seat - it is a laughable sight to be sure! The new seating arrangements highlight the complete hypocrisy and farce that Burnsideans will see: a big man and uniformed police officer, failed Liberal candidate, shrinking violet sitting at the table of the 'high-priests'. It's an evocative image. At least keep the arrangements long enough for picture - it'll make a great snap-shot for the Council's history book.

You know as well as me that the three resigning members do not have the integrity or intestinal fortitude to go through with their promise to resign and that they are either just grandstanding at the request of your good-self or the CEO or they are completely ignorant to what's really going on. I am very hopeful you will encourage them to be people of their word and show some integrity. Members like Cr Osterstock (who no longer even lives in the City of Burnside) and Cr Davis (who's never paid a single cent in rates to Burnside) do not, in my clear view, have a great claim to properly represent the ratepayers of this great City. Please encourage and convince them to carry out their intended Course of Action and resign ASAP. If they would do this, the Council will be most benefitted by having an increased majority of right-minded Councillors with integrity, honesty, openness and virtue. This will mean that the people of Burnside may finally have appropriate representation from a Council prepared to act in their best interests.

Please note that these resigning Councillors now have a material conflict of interest when it comes to debating and voting on issues that deal with the CEO, me or potentially the CEO's retention or dismissal. They have staked their Council positions in backing the CEO with a prejudged bias. I expect that when it comes to future motions regarding the CEO's appointment or is relationship with Council you will remind these members of their material conflict of interest and they must leave the chamber. Hopefully they will have already resigned from their untenable and undeserved office as community representatives. But then again; you're conflicted too Mr Mayor!

I note with some concern that my verbal statement, made in the chamber of the 23rd May 2017, is being held up as another false example and allegation of me acting in some kind of threatening, bullying or harassing way. I wish what I said, and the allegations you made, were recorded so that the people of Burnside could clearly understand what actually transpired. I was appropriately and rightfully defending myself and my good name from your heinous and false allegations. I was calling 'a spade a spade'. If you will recall, after your insulting and false allegations and my realisation about what the CEO was up to; my words were these:

"Mr Mayor, I have only ever just wanted to properly represent my community; to the what [sic] is right and to be helped by Council in doing those things. This (the current debate and the false allegations being openly made against me) is bullshit! I hold you all in contempt! This whole debate is built on a lie (re the corrupted Resolution C11055)! I'm going to make sure that the Ombudsman gets to know about this."

The only bullying and harassment in that meeting emanated from you, Council Administration and a few other Councillors in that meeting. Mr Mayor, you simply have got to stop holding these meetings in secret, it's unbecoming of you and significantly worsens the already gaping trust deficit with the people of Burnside. They really want an open, honest, reliable and competent Council. They are certainly paying the CEO to have those qualities, but they're not getting any value for money.

Please note (and recall) that anything I say, write or do in Council and as an elected member - even this e-mail - I would be happy to have published, shown to the press and

the people of Burnside. That has always been my mantra and I have long shared that with you and the CEO. Trust me when I tell you that I am a “straight-shooter” (and no; that isn’t a violent threat... it’s an expression). It’s the CEO who has been caught out bullying and harassing and I suspect his longsuffering staff are equally fed up with his antics. It is the CEO who has been found guilty of misdemeanours, transgressions of the Act, contravening his Code of Conduct. After studying his employment agreement today I now realise he stands in contravention of that too. The CEO needs to be called to account for these and his continuing poor behaviour; overseeing an unworkable and ineffective Council.

My largest concern after the poor people of Burnside is for the BCC’s staff. I am certain there’s a number of Burnside staff who’d love to have their say, if only they didn’t feel at threat from loosing [sic] their jobs. I have the fortunate position - even the obligation - to speak the truth. I know that that is not what you may like to hear, but it’s reality. I am not beholden to you or the CEO. Like you, I am beholden and answerable to the people of Burnside. I am obliged to speak the truth and, as a member of Council, hold the CEO to account. You are also!

Can you please tell me when you think I have been sufficiently punished for the CEO’s misdemeanours? I am keen to know at what point you plan to release me from the shackles of C11055, a resolution written by Council Administration for Cr Piggott to run which severely constrains and punishes me for the CEO’s breaches of his code, the Act and his employment contract. You have indeed confirmed to me in writing that it was designed to punish me. The only reason I ask is that there are a few others also keen to know as well. Oh, and now the CEO won’t be held to account for his breaking the same Resolution, will he resign?

Please do the right thing by Burnside: call the CEO to account for all his many failings and to have him apologise to me, the people of Burnside and Burnside Council staff. I can assure you that there is plenty [sic] of virtuous, talented and deserving candidates for a freshly vacated position of CEO at Burnside. I have been in touch with a few already.

Lastly, can you please arrange for this e-mail (and e-mail string) to be published on the Council’s website home page. I’d be very grateful.²¹⁰

267. Mr Spearman addressed Cr Bagster’s email by way of the following email to the council’s Records and Leadership teams, sent on 27 June 2017 and copied to the council’s elected members:

Dear Leadership and Records Teams,

As there is an established communication channel in place there is no need for you to receive these types of emails going forward as you are not directly involved.

There are already Executive Team members who manage the LJBAAdmin account and ongoing records management is actively completed on these emails so I will be removing the ability for these matters to land in managers [sic] inboxes and below. Where genuine requests come in via the LJBAAdmin account, the respective member of the Executive Team will work with you to provide a response on your behalf.²¹¹

268. Shortly afterwards, Cr Bagster responded:

Dear Matthew,

You may have missed it, but at 12:05 today I sent the Mayor an e-mail which stated the following:

“On the strength of recent legal advice I will not be able to receive or address written correspondence from or to anyone other than people with names [or] who are prepared to put their names to their correspondence.”

I have today also asked the Mayor to confirm who now constitutes “The Executive Team”. I am hoping for a swift response at his earliest convenience.²¹²

²¹⁰ LB158.

²¹¹ LB161.

²¹² LB161.

269. On 28 June 2017 Cr Bagster emailed Ms Theresa Hines, a HR consultant engaged by the council to provide private support sessions to both Cr Bagster and Mr Deb:

Now that the CEO's bogus claims of bullying, harrassing [sic] and threatening behaviour (and the Burnside Council Administration claims against me to SAPOL and Safe Work SA have been dismissed or found to be baseless) I am now more than happy to participate in mediation with the CEO.

Bring it on! But please note that I work full-time and believe that the venue for our mediation should not be on Burnside Council property or during normal working hours. I suggest after-hours meetings at the Feathers Hotel.

I look forward to hearing from you very soon. Thanks for your patience. I'm sure you'll understand that I couldn't commence this course of action whilst Paul Deb was pursuing me via those trumped-up allegations!?

At the end of the day, I'm very hopeful that there'll be a net benefit [sic] to the long suffering people of Burnside and the staff on Council Administration. I'm confident that you can effect a positive change.²¹³

270. Cr Bagster appears to have subsequently received notification that the above email was rejected by the inbox that had been established to collect correspondence connected to the allegations concerning his behaviour, causing him to send the following email to Mr Spearman:

What the heck is going on. Have you been told to exclude my emails to the "Review" account? It is important that any allegations of my bullying, harrassing [sic] and threatening behaviour be received and put through rigorous analysis. Please remove this undemocratic restriction.

Can you please see the attached makes it safely to the Review account!? It's vitally important to ensure that no one's being inappropriately bullied, harassed or threatened. God forbid!

Be Switzerland! That's the best way to play this current game!!

BTW the Mayor stood me up at the Robin Hood. Though he had agreed to meet me. Sad huh!?

I'll pray for you!²¹⁴

271. On 29 June 2017 Cr Bagster sent an email to a member of the public that included the following comments:

I'm a little bit preoccupied with fighting other battles on Council - mainly trying to fix a broken culture and corrupted attitudes.

Thanks your your [sic] words of support and encouragement. Council is a quagmire of bad blood and bad attitudes at the moment. The CEO is playing a terrible and devisive [sic] game that goes well beyond bullying or harassment. He's attempting to turn the entire Council against me. He's excluded all Council officers from Council meetings claiming that they shouldn't be exposed to my alleged bullying, harassment or threatening behaviour. After Council Meetings he meets secretly with his key staff and corrupted Councillors to plot and plan his next underhanded move. It's hardly the work of a man who is helping Council achieve the best outcomes for the City and for Council. It's a disgusting and partisan display from a man who has breached his own code of conduct; his employment agreement and the Act.

What's worse is the Mayor, who says he's acting collegially, is actively assisting the CEO in his devious and corrupted course of action. David Parkin has actually mimicked the CEO's baseless allegations against me. I guess they're good mates.

²¹³ LB164.

²¹⁴ LB165.

I am actually going to be standing for another term, I can't leave the council when the fox is running the hen house. It's my duty to rid the council of these gangrenous elements.

Bastardy abounds and is thriving at Burnside Council!²¹⁵

272. On 4 July 2017 Cr Bagster sent an email to Ms Hines, copied to Mayor Parkin and the council's senior staff, that included the following comment:

I'm not sure if Paul Deb is amenable to mediation yet? But a honourable [sic] predisposition on his part would be for him to discontinue his ridiculous removal of Council staff from Council meetings - on the false claims he's made in alleging that I have bullied, harrassed [sic] and threatened him or his staff. There's probably not going to be a good outcome from mediation unless Paul does this.

Please let me know if and when Paul Deb is prepared to play nicely?²¹⁶

273. On 4 July 2017 Cr Bagster sent the following email to Mayor Parkin and the council's administration:

The following are Questions on Notice for the next Council meeting:

1. What were the reason, agenda and outcomes of the meeting (which included the CEO, GM Urban Services, Mr Matthew Spearman, Cr Henry Davis and Cr Mark Osterstock) that took place at The Robin Hood hotel (Norwood) after the last Council meeting on 27 Jun 2017? Why was the meeting closed to other elected members? Why did Cr Henry Davis shout "fuck off" to Cr Bagster when he attempted to join the meeting?
2. What are the outcomes of the Council Administration staff complaints (especially to SAPOL and SafeWork SA) against Cr Bagster's alleged bullying, harassment and threatening behaviour?
3. Who is the contractor BCC has engaged to remove the Heatherbank Tce chicane by 24 July 17?
4. Why have all Council Administration staff been banned from attending Burnside Council meetings, with the exception of the CEO?
5. When will Council Administration make available to all EMs the CEO's extant employment agreement? This has been on request now for over 1 month; and that agreement requires its release to Council.
6. When will Council Administration make available to all Council all the correspondence between BCC and the Mutual Liability Scheme between 1 Nov 16 and 30 Jun 17?
7. When will the Burnside Council CEO, Mr Paul Deb, tender his resignation to Council for his various breaches (of the Act, his Code of Conduct, and his employment agreement) and because he now presides over a disfunctional [sic] Administration?
8. When will the CEO and the Mayor of Burnside issue Cr Bagster an open, public apology for their appalling false and defamatory allegations and statements against Cr Bagster?
9. What was the reason for the Mayor, David Parkin, not showing up to a prearranged meeting on 27 Jun 2017, agreed to between Cr Bagster and the Mayor to discuss the present issues befalling Council?²¹⁷

274. On 4 July 2017 Cr Bagster sent the following email to Mr Spearman and Mayor Parkin, copied, *inter alia*, to Cr Helga Lemon and Cr Davis via his personal email account:

Dear Matthew,

1. I think that this [sic] e-mail falls within the criteria of emails which fall into scope of the below (Resolution C11228) and therefore believe it should be considered:

²¹⁵ LB166.

²¹⁶ LB168.

²¹⁷ LB169.

- In the Council Meeting of 27 Jun 17, Cr Helga Lemon spat vitriol from her thin lips. This included general insults and disparaging remarks to other Councillors whilst they were debating in Chamber. I clearly heard her telling EMs that they were “stupid” and that they should “go home”. This should be audible on the BCC meeting audio recording.
 - At a meeting of Council Officers (CEO, Messrs’ Spearman and Cant) and EMs (Crs Davis and Osterstock) at the Robin Hood Hotel (PM Hours 27 June 2017) Cr Davis exclaimed to Cr Bagster (at the Robin Hood hotel to meet with the Mayor) that he should “fuck off”. This was said in a very threatening and menacing manner in front of the whole meeting.
2. I’ll keep forwarding relevant e-mails to ‘review@burnside’ where I have material which falls into scope of the below that I believe should be considered.
 3. Keep up the great work: it is really helping Council deliver great things for the people of Burnside. It is good to know that BCC Admin is finally doing something about this recalcitrant behaviours [sic].

For the Mayor

Dear David,

1. Can you please give Cr Lemon and Cr Davis a stern talking to? Otherwise I am afraid that these shocking behaviours are complaint-worthy and clear breaches of the EM’s CoC. Left unaddressed I will have no choice but to ask that you to consider this a formal complaint.
2. I am still not in receipt of a copy of Cr Davis’ original EM Candidacy application which requested some time ago. Is this still coming?
3. Now who are the real bullies in Burnside?²¹⁸

275. On 1 July 2017 Cr Bagster emailed Mr Cant and Mayor Parkin to submit a request for assistance from the LGA MLS:

I hereby apply for legal support and advice from the MLS to prosecute a legal action against the CEO of Burnside. I consider that if the CEO and Mr Cooper can receive comfort and legal support from the scheme, then I should also have the same level of support. The damages I claim against BCC Administration Officers have been incurred as a result of my service my community and because I am an elected member. I should not have to be exposed to those damages and false claims and I consider that the MLS should be affording me appropriate legal support to defend myself and my reputation from the unscrupulous behaviour of Council Administration staff.²¹⁹

276. On 3 July 2017 Mayor Parkin responded:

Your application is ridiculous. It is either naive or disingenuous.

MLS is s [sic] protective defensive mechanism for officers against whom a claim has been made. It is not a slush fund for EMs to draw on to fund prosecution cases that [sic] have dreamed up.²²⁰

277. Shortly afterwards, Cr Bagster responded in turn:

My claim in neither nieve [sic] or ridiculous [sic] and I find your latest remarks hurtful and dismissive.

The BCC Administration have made baseless claims against me to SAPOL and Safe Work SA. Therefore, I now have the right to seek the assistance and support of the MLS. I have incurred a significant loss to my personal reputation and been defamed as a result of my service to Council as an elected member.

²¹⁸ LB170.

²¹⁹ LB167.

²²⁰ LB167.

The CEO has driven the Burnside Council into some form of a farcical circus in a continuing effort to perpetuate these false claims against me and in an effort to convince both BCC staff and the Council against me. Securing MLS support would be a fair [sic], elegant and efficient way out of this current quagmire.

My request is very serious and valid. I stand in need of assistance from the MLS. Council Administration had [sic] an obligation to attend to this request and to treat it seriously.²²¹

278. Cr Bagster subsequently received the following email from the council's Executive Group:

Your request has been received, and following receipt of legal advice, we can advise that your request will be put to Council for consideration.

Regards

The Executive Team²²²

279. Shortly afterwards, Cr Bagster responded by way of email copied to the council's elected members:

More anonymous emails!? These have got to stop.

Regarding the MLS support, why do you need the mandate of Council to write to MLS when no such mandate or justification was sought WRT Paul Deb's and Martin Cooper's approaches to the MLS.

Please expedite the request without the unnecessary and so far unprecedented approach to Council. I should be afforded the same rights in this respect as was afforded Mr Deb and Mr Cooper.²²³

280. On 5 July 2017 Cr Bagster sent the following email to Mayor Parkin and Mr Cant, copied to the LGA MLS and Mr Cooper:

Dear Mayor and Barry,

Contrary to your advice - WRT Mr Martin Cooper and the subject - there was (and is no current) litigation involving Council or Mr Cooper.

I had merely sent Mr Cooper a personal letter asking him to apologise and indicating that I would probably consider my legal options if he did not apologise.

There was no mandate (moral or from Council) for BCC to have written to the MLS and especially nothing to warrant the MLS providing a legal umbrella for Mr Cooper in the event that I seek damages through litigation.

The MLS has no mandate to support either Mr Deb or Mr Cooper in the case of any claims I have against them for damages, because defaming elected members and making false allegations against me is not part of their job descriptions or roles as CEO or GM.

I again reiterate my request for all correspondence (now dating back to 1 Nov 2016) between BCC and the MLS to be presented and made available (as a PDF) to Council.

I also request that BCC writes to the MLS seeking legal support for me to defend myself against the defamatory and hurtful allegations made against me in the course of undertaking my role as an elected member. The MLS has a moral and an actual obligation to support me in my claims against Mr Cooper and Mr Deb.²²⁴

281. I understand that the Byrt report was considered as Agenda Item 18.1 during the council's 11 July 2017 ordinary meeting, at which time Mr Deb was also scheduled to

²²¹ LB167.

²²² LB167.

²²³ LB167.

²²⁴ LB171.

deliver a verbal update on the matter. That same evening, Cr Bagster emailed Mr Cant and the elected members:

Barry, et al,

Can I please have the verbal update from the CEO recorded or transcribed to send to my legal support and to the MLS.

I particularly want to capture any allegations and accusations from the CEO of alleged behaviour on my part.

How is it that the CEO is in such a position to make such a potentially slanderous speech without accepting the repercussions of his false allegations?

Could someone please point out to the presiding member that despite making allegations and complaint and lodging them with Safework SA, SAPOL and (recently I learnt) with the SA Ombudsman, they have all fallen flat because they are baseless and they are also slanderous.

The CEO is conflicted in this Agenda Item 18.1, along with the Mayor, Cr Davis and Cr Osterstock, Mr Barry Cant.

This secrecy and confidential character assassination and continuing Defamation by Mr McDeb [sic] must end!

How are the CEO and I expected to enter mediation in good faith when this sort of behaviour from Paul McDeb continues on council?²²⁵

282. On 12 July 2017 Mr Deb sent the following email to a member of the public in respect of an ongoing neighbourhood dispute that had previously been raised with the council:

Thank you for your email.

I have provided you with numerous responses to your questions. Unfortunately, I cannot assist any further.

If you are dissatisfied with the Council's response, I suggest that you contact Ombudsman SA.²²⁶

283. It appears that Mr Deb's email was copied to Cr Bagster (who had been copied into previous emails by the ratepayer in question), causing Cr Bagster to send the following email to Mayor Parkin, copied to the ratepayer:

I have been following the developments at [street name omitted], Burnside, with a keen interest and concern for many months, even years now. This latest exchange from the Burnside CEO raises my concern on many levels - which have precipitated this email response to you now.

My first and probably least important concern is that the CEO, in sending me this direct correspondence has, yet again publicly or openly breached the conditions and requirements of Burnside Council Resolution C11055. Admittedly they are silly requirements which you have confirmed in writing to me were designed to punish me and not the CEO for his misdemeanors [sic] and his breaches of his employee code. Isn't it ironic that these rules, which he and his staff wrote, are causing him such grief!? Please treat this email as a serious complaint against the CEO's latest flagrant breach of Resolution C11055, his code and his employment agreement.

On the far less trivial issue; I am not satisfied with the facts, tone, level and style in the CEO's last email to [name omitted]. I do not believe that the [name omitted] have been afforded a fair or balanced consideration of their valid and pressing concerns. These concerns they have stated to BCC in routine, timely, detailed and articulate fashion.

²²⁵ LB172.

²²⁶ LB173.

The CEO's last email is, at best, unsatisfactory, terse and dismissive. You (yourself) will understand the futility of having to take issues and a complaint to the SA Ombudsman. This is because of your recent, cowardly and baseless complaint against me to the Ombudsman that fell flat on its face, just like Paul McDeb's [sic] complaints against me to SAPOL and SafeWork SA. The chances that the [name omitted] will get justice via that avenue is remote and the CEO knows this.

Even though I believe that the [name omitted] Complaint has merit, the fact that the CEO has now advised them to approach the Ombudsman as their last or only recourse is a terrible piece of advice from the BCC.

I expect the CEO to change his attitude and tone when addressing the residents of my Ward.

The [name omitted] are entitled to a fairer and more just consideration from BCC. I hope that you are able to get off your easy chair, put down your free wine (paid for by the people of Burnside) and help them.

Please ask the CEO to have another and closer look at the problem with an unbiased and fresh review. I find this behaviour and attitude to be an intolerable burden for the residents of my Ward.²²⁷

284. On 17 July 2017 Ms Hines sent the following email to Cr Bagster:

Hello Lance,

Thank you for committing to the mediation process.

I appreciate you have some concerns engaging with this process and therefore I appreciate you taking the opportunity to do so.

I think it is important that someone objective to the Council and its members is able to work with you to understand what is/has occurred from your perspective.

On this basis, can you bring with specific evidence which supports your complaints. I can see from your email correspondence that you potentially feel victimised and that you indicate there is a basis for your position. That is what I am trying to independently understand.

This also allows me to objectively review your allegations and support and challenge you where appropriate.

My role is not to judge either yourself or the other party.

As we have discussed, I will meet with you at the hotel Feathers 7.30pm Tuesday 25th July.

Please allow for 1.5 hours for our initial meeting. We may not require this long, but prudent to book that amount of time please.

I look forward to having the opportunity to meet with you to discuss these matters further.

I also appreciate what you have sent me as it helps me to better understand your position.²²⁸

285. Shortly afterwards, Cr Bagster responded to Ms Hines by way of email copied to Mayor Parkin:

It great that you have managed to coax Mr McDeb [sic] along too. I'm really looking forward to hearing from his perspective, as you may know we haven't been able to communicate with each other since the Council ratified a Motion that he wrote prohibiting us from communicating with each other and as punishment for me blowing the whistle on his horrendous breaches of his Code.

Regarding evidence; I am still in the process of gathering some of these through FOI and the SA Parliament. I have asked the Council, but (illegally on their part) they've not

²²⁷ LB173.

²²⁸ LB175.

replied. However, I'll eventually receive the baseless complaints Council Administration (via the CEO) have made to the Ombudsman, SA Police and SafeWork SA. In the meantime you'll have to take my word that they exist and i [sic] am sure Mr Paul McDeb can also confirm their existence.

Could you also please ask Mr McDeb to bring along the transcripts of his and the other relevant defamatory briefings (to Council) in which his various baseless allegations against me have also been put.

As it's mediation, I have no need to bring along additional materials, proof and evidence that the CEO has breached his Code of Conduct, his employment agreement, and the Act.

It is self evident that Mr McDeb has defamed me and instructed his staff to remove themselves from the Chamber. Also, it is a matter of fact that the various reports and Resolutions have been made and these are not arguable or debatable.

It would be a great start to mediation if Paul could bring along his evidence that I have bullied, harassed and threatened him or his staff. It'll make for a wonderful baseline for discussions.

As a clear sign of Mr McDeb's good will and good faith in these impending mediation sessions, it'd lovely [sic] if Mr McDeb would make a public apology to me, the City of Burnside and his long suffering staff. Better still I'm still seeking his resignation. However, I don't think he's yet ready for the inevitable period of long unemployment that will follow that event.

If you'd prefer, I'm happy to provide you with a separate briefing prior to the mediation to familiarise you with these matters and the details and evidence that I have provided the Ombudsman and other agencies in respect of these matters.²²⁹

286. That evening, Ms Hines responded in turn:

Thank you for your quick response.

Could I make the suggestion please that we address all parties professionally.

Accordingly could you please use the name Mr Paul Deb, as I understand that is his correct surname.

Rest assured that if Mr Deb did not use your correct name, or address you professionally, I would request this of him also.

I appreciate your support regarding this.

I look forward to meeting you Tuesday week, and as I am interstate this week, I am comfortable that that is our first meeting.²³⁰

287. Shortly afterwards, Cr Bagster responded to Ms Hines:

It is my understanding that Mr McDeb's birth certificate says that his surname is spelt "McDeb". I had thought that it was his official title. I'm happy to use the less formal surname "Deb" if you'd prefer. But I hope his subpoena or any future warrants will read, "McDeb".²³¹

288. On 25 July 2017 Cr Bagster sent the following email to Mayor Parkin:

Dear Mr Mayor,

I note that you have excluded yourself as being conflicted in the debate regarding tonight's COC complaint against me. I also note that you have lodged a complaint against me to ICAC regarding my own declaration of interest and claim that I am conflicted or have been.

²²⁹ LB175.

²³⁰ LB175

²³¹ LB175.

So, to tally the recent complaints against me by you, thus far:

1. A failed complaint against to [sic] SAPOL which they told you was actually bullying and harassment of me;
2. A complaint to ICAC;
3. A complaint to SafeWork SA;
4. A failed complaint to the Ombudsman SA; and
5. An internal Code of Conduct complaint (the biased preliminary assessment report for which is being considered tonight).

What am I to make of the plethora of complaints you have raised against me? Do you think that you just might not be playing nicely in the sand pit!?

You are a terrible Mayor and for a man who I once considered a friend and a person of honour and integrity; you have come a long way!

Let's see how you're going to respond to this request. I formally complain that the CEO remaining in the chamber for tonight's debate - where you have conflicted yourself out - is a clear conflict of interest. If you are to be consistent and fair, you must take this complaint to ICAC.²³²

289. On 26 July 2017 Cr Bagster sent the following email to Mayor Parkin, copied to a representative of the *Messenger* local newspaper and the personal email addresses of various elected members and forwarding a copy of his previous email to Mayor Parkin:

Dear Mr Mayor,

My humble apologies again Mr Mayor, I neglected to leave off your other failed complaint against me to the Local Government Minister. How silly of me! What was I thinking?

So do you now declare that we Elected Members are your "colleagues" or, if asked again, will you fess up to supporting your good buddy Paul Deb at any cost to your soul and your dying breath!?

Can I assume that you wrote all these complaints against me without the "helping hand" of Council Administration and Mr Deb? You and I both know that the CEO is writing (having written) all these complaints. The CEO is therefore 100% compromised and conflicted. Are you aware that that's corrupt? The CEO definitely should be reported to ICAC and he should also be summarily dismissed.

Please stop supporting this corrupt behaviour Mr Mayor. It's so unbecoming. Almost as cowardly and unbecoming as your behaviour after the last Council meeting.

Please please [sic] be on the right side of history... And rescue any chance you have of leaving a legacy. At least don't burn all of the bridges in Burnside!

Lastly, why are all the Admin staff leaving the chamber when I enter? It's pure madness!²³³

290. On 31 July 2017 Mayor Parkin responded to Cr Bagster's 25 July 2017 email:

I acknowledge receipt of this message.

I cannot initiate complaints on your behalf. Please consult our policy on these matters.²³⁴

291. Shortly afterwards, Cr Bagster responded:

Please consult the policy again. You have been provided with a legitimate complaint against the CEO in writing. I have outlined how and when the CEO has breached the Act in not declaring a clear material conflict of interest in a matter before Council on 25 Jul 17. The CEO remaining in chamber despite the fact that I unambiguously pointed out to him

²³² LB177.

²³³ LB177.

²³⁴ LB178.

that he should declare the conflict and how and why he was conflicted. This was no ordinary lapse or oversight on the part of the CEO.

I have initiated the complaint and raised the issue to you as the Presiding Member.

I understand that, in the same way you initiated (or proceeded with) a complaint against me to ICAC - and possibly to the Ombudsman, SafeWork SA, the Minister, SAPOL, and WRT the CoC complaint (etc, etc) - so too should you now also proceed against your good friend, the CEO regarding this issue.

I trust that you will act expeditiously in this matter and also that you will act fairly and be consistent with your current propensity to progress complaints against those who "deserve it". Be assured that Mr Deb is most deserving of this action.²³⁵

292. On 29 July 2017 Cr Bagster appears to have sent the following SMS message to Mr Cant:

G'day Barry,

You'd be aware of what you handed me last Council meeting.. the result of Deb's recent ICAC complaint.

This is getting ridiculous [sic] as the complaints now tally six:

Ministerial Complaint.

Ombudsman complaint.

ICAC complaint.

COC complaint.

SafeWork SA complaint.

SAPOL complaint.

And apparently I deserve this!? Were you and the tribe scheming any of these up at the Robin Hood hotel when I caught you guys in a consortia.

Anything else you and McDeb [sic] have planned?

I saw you as fair minded and above Paul's personal retribution. I thought you might be a candidate for the interim CEO role when I Deb [sic] is tossed. I thought [sic] you were playing 'Switzerland'. Now I think you're just being 'Italy'. You know that if you are asked to do something unlawful, immoral or underhanded... You should simply not do it. History will back you up.²³⁶

293. On 1 August 2017 Cr Bagster sent the following emails to Mr Cant, the context of which is not immediately clear:

Thanks Barry,

And thanks for having the balls to put your name to that last email on the subject.²³⁷

294. Shortly afterwards, Cr Bagster emailed Mr Cant:

Dear Barry,

RE: CoC Complaint - Cr Bagster (COCC17/3), resolution C11327

Good News I hear regarding the subject. Thanks.

I will now contact Greg Griffin in anticipation of his firm dealing with the matter.

Greg will now also have the opportunity to explain to me how Griffins buggered up the internal review by tacitly agreeing with the 'WHS' baloney which emboldened the idiots on council to continue Paul Deb's defamatory practices and false allegations.

Do you have a clue when I'll get the opportunity for a face-to-face with Griffins?

May your god/s bless you,²³⁸

²³⁵ LB178.

²³⁶ LB179.

²³⁷ LB180.

295. That same evening, Cr Bagster emailed Mr Cant a third time:

Dear Mr Barry Cant,

*** (previous subject e-mail poorly written in haste, amended here)

I have advised Council and BCC Admin on a number of occasions now that I have received legal advice that I cannot formally accept, receive, reply or acknowledge communications to the LJBAAdmin account. In practice, I probably only scan a small proportion of them. I have also made it clear that I am only to receive council correspondence to my proper BCC e-mail address or correspondence forwarded to my Gmail account.

1. However, I am led to believe that you have taken a dislike to my analogies or my use of analogies regarding the neutrality or belligerence of European countries during WWII. You are from Europe and I know you understand these analogies. Most notably (and as an example) my suggesting that - under the terrible circumstances befalling council and council Administration presently - it would be best for you to be 'neutral' like Switzerland. I find that, if you are taking some kind of offence from this, then I am 'gobsmacked': surely you jest and take false offence as this [sic] benign analogy? Maybe you should run it by the Burnside lawyers to determine whether the position you are taking is rational and reasonable. Until you have advice, I strongly advise you not to adopt the ridiculous posture taken by others in Burnside in this regard. C'mon mate, I was hoping that you, of all people, would be sane and reasonable!
2. Regarding the "having balls" comment; you well know that this is considered a benign and common Australian (vernacular) expression that is also commonly used even by females in general social and business settings. Similarly, there was even a ruling on the word "bugger" as being benign, common and non-offensive. You well know that "having balls" or "having the balls" it refers to 'having courage'. I find it hard to believe that my use of the expression in a (personal and friendly) e-mail to you has precipitated a genuine offence. If you are genuinely offended by this, again I am gobsmacked, but I apologise to you - no offence was intended. I will try my best to avoid using these expressions in communications to you in the future. I find your name-calling in reply and you calling me a "misogynist" for using this expression (and noting that that I have heard Cr Lemon using in [sic] the chamber on occasions) is offensive, hurtful and unwarranted. Please withdraw your offensive allegation and inference.

I will now limit all my communications with you to the bare essentials and the perfunctory for [sic] this point on. I reserve all my rights and the right to use what I consider to be non-offensive and appropriate analogies and vernacular in making my points understood.

I really hope that you are merely 'play acting' at the behest of your CEO!? But in that case, that would best most [sic] disappointing!

I am sorry it has had to come to this Barry and I hope that you won't become just another victim at the end of the day that walks out the council door when Paul Deb is inevitably forced to leave. When Paul does move on, and if you stay, I hope that you and I can again be friends or at least have a cordial and productive working relationship once again.

Lastly, please also remember that if you become stressed or anxious, even by this e-mail, may I suggest that you contact Lifeline or Beyond Blue... two excellent counselling services. Alternatively, if others around you (at home or in the workplace) are stressed and anxious I strongly recommend that they too contact these services. I also know that there's support available via the LGA and SafeWork SA. If you feel that you or others around you are doing or being asked to do illegal, immoral or unethical things - speak up and you will be supported!²³⁹

296. On 8 August 2017 Cr Bagster appears to have sent the following SMS message to Mayor Parkin:

²³⁸ LB181.

²³⁹ LB182.

Mayor, I'm still quite sick. Small agenda item tonight. As I can't get leave - because of your unscrupulous jobbery - can you please offer my apologies for my unplanned absence this evening? Had you anything new planned for this evening? Another ICAC complaint perhaps? Good luck with your circus performance, make sure your hearing aids are in good working order; it'd be a pity if you're not clearly hearing what Paul is telling you what to [sic] do! ;) Lance²⁴⁰

297. On 8 August 2017 Cr Bagster emailed Mr Dabrowski, Mayor Parkin, Mr Cant and Mr Cooper (responding to an email from Mr Deb sent to all elected members):

Dear Robert,

Can you please see that this message gets to the CEO.

Please also remember that if [sic] you do become stressed or anxious, even by this e-mail, may I suggest again that you contact Lifeline or Beyond Blue... two excellent counselling services. Alternatively if others around you (at home or in the workplace) are stressed and anxious I strongly recommend that they too contact these services. I also know that there's support available via the LGA and Safework SA. If you feel that you or others around you are doing illegal, immoral or unethical things - speak up and you will be supported!

Thanks, Cr Bagster

Dear CEO (via his PA)

1. Please stop sending me direct correspondence.
2. You have been routinely doing this even though I have highlighted via formal complaint and in other correspondence.
3. You continuing to do so clearly demonstrates to me that you are prepared to flaunt your scandalous disregard for an unambiguous Council resolution for you not to do this.²⁴¹

298. On 8 August 2017 Cr Bagster, in response to a brief email from Cr Jane Davey expressing gratitude to Mr Deb, sent the following email to Cr Davey, copied to Mr Cant, Mr Cooper and the council's elected members:

Dear Cr Jane Davey,

Have you had an epiphany? What is the clarification that you have received from the Mayor's good chum, the CEO? Are you aware that I went to a mediation session on 26 July 2017 which was conducted by a lovely lady, Theressa Hines. I went along in good faith expecting the CEO to be there, he was not. I went along despite learning only the previous night that the Mayor's good chum, the CEO, had had his dastardly hand in penning yet another serious complaint against me. Believe me, that took a great deal of effort - even just to hope that the CEO's attitude could change at that point.

That recent significant complaint to a new agency of the SA Government adds to the other complaints the CEO and his best buddy the Mayor have made against me to SAPOL, SafeworkSA, the Ombudsman, the Minister, and a CoC complaint (for good measure). They're the ones I know about. Be aware that the minister, the Ombudsman and SAPOL told the pair to bugga off. SAPOL even went as far as to suggest that it was me who was being bullied by Council.

The Mayor's good chum, the CEO also continues to vilify me and defame me in the most horrific and degrading terms. I am advised that I have a very strong case against the CEO for damages including defamation. I am advised it is a 'lay down misere' and also one in which I am also advised that the CEO most definitely cannot be covered or indemnified by any agency (esp. the MLS) for this private action. In good faith I have elected to put my legal action on hold in the hope that the CEO would repent, apologise,

²⁴⁰ LB183.

²⁴¹ LB184.

maybe just do his job or move on. I have people falling over themselves to offer me QCs to prosecute my case. I have been very restrained and given the CEO plenty of latitude. Yet despite this he continues his relentless campaign and pantomime: urging his staff to run away from me; flouting Council Resolutions; breaking [sic] his CoC, breaching the conditions of his employment agreement and the Act.

How would you feel if any of these things were being directed at you!? You of all people know what it's like to be targeted by unscrupulous forces on Council; I would have expected your sympathy and help; not your capitulation. How would you feel if you knew that the Mayor and the CEO were undertaking a deliberate campaign of character assassination against you with the aid of significant staff effort and ratepayer funds? It is just not on; and nor should any of my fellow elected members engross themselves in such behaviour - but there's more than 2 or three of them that seem to love acting with similar wicked intent! I have been made to pay a very heavy price for blowing the whistle of [sic] the Mayor's good mate, the CEO - in just having a hand in showing Burnside what kind of person he is. It's is [sic] immoral and heinous.

When the plethora of ridiculous complaints has passed and exonerated me of being an evil bastard - I hope you and all the other right-minded Councillors can reach down into the deep dark corners of their minds and finally support me in my righteous campaign and efforts to rid Council of its necrotic and gangrenous culture and elements.

If you cannot clearly see what is going on, like you claim to with your recent epiphany with the CEOs dark partisan political efforts; then when it comes to dealing with me - please keep an open mind, or at least don't add fuel to the already raging fire. Be Switzerland!²⁴²

299. On 1 August 2017 Cr Bagster sent the following email to Mayor Parkin, copied to Mr Cant and Mr Cooper:

Here's some numbered QONs for the next Council meeting for the agenda of 8 Aug 2017:

1. What were the reason, agenda and outcomes of the meeting (which included the CEO, Mr Barry Cant, Mr Matthew Spearman, Cr Henry Davis and Cr Mark Osterstock) that took place at The Robin Hood Hotel (Norwood) after the last Council meeting on 27 Jun 2017?
2. Why was the 27 Jun 2017 meeting at the Robin Hood Hotel closed to other elected members? Why did Cr Henry Davis shout "F... off" to Cr Bagster when he attempted to join the meeting?
3. What are the latest outcomes of the Council Administration staff and your complaints against Cr Bagster to: SAPOL; SafeWork SA; ICAC; the Ombudsman SA; and the Minister? What mandate from Council did you have for submitting these complaints?
4. You told Cr Bagster at the end of the Council meeting on Tuesday 26 Jul 17 that he deserved to have these multiple complaints and this cruel and unusual treatment which has descended upon him. Could you please explain why and how this is fair and respectful treatment of your colleague and fellow elected member?
5. Is it true that the SA Police refused to investigate the complaint because of the baseless allegations and instead described to the complainant that the complaint was itself an example of the BCC bullying Cr Bagster?
6. Can you please provide Council with copies of those written complaints and the most recent Code of conduct complaint you signed, against Cr Bagster?
7. Preamble. In response to a preliminary assessment report which found the CEO in breach of his Code of Conduct; Council Administration provided Cr Grant Piggott with the text of a Motion that became Resolution C11055. That Resolution prohibited Cr Bagster and the CEO from direct communications and imposed a significant barrier to Cr Bagster doing my [sic] job as an elected member. I note that the CEO has breached and continues to breach the requirements of the very Resolution he wrote and C11055 has not been any impediment to the CEO whatsoever as he continues to do exactly what he previous did with impunity and your apparent approval. You have confirmed it in writing that C11055 was designed as a

²⁴² LB185.

punishment to Cr Bagster; thus simply a reprisal from the CEO at having caught [sic] out and in breach of his code, his employment agreement and the Act. Why should Cr Bagster be punished for the CEO's misdemeanours? Why is it appropriate that Cr Bagster continue to be punished when the CEO continues to act with impunity and is apparently unshackled by any restrictions to his communications? When do you think it'd be appropriate for the CEO to be held accountable for breaches of his code, the Act, his employment agreement and Resolutions of Council?

8. Preamble. Cr Bagster is still receiving anonymous e-mails from Council after Mr Martin Cooper assured him that he would not receive any more correspondence from anonymous sources. Evidentially Cr Bagster continues to receive anonymous and unacceptable correspondence attributed to the "Executive Team". In the past I am aware that the authorship of some of the anonymous correspondence was from Martin Cooper, Barry Cant, Matthew Spearman and Magnus Heinrich. When Mr Martin Cooper agreed to sending no more anonymous emails he also explained that correspondence would only be sent from either himself or Mr Barry Cant with their respective signature blocks on them.

Question. Why does Cr Bagster continue to be sent anonymous e-mails with no history attached (as e-mail strings) and who now constitutes the "Executive Team"?

9. Does the "Executive Team" include the CEO?
10. Is the CEO able to access emails sent to or from the LJBAAdmin account?
11. Preamble. These days, it appears obvious that the CEO is intent on perpetuating his malicious and false claims against Cr Bagster through his subordinate Council staff. The most obvious indication of this is that the Council Administration staff have been instructed to leave en masse when Cr Bagster attends the chamber.

Why don't the staff in the Council library, Pepper Street gallery, Council buildings or the Council nursery, also all "run away" when they see Cr Bagster? What is the reason that has been given to Council Staff for this ridiculous display? Is it for the benefit of the press and the public gallery? How is this not defamatory to Cr Bagster? How much longer will it last? Why do you let the CEO get away with such a naked display of enmity and defamatory behaviour? Why have all Council Administration staff been banned from attending Burnside Council meetings, with the exception of the CEO only when Cr Bagster attends meetings or Council gatherings?
12. When will Council Administration make available to all EMs the CEO's extant employment agreement? This has been on request now for over 2 months; and that agreement requires its release to all of Council.
13. When will Council Administration make available to all Council all the correspondence between BCC and the Mutual Liability Scheme between 1 Nov 16 and 30 Jun 17?
14. Can you please make available the written request from Council to the Mutual Liability Scheme in fulfilling Cr Bagster's written request to Burnside Council for legal assistance and coverage against the false, baseless and defamatory allegations being made against him by the Burnside Council Administration?
15. When will the Burnside Council CEO, Mr Paul Deb, tender his resignation to Council for his various breaches (of the Act, his Code of Conduct, and his employment agreement) and because he now presides over a dysfunctional Administration?
16. When will the CEO and the Mayor of Burnside issue Cr Bagster an open, public apology for their appalling false and defamatory allegations and statements against Cr Bagster?
17. What was the reason for the Mayor, David Parkin, not showing up to a prearranged meeting on 27 Jun 2017, agreed to between Cr Bagster and the Mayor to discuss the present issues befalling Council?
18. Preamble. On the strength of recent legal advice Cr Bagster will not be able to receive or address written correspondence from or to anyone on Council other than people with names who are prepared to put their names to their correspondence.

Question. Can you, Mr Mayor, please acknowledge receipt of this information?

19. Preamble. Cr Bagster has heard from media sources that three (3) Burnside City councillors have indicated they will tender their resignations if the current dispute between the CEO and Cr Bagster is either: not resolved soon; or not resolved in favour of the CEO.

Can you please confirm the truth to this assertion; name the three Councillors; and encourage the submission of those resignations ASAP?

20. When will you (the Mayor) consider that Cr Bagster have [sic] received sufficient punishment by having to endure this cruel and unusual communication protocol which was the result of Resolution (C11055) written by Council Administration staff for Cr Piggott and confirmed by you to be a punishment from Cr Bagster's peers as a result of the CEO being found in breach of his code of conduct?

21. Preamble. Cr Bagster attended a "mediation" session last Wednesday evening (26 Jul 17) which was supposed to include the CEO. Cr Bagster went in good faith, expecting to hear from the CEO and to understand his perspective and the position he's taken on various contemporary issues and why. The CEO was a "no show" at mediation.

Was the CEO's "no-show" is [sic] a clear indication of his attitude and desire to resolve current problems and issues he has with EMs? When with [sic] the CEO have the courage to attend a mediation session with Cr Bagster?

22. Mr Paul Deb, the CEO of Burnside Council, has previously said to Cr Bagster and to Mayor Parkin (and other elected members) that if ever Mr Jim Jacobsen got re-elected to Council that he would resign. Is the CEO willing to state the reasons for this position to Council and provide them with a guarantee that he will actually resign in that event?

23. Mr David Parkin has routinely stated his position and intent not to recontest for Mayor at the 2018 Local Government elections. Is the Mayor willing to publicly state this position to Council and provide them with a guarantee that he will not re-contest the position of Mayor in 2018?

Many thanks for your inclusion of these QONs and respective answers in the next Council Meeting agenda.²⁴³

300. On 3 August 2017 Mayor Parkin provided a lengthy response to Cr Bagster, the substance of which was that he refused to accept Cr Bagster's Questions on Notice on the basis that they were non-compliant with regulation 9 of the Local Government (Procedures at Meetings) Regulations.
301. On 6 August 2017 Cr Bagster responded to Mayor Parkin, in an email copied to the elected members, the council's Executive Group and Mr Dabrowski:

You continue to inappropriately, and devoid of honesty, honour, courage, integrity... disseminate your perverted ramblings via e-mails to the long suffering Elected Members. For some reasons (beknownt [sic] only unto yourself and you chum Paul McDeb [sic]) you also send your previous to the questionable 'executives' of the BCC. You'll note that my QONs were not delivered in such a fashion.

I still expect answers to my validly put QONs in the appropriate and usual way. I have submitted these QONs to you IAW established protocols and procedures. In fact, IAW the law. They are deserving of publication and answers in the required and appropriate way. The questions have been properly constituted and put; and are deserving of answers. Be in no doubt that they will be continually put to you (in an ever growing list) until there is appropriate and properly constituted and published answers. The people of Burnside deserve to know just what is happening on Council, and what a shambolic Council you run and what a dysfunctional and demoralised Council Administration McDeb is responsible for.

²⁴³ LB186.

One of the only personal agendas being served on Council presently is the unconscionable and indefensible position you have taken in supporting your good mate and (hopefully future co-defendant and inmate Paul. [sic]

Your rulings - WRT my QONs - are insulting, improper, unlawful, insulting, hurtful, undemocratic and unwise. You really should think more wisely and circumspectly before being so ill-advised by such corrupted and partisan personal agendas.

I am particularly keen to understand why you think that it is fair and reasonable to have made so many formal complaint [sic] against me to such a variety of different agencies as: SafeWork SA; SAPOL; the Minister; the BCC through a Code of Conduct Complaint, the OmbudsmanSA [sic], ICAC. You also keep supporting McDeb's horrendous and defamatory position WRT my apparent bullying, harassing and threatening behaviour. More recently Mr Barry Cant, on behalf of McDeb, has alleged that I am now a warmongering, misogynist. The list keeps growing! You are aware that all of your (and Paul's) ridiculous complaints and stunts have so far been seen by these agencies for what they are - a character assassination of the highest order. SAPOL have even told you that you are bullying and harassing me. Didn't that act as a 'combat indicator' to you?

Mr Mayor, I beseech you to search the remnants of you corrupted soul... those bits that Beelzebub hasn't purchased from you. You must know in your heart of hearts that your pathetic efforts in this campaign of good and evil will only result in a poor outcome for the long suffering people of Burnside and the already battered reputation of Council.

Please stop being so damn immoral and wicked... and start acting in the best interests of the City of Burnside. Please be on the right side of history. I can assure you that your early resignation (along with Paul's) will be seen as far more honourable than the humiliation you are presently destined for - if not a short stint at "Her Majesty's Pleasure" that I have separately indicated you risk by at [sic] of breaches of several State Govt Acts [sic]. Though you already have proved you leave no legacy; it would be best you that you minimise the damage you and Paul McDeb currently do to our fair City, the long suffering people of Burnside and the poor, defenceless employees of the Burnside Council.²⁴⁴

302. Shortly afterwards, Cr Bagster again emailed Mayor Parkin:

Dear Mr Mayor,

Though there are spelling mistakes and syntax errors in my previous email; it should be abundantly clear to you that you are on "the wrong side of history". Your current courses of action (COA) are going nowhere ... fast!

I am sensitive to the problems associated with being on the wrong side of history - you constantly show me! As an example - Hitler, Himmler, Goering, Goebbels, Mengele, etc. ... all thought themselves to be correct, proper and to be leaving a legacy of the "1000 year Reich". The Burnside Council hasn't even built a sports stadium or yet forced its employees into brown uniforms. But I am guessing something like that is on your mind.

Please understand that you do not have the capability, nor can you justify the position that you take regarding, defending your good mate and chum, Mr Paul Mc Deb [sic]. There comes a point where you are devoting your energies and efforts to a corrupted and unwinnable cause. That time is now.

My personal and sagely advice to you is that you should begin to act with integrity, honesty and respectfully. It's time you resigned and left the 'big thinking' to people who are capable of acting in the best interests of the City of Burnside.

God save your soul.²⁴⁵

303. That same evening Cr Piggott emailed Mayor Parkin a message of support, copied to Cr Bagster and the other elected members:

David:

²⁴⁴ LB186.

²⁴⁵ LB186.

I feel that it is necessary to state that you have my full support as Mayor of the City of Burnside.

I have observed, without comment and over an extended time, your continued perseverance to oversee the activities of the Council while irrational & inappropriate communications have been directed at you - dipping to a new low with references to Nazi Germany.

Your approach has been consistent and appropriate & I commend you to continue to pursue this course of action.²⁴⁶

304. On 8 August 2017 Cr Bagster sent the following email to Cr Piggott, copied to Mr Dabrowski, Mr Cant, Mr Cooper and the elected members:

Dear Cr Piggott,

I must admit that my analogies and stories were somewhat 'over the top' and exaggerated for effect and as an 'attention grabber'. I hope that you are not genuinely upset. I also have to admit that I am at the end of my tether and completely frustrated in dealing with a recalcitrant CEO (the Mayor's good chum) and Council administration. In fact it is 'doing my head in'.

However, your message to the Mayor, below, is completely redundant. This is because he seems to already have your undying support and assistance in even the most dastardly and undemocratic of Motions (notably C11055). Remember that Motion which you ran on behalf of Council Administration and a beleaguered CEO, under pressure at being found to have deliberately breached his Code of Conduct.

I should remind you that on this Council I am your peer, and no subordinate of yours. You should be supporting me in my efforts to have my valid Questions On notice answered by a reluctant Mayor who is severely conflicted by his undying loyalty to his good chum.

It is about time that you realised you cannot lord it over me or any other peer on Council. You have no right to even consider that you are somehow superior in any way to me or any other Councillor. That is a conceited attitude. Your advice and encouragement is inappropriate and especially unwarranted in coming from you. Cr Osterstock's similar goading and encouragement in the plethora of formal complaints the CEO and the Mayor have made against me will doubtless land them in much more hot water than they believe they'll land me in. At that point, I hope that you can start to act and sound more collegial and work in the City's best interests rather than for the CEO's.

Please also remember that if you do become stressed or anxious, even by this e-mail, may I suggest again that you contact Lifeline or Beyond Blue... two excellent counselling services. Alternatively if others around you (at home or in the workplace) are stressed and anxious I strongly recommend that they too contact these services. I also know that there's support available via the LGA and Safework SA. If you feel that you or others around you are doing illegal, immoral or unethical things - speak up and you will be supported!²⁴⁷

305. On 11 August 2017 Mr Cooper sent the following email to the council's elected members:

Hi All

For your information, at the Council Meeting last Tuesday (8/8/17) the following Resolution C11341 was carried:

"That effective forthwith the Council will not accept for inclusion in the meeting minutes that portion of a report, from an elected member that makes either a direct or indirect reference to a Council staff member or an elected member, without that person's written consent."

What does this mean?

²⁴⁶ LB186.

²⁴⁷ LB186.

In future, you may receive a request from an Elected Member(s) who would like to mention their interactions with you, or members of your team, in their fortnightly report of Delegates and Working Parties to Council. If you are happy for this to occur, a simple email response to the requesting Elected Member(s) is all that is required of you.

In the unlikely event that you wish to decline such a request, this can be done verbally or via email to the requesting Elected Member(s) as appropriate.

This change provides professional courtesy to all staff before their position title can be quoted in public Council Minutes.

Please pass this onto your teams and let me know if you have any questions.²⁴⁸

306. That evening, Cr Bagster sent the following email to Mr Cooper, copied to the elected members:

Dear Mr Martin Cooper,

Thanks for that information. I am still somewhat confused. I would like to understand the intent and meaning of this Resolution C111341. Is the intent of this resolution to avoid the embarrassment of EMs making mention of potentially illegal or unlawful meetings such as I have been trying to highlight in my previous QONs? Does it extend to QONs that should be in the agenda or merely just the fortnightly reports. I note that even when I make mention of Councillors or Council staff in my reports that their names have been redacted without my permission in the recent past. Are you implying that that has been illegal?

Regard the potential effect on other agenda matters, could I continue [sic] to ask the following QONs expecting an answer and noting that I am naming council [sic] staff and EMs:

1. What were the reason, agenda and outcomes of the meeting (which included the CEO, Mr Barry Cant, Mr Matthew Spearman, Cr Henry Davis and Cr Mark Osterstock) that took place at The Robin Hood Hotel (Norwood) after the last Council meeting on 27 Jun 2017?
& 2. Why was the 27 Jun 2017 meeting at the Robin Hood Hotel closed to other elected members? Why did Cr Henry Davis shout "F... off" to Cr Bagster when he attempted to join the meeting?

Does this Resolution C11341 mean that such questions cannot be asked or won't be answered in the future? Does this apply to QWON too? Also noting that the info in these questions might well (should) have been put in EM and the CEO's reports.

In any case, what is the point of the resolution since the Mayor appears only to answer the questions he feels like answering and ignores anything else which might him [sic] or his buddies uncomfortable.

Will these questions (above) now have to be put to the Ombudsman or ICAC for an answer?

For your advice and information in response.²⁴⁹

307. On 12 August 2017 Cr Osterstock sent the following email to Mr Deb, copied to the council's elected members:

Hello Paul

In light of the investigation that has recently been commenced by Safework SA, and in view of the proactive and professional steps that Council undertook last Tuesday night, in respect to protecting the work, health and safety of staff and elected members, are there any other measures that Safework SA suggest that Council could implement in order to comply with our legal obligations?²⁵⁰

²⁴⁸ LB187.

²⁴⁹ LB187.

²⁵⁰ LB188.

308. On 14 August 2017 Cr Bagster replied to Cr Ostertock by way of an email copied to the elected members, Mr Spearman, Mr Cant and the SafeWork SA 'help desk' (attaching a photograph of a stockade):

G'day Cr / Brevet Sgt Mark Osterstock,

1. Thanks for asking these really important questions. You truly are a gem - working for the greater good of your community! Since you haven't lived in Burnside City for years - I am not exactly sure which community that is?
2. It is certainly important that the Burnside CEO ensures that there is a safe work environment for all staff and for the elected members.
3. We should especially expect to be free of any acts of physical violence, ongoing abuse, defamation, bullying and harassment.
4. For these reason, I am thinking it would be especially apt for the 'guilty bastard' to be physically restrained and publically humiliated. Of course, we must assume - staying on the side caution and absurdity - that that is me.
5. Therefore, I think it appropriate that I be placed in a specially built stockade, and I am willing to be restrained for the duration of Council meetings, and other council events. These restraints will mean that I cannot be in any position to wreak havoc on unsuspecting staff. This would have the added advantage of my fellow (peer) Councillors - and any other persons wishing to join in the festivities - being able to pelt me with rotten tomatoes. I have attached a picture of the kind of thing I have in mind. My desk in the council chamber could be replaced with such a stockade device.
6. I would much prefer to be pelted with rotten fruit than to sustain the relentless and ongoing attacks from the likes of the CEO, senior staff and the Mayor - such as the complaints the Mayor has confirmed he's made to Safe Work, SAPOL, the Ombudsman, (that agency we cannot name - yes an extraordinary admission from the Mayor!), the Minister for local Government, CoC complaints. I am sure that there are a few others!? C'mon mate, you'd know, you must have discussed this strategy with your buddies at the Robin Hood!?
7. As for the CEO, I think that he should not be himself exposed to potential violence and such a risky work environment. I would further suggest that he hide with his long suffering staff behind locked doors and only communicate with Council remotely. Certainly that would make me feel a little safer and less ill. He owes a safe work environment to himself too.
8. Lastly mate, don't you feel somehow conflicted or compromised in any of these affairs, especially in perpetuating these horrendous and false allegations and in stirring up those with lessor abilities than yourself to rationalise and think strategically?²⁵¹

309. On 14 August 2017 Cr Bagster sent the following email to Mr Cooper:

Dear Mr Cooper,

Ms Theresa Hines - who is employed by you to mediate differences between me and your boss - has informed me that she spoke with you today. She has explained to me that IOT successfully apply for leave, I will need to obtain a medical certificate from my treating medical practitioner to support my leave application.

You have requested to have that by next Wednesday.

Whilst I can easily obtain a certificate, can you please explain why it is required? What policy requires an elected member to provide you with such certification and has BCC ever made such a request of an elected member in the past?

I was under the impression that our policy merely requires an Elected Member to provide a valid reason - which I have provided to the Mayor today.²⁵²

310. Approximately three hours later, Cr Bagster again emailed Mr Cooper:

²⁵¹ LB188.

²⁵² LB189.

Could you please acknowledge my previous email to you of 10 Aug 2017 at 6:23 pm?

I am keen to have a response to the questions I posed; especially regarding your requirement of me to deliver a medical certificate IOT support my request of Council for leave.

I am particularly interested to know:

1. how such a request is not a breach of my privacy and what motivates you in making such a request;
2. if you being [sic] driven by some sense of revenge or retribution or acting on instructions or at the direction of the CEO; and
3. if your (or the CEO's) plan is to again (unlawfully or without integrity) hold the application for my leave in the Confidential part of the next Council meeting.

For your consideration [sic] and reply as appropriate and at your earliest convenience.²⁵³

311. That same evening Cr Bagster emailed Mayor Parkin:

Request [sic] you acknowledge my previous complaint (via you) against the CEO for his not declaring a conflict. Given your recent series of serious complaints against me to a plethora of State Government agencies, I believe you should now be raising such a complaint (as I have suggested) to ICAC against the CEO.

Further, can you please answer, as a Question on Notice:

Do you plan to resign when each and every one of your complaints made against me by you, and on behalf of your good buddy the CEO, fall flat and are all revealed to have been made vexatiously, in bad faith and as retaliation on behalf of the CEO.²⁵⁴

312. Shortly afterwards, Cr Bagster again emailed Mayor Parkin:

Dear colleague and friend,

The Scorecard so far:

1. Complaint to the Minister. DONE.
2. Complaint to SAPOL. DONE (great result).
3. Complaint to Ombudsman. DONE.
4. Complaint to ICAC (that you indicated). DONE.
5. Complaint to SafeWork. Work in Progress.
6. Code of Conduct complaint. Work in Progress.

Anything else you need to tell me about?

When do you want me to "pull the trigger" on my issues? Please just give me the nod! All lined up and revving up the engines.

BTW, when are you and Paul planning to resign? That would allow Burnside Council Council [sic] to move into a new era of enlightenment and integrity. I sense that the long suffering people of Burnside and the Council staff truly [sic] want that change.²⁵⁵

313. Shortly afterwards, Cr Bagster emailed Mayor Parkin a third time:

Dear Mr David Parkin,

I am reminded that I needed to ask you what it was that made you say to me (after the Council meeting of 25 July 2017) why it is that I "deserve all these complaints" you made against me. You said that to me right after you revealed that you had complained against

²⁵³ LB189.

²⁵⁴ LB191.

²⁵⁵ LB190.

me to ICAC as well as a number of other State Government agencies. This was a very ill-advised thing for you to have said.

Do you think that you ought to seek the MLS to indemnify you ... just like your good buddy the CEO did? I'd strongly recommend that you do. Also, I note that your indemnity under Section 39 of the Act probably won't apply, given the clear interpretation that you have not acted with honesty in all of these matters: you are conflicted. Don't forget that you should apply via a Council Resolution and not without a mandate as did your good buddy the CEO and Mr Marty [sic] Cooper. I'm sure that Council will look upon your application favorably [sic].

Should I ask you the above questions on notice? Should I expect you to answer them?

For now, sleep well, if not straight. Hopefully you'll summons the courage to call me to discuss the terms of your resignation. It's an offer that remains open to you at anytime. Nite, nite.²⁵⁶

314. At 12:19am on 17 August 2017 Cr Bagster appears to have sent the following SMS message to Mr Deb, during a period in which Mr Deb was known to be on sick leave from his responsibilities with the council:

Hiah Paul, hope that you are doing okay!? I know that things must be difficult for you at the moment. Please call me at anytime [sic] if you are up to a chat or negotiation. Regards, Lancelot James Bagster²⁵⁷

315. On 16 August 2017 Cr Bagster sent the following email to Mayor Parkin, copied to the elected members and various members of the council's administration (subject: 'Special Meeting of Council – CEO's Performance and Appraisal'):

Dear Mr Mayor,

As you have already had some exposure to it, I have requested Special Meeting of Council. I have the support of Cr Piggott, Cr Lord, Cr Bills, Cr Ford, Cr Monceaux, and myself calling for a Special Meeting to be held at 09:00 on next Monday morning, 21 Aug 17.

I believe that I only need 3 EMs to call the meeting. I am confident that we'll get a quorum for the meeting.

Could you please inform me what additional information you require for the meeting and could I kindly request that you arrange for the HR Specialist Mr Andrew Reed or his delegate) to provide Council with a summary and overview of the CEO's recent performance assessment at the commencement of the meeting?

Please acknowledge receipt of this email and I request that you seek Council Administration staff to appropriately gazette and prepare for the Special Meeting.

Thank you in anticipation.²⁵⁸

316. Shortly afterwards, Mr Cooper sent the following response to Cr Bagster:

Cr Bagster

The Mayor has asked me to respond in my capacity as Acting Chief Executive Officer.

If your email below is a purported request for a special meeting, it is of no effect. To be effective, such a request must -

- be addressed/delivered to the CEO. In this instance, this is me as the Acting CEO, and
- be in writing, be dated and signed by at least three (3) members who are making the request (or otherwise, provide me with written evidence that they do agree to the

²⁵⁶ LB190.

²⁵⁷ LB193.

²⁵⁸ LB194.

calling of the meeting), and further, it must be accompanied by the agenda for the meeting.

Once the above criteria are satisfied, I will have a valid request for a special meeting and I can proceed to call it in accordance with requirements.

A practical difficulty that may present itself is whether your request for a representative from Henders can be accommodated at such short notice.²⁵⁹

317. That evening Cr Bagster emailed Mr Cooper:

I acknowledge your requests and provide you with the following (#) assurances and information:

For a Special Meeting of Council on 21 Aug 17, request to you (as the acting CEO) arrange for the required meeting and the required supporting presentation of the CEO's performance appraisal. This email (official correspondence) suffices as such a written request - being in writing and dated as it is.

The requirement for at least three (3) members who are making the request includes me and the elected members I have previously nominated. This should suffice as appropriate proof and numbers required to hold or conduct such a meeting. In addition, I will provide you, by COP tomorrow, with the physical (hand written) requests of at least three elected members (written evidence) that they agree to the calling of the meeting. However, you should accept, as the BCC previously has, that sufficient numbers and mandate exists (noting that this e-mail includes all elected members) that there is a sufficient number of EMs to validly constitute the meeting requirement and its legitimacy.

The Agenda has already been provide [sic] to you. However, if you require me to specify exactly or reiterate it; it is in accordance with the following agenda:

Title of Agenda: Special Council Meeting Agenda

Date and time: Monday, 21 August 2017 at 9.00 am

Place: Burnside Council Chamber 401 Greenhill Road, Tusmore.

Members: (All available members of the Burnside Council).

1. Opening Prayer
2. Acknowledgement of those who gave their life for this Country and acknowledgement of Traditional Owners
3. Apologies
4. Leave of Absence
5. Reports of Members, Delegates and Working Parties.
6. Presentation (including questions and answers) by a council appointed HR Specialist of the CEO's Performance - or open discussion of the CEO's recent performance and EM experiences WRT the CEO's performance appraisal. Note that Admin have made various requests for the attendance of relevant HR specialists. If they are not available Cr Lance Bagster will provide a summary of the CEO's performance and answer relevant questions.
7. Questions without Notice.
8. Motions without Notice.
9. Relevant Council correspondence (only including all related to this meeting).
10. Other Business.
11. Closure.

Lastly, please provide me with an assurance that BCC required the same level, requirement, and 'proof' and "legitimacy" for a recent "Special Meeting" of Council to

discuss the press release regarding the false allegations (by you and the CEO) of bullying, harassment and threatening behavior [sic] you have alleged to Safe Work SA.²⁶⁰

318. Shortly afterwards, Cr Bagster again emailed Mr Cooper:

Dear Mr Martin Cooper,

I am reminded that we also require that the CEO's employment agreement (contract) be tabled.

Can you please add that to the agenda for the Special Meeting?²⁶¹

319. Shortly afterwards, Cr Bagster emailed Mr Cooper a third time:

Dear Mr Martin Cooper,

I am obliged to remind you of Section 82 of the LG Act.

[excerpt omitted]

In accordance with the Act and to clarify:

1. you have been provided an indication that at least three members of the Council call for this special meeting; 2. you have been provided with an agenda for the special meeting; and 3. you have been provided with a time, place and the requirements of the special meeting.²⁶²

320. On 17 August 2017 Cr Piggott sent the following email to Cr Bagster, copied to Mr Cooper and the elected members:

Lance

You sent me a text on Wednesday morning asking me whether I was available at three potential times for a Special meeting you wished to arrange. I responded positively in respect to all three times.

Since that time:

1. You have attempted to harass Martin into accepting a process outside our established procedure for requesting a Special Meeting (i.e three EM signatures on one piece of paper). This process has been the requirement for special meetings during my time on Council, including for special meetings proposed by me. In the time spent corresponding to Martin, you could have achieved the other two EM signatures (assuming their willingness to sign).
2. The Agenda proposed requests an update of the CEO Performance assessment for Council-an update I would encourage- but in the absence of that, proposes that you personally update the Council on your opinions. This displays an unwillingness to understand the status of the Chamber and continuing arrogance in respect to the Council.

I responded to your text on the basis that it was a reasonable request from a fellow EM to call a special meeting. Instead it is clearly a tactic in your ongoing irrational attempt- as stated by you several times - to remove the CEO, a CEO who has achieved scores of 4.0+/5.0 from professionally run assessment processes over recent years and, in my opinion, there is no evidence that the current assessment process will not continue that trend.

On the basis of the current agenda proposed, my work commitments will need to take precedent [sic] and I will not be attending the meeting.²⁶³

321. That afternoon, Cr Bagster sent the following email to Cr Piggott, copied to Mr Cooper and the elected members:

²⁶⁰ LB194.

²⁶¹ LB194.

²⁶² LB194.

²⁶³ LB194.

Dear Councillor Piggott,

I appreciate you writing this e-mail.

I have addressed the intent and motive in the Special Meeting. The meeting is most certainly due now and it is timely. I am very worried for the CEO and also the way in which the Council has been driven via his leadership and management. I am convinced that things need to change and fast. There are many things council might be able to do to help the CEO and the Burnside city Council. Swift and decisive action now is required. The Special meeting now, of all of Council is the right thing to do.

You have alleged that the desire of several Councillors to hold this meeting is a "tactic in your ongoing irrational attempt ...". I can assure you that I am quite 'rational' and this is not tactic by me. All decisions to emerge from the special meeting will be from the CEO's employers (the Council).

I take exception to your allegation that I have harassed Mr Martin Cooper, A/CEO. I have only provided him with appropriate documentation, materials and questions of relevance.

please [sic] withdraw our terrible [sic] allegation which does nothing more than add to other's defamatory, vilifying actions against me and their bullying and harassment of me.

I take exception to your statement that I am 'irrational'. Please withdraw your dreadful allegations.²⁶⁴

322. On 19 August 2017 Cr Davis emailed Mayor Parkin, Mr Cooper and the elected members:

I have a scheduled meeting with a client for 9am Monday morning which I have been unable to move, I will be an apology for the special meeting.²⁶⁵

323. That evening, Cr Bagster sent the following email to the elected members and Mr Cooper:

Dear Cr Davis,

While you're in the apologetic mode; who about [sic] you issue a sincere apology to Cr Monceaux!?

I note with concern your apology from the Monday Special meeting. I also note your apology is for contrived and disingenuous reasons. I believe you ought to be thinking more about the welfare and support of the poor CEO in his hour of need. I thought that you and the CEO were good buddies, he's certainly never done anything wrong by you ... he deserves your support and help. Why are all the CEO's - so-called - friends so keen to abandon him. I am really worried for him and we all need to help him now.²⁶⁶

324. On 15 August 2017 Mr Spearman contacted the Fair Work Commission on behalf of the council to request an extension of time in which to file an employer declaration in respect of an anti-bullying application made by Mr Cooper. That extension was provided on 25 August 2017, leading Cr Bagster to email Mr Spearman, Mr Cooper and Mr Cant:

Dear Mr Cooper and Mr Spearman,

What an atrocious and concocted complaint! Do you not realise or appreciate that I am a citizen and ratepayer of Burnside. I have no power or authority over you. This and the other complaints against me are simply a form of revenge and retribution. What do you really expect of me?

For Martin, You have my lowest regard.

²⁶⁴ LB194.

²⁶⁵ LB195.

²⁶⁶ LB195.

For Matthew, I just hope that you are only involved to the extent that you have been directed to partake in this madness. You know that if you are asked to do things that make you are uncomfortable or that are illegal; you are allowed to say “no”. Stay in [sic] the right side of history mate.²⁶⁷

325. I understand that Cr Bagster subsequently made his own application to the Fair Work Commission.
326. On 30 August 2017 Mr Cooper emailed the Fair Work Commission on behalf of the council to supply a copy of the Hines report and to request that consideration of Cr Bagster’s application be deferred pending resolution of the application made against Cr Bagster.
327. On 10 September 2017 Cr Bagster sent the following response to the Fair Work Commission, the then-Minister for Local Government, SafeWork SA, Mayor Parkin and various external parties:

Dear Minister Brock, Fair Work Commission and SafeWork SA,

Could the same (Ms Theresa Hines) Report that Mr Martin Cooper, of the Burnside Council Administration, has asked (see Mr Cooper’s email below) the FWC to consider also be included with my Complaints (to both the FWC and SafeWork SA) as evidence in support? I am aware that Mr Cooper immediately forwarded Ms Hines’ report to the Local Government Minister, SafeWork SA and the Fair Work Commission.

That report demonstrates the lengths that the named parties of the Burnside City Council (BCC) member in my complaints are prepared to go to to [sic] bully, harass [sic], vilify and defame me.

The “Hines Report”, purports to be a report into the “mediation” between me and the Burnside CEO, Mr Paul Deb (one of the three named parties). The report is nothing but an exercise to further defame, harass, and bully. It was written by an unqualified, unprofessional person who makes the most outlandish and baseless allegations against me. The Hines Report was commissioned, briefed (instructed) and paid for by Mr Martin Cooper (on behalf of the Burnside Council) in support of his many false and personal claims and complaints against me.

The Hines Report actually stands in violation of: the SA Local Government Act Sections 270 and 271; the Federal and SA State Governments’ Privacy Acts; it breaches the privacy of a significant number of innocent residents of the City of Burnside. The report is nothing more than a rambling series of false and heinous allegations, which are not cross-referenced or supported by the voluminous attachments to the report.

I have previously and publicly rejected the report as illogical, illegal and illegitimate. It is a manifestation of the revenge and retribution that Mr Deb and Mr Cooper (the two most senior Burnside Administrators) are determined to wreak upon me and upon Council. I am aware of their similar dastardly [sic] deeds wreaked upon at least three other Burnside Elected Members to lesser degrees than their vengeance against me. It would seem that these unscrupulous people will stop at nothing, and take any opportunity, to quash the people who oppose them or dare speak out or speak the truth. They don’t appear to understand that the Council is not their play thing or that they are not employed to suppress and silence duly elected members of the community.

The real source of the problems and dysfunction in Burnside stem entirely from the CEO, Mr Paul Deb, who implementing [sic] a dastardly [sic] strategy to retain his job in the face of his many breaches of his Code of Conduct, his employment agreement, the LG Act, and Council Resolutions. His bullying, harassment and defamatory actions against me and other Elected Members are designed to obfuscate the truth of his unsuitability for the CEO role and his confirmed unsatisfactory conduct. His retaining [sic] his position is entirely untenable.

By his own admission, Mr Cooper (Mr Deb’s trusty lieutenant) states that he has spent many tens of thousands of dollars in public monies, and spends ‘half his time’, in “dealing

²⁶⁷ LB198.

with” me. I am just one of 13 elected community representatives of the City of Burnside. I work full-time in a very demanding job outside of the Council. Burnside Council Administration has not provided me with any support whatsoever to defend or protect me from these relentless, illegal and immoral attacks, and bullying and harassment [sic]. My Defence against these vicious and unwarranted attacks has been entirely at my own personal expense.

Worst of all - apparently blinded by their animus and possessed with a need for revenge - these named Council Administration staff have wrecklessly [sic] betrayed the confidence, trust and privacy of innocent and unsuspecting citizens of Burnside through the release of the horrid Hines Report. That report was hastily posted by the Burnside Council on the internet for the world to see.

Not satisfied to confine their heinous actions to just complaints, bullying, harassment and defamation of me - the Hines Report has been forwarded to one of my employers, the Department of Defence, in a blatantly illegal effort to jeopardise my ordinary employment. The complaints submitted by BCC against me have been to a plethora of different agencies including: SafeWork SA, the Ombudsman, the Fair Work Commission, the Local Government Minister, ICAC, SAPOL and the Burnside Council itself.

Initially I believed that SafeWork and the FWC should disregard the Hines Report. However, now I realise it is appropriate for it to be included in my Complaints as a key piece of evidence that supports my claims against the named parties: Mr Deb (BCC CEO), Mr Cooper (a BCC GM) and Mr Parkin (Burnside Mayor). None of the outlandish claims made and examples provided in that report can be proven to support their baseless allegations. The Report is nothing more than another chapter in a dirty smear campaign against me.

Regarding the supposed “evidence” and “examples” provided in the Hines’ “mediation” report, I stand by everything I have written; none of which comes close to proving or supporting any of the horrendous and false allegations made against me. However, the reader of this report should be aware that the examples and excerpts provided have been collated from a period of three years and nearly all are quotes that have been taken out of context by Ms Hines and the BCC Administration (who delivered them to Ms Hines). None of the information I provided Ms Hines which provides evidence of misappropriation, malfeasance, bullying and harassment of me by the CEO has made it into this report, which provides more evidence of the lack of procedural fairness and propriety of this smear campaign against me. Despite this, I would ask that and [sic] of the agencies who have received complaints against me from BCC and all Burnside Council thoroughly read the Hines Report and all the appended information. Even this biased and prejudiced Report stands as a key example of the practices employed by the CEO and BCC to pervert [sic] democratic processes and suppress duly elected member [sic] from undertaking their roles as community representatives.

The Hines’ Report is available from the BCC website from the following two links:

[hyperlinks omitted]

The ongoing SafeWork SA investigation of yet another adverse complaint against me by BCC Administration is yet another part of the “stitch up” job and smear campaign against me, all orchestrated by Mr Paul Deb, CEO of Burnside. The investigation of these heinous and false allegations has already been completely compromised by the investigator, [name omitted], writing to BCC Administration stating her absolute bias and prejudice in this case. There can be no just outcome or procedural fairness as a result of the compromised and conflicted SafeWork investigation into Mr Cooper’s false and vexatious complaint.

I again call on Minister Brock to replace the current Council and the senior executives of BCC (the CEO and General Managers) with an administrator until the next election in 2018. I also reiterate my call for the release of the MacPherson Report which will clearly demonstrate that the factionalism, culture and corrupted activities of the “bad old days” have not changed a bit. The people of SA deserve to see the MacPherson Report which they have paid millions of dollars for.

Whilst the BCC Administration staff and the Mayor of Burnside may not like what I say, may not want me to speak the truth, may not want me to ask the difficult or embarrassing

questions, be frank and fearless - that is my obligation as an elected community representative. Doing the right thing can never be wrong.²⁶⁸

328. Later that afternoon, Cr Bagster emailed Mr Cant:

G'day Bazza,

I can confirm that I don't want, need or require any counseling [sic] from you now or ever. That would be most unwelcome and inappropriate.

Please see the attached email to the LG Minster [sic], SafeWork, and the Fair Work Commission. Enjoy the reading!

I must say that I had thought better of you. But from the Theresa Hines Report I clearly now see you as just another sycophant and ex-pommie wasting the money of the good people of Burnside.

You're now on the periphery of my radar. Your boss is front and centre. I'm very sorry that you have taken the position you have. I asked you many times to be Switzerland; but you ignored me.

You are now on the wrong side of history and I have a grievance against you. That's going to be difficult. I'm sorry it has had to come to this.²⁶⁹

329. At 11:13pm on 24 August 2017 Cr Bagster appears to have sent the following SMS message to Mayor Parkin:

Dear David, I would really appreciate your assurance that ol' Debbie is okay? Is he with anyone else, family, friends? ... Should someone from Council be paying him a visit? Should I be knocking at his door if you won't?

I am really worried about him and can only imagine the enormous pressure he's under professionally and personally. My brother Nigel is going through his own issues with separation and divorce. But Paul's issues are far more involved, especially because he risks losing [sic] his job, house, reputation, etc.

Please assure him that I'm only after getting him help and a good mentor. I don't want to sack the poor bugger whilst he's on the ropes. I'm [sic] really very concerned about the CEO and I insist you update Council on the situation. Time is of the essence.

I've seen too many people take their lives, especially recently. We have an obligation to look out for any signs of self harm... And Paul's current circumstances and behaviour tick every rdd [sic] boxes.

Please call me ASAP. Call me anytime.²⁷⁰

330. It appears that at or around this time, Cr Bagster sent a similar SMS message to Mr Cant:

Dear Barry, I would appreciate your assurance that Paul Deb is okay? Is he with anyone, else, family, friends? ... Should someone from Council be paying him a visit? Should I be knocking at his door if you won't?

I am really worried about him and can only imagine the enormous pressure he's under professionally and personally. My brother Nigel is going through his own issues with separation and divorce. But Paul's issues are far more involved, especially because he risks losing [sic] his job, house, reputation, etc.

If you're in touch and your genuine role is just as a mediator ... please assure Paul that I'm only after getting him help and a good mentor. I don't want to sack the poor bugger whilst he's on the ropes. I'm really very concerned about him and I keep on insisting the Mayor update Council on the situation. Are you able to do the same? Time is of the essence. I've seen too many people take their lives, especially recently a good friend of mine, Nick

²⁶⁸ LB211.

²⁶⁹ LB211.

²⁷⁰ LB196.

Lock took his own life. Council has an obligation to look out for any signs of self harm... and Paul's current circumstances and behaviour tick every red box.

Please call me ASAP. Call me anytime. Look after yourself mate, I know you have been on a rough trot too recently, also with your own significant health issues. Sincerely,
Lance.²⁷¹

331. On 25 August 2017 Cr Bagster sent the following email to Mr Spearman, Mr Cooper, Mr Cant and Mayor Parkin:

Dear Gents,

All your pantomimes aside; I would really appreciate your assurance that Paul Deb is okay?

Is he with anyone else ATM: family, friends? ... Should someone from Council be paying him a visit? Should I be knocking at his door if no one else is?

I am really worried about him and can only imagine the enormous pressure he's under professionally and personally.

My brother Nigel is going through his own issues with separation and divorce. But Paul's issues are far more involved, especially because he risks losing [sic] his job, house, reputation, self-respect, etc.

If you're in touch with Paul ... please assure him that I'm only after getting him help and a good mentor. I don't want to seek his sacking ... the poor bugger ... whilst he's on the ropes. I'm very concerned about him and I keep on insisting the Mayor updates Council on the situation. Are you able to do the same? Time is of the essence. I've seen too many people take their lives, especially recently a good friend of mine, Nick Lock, took his own life.

Council has an obligation to look out for Paul and any signs of self harm... and Paul's current circumstances and behaviour is really waving a red red [sic] flag.

You should know that I'm really sorry that you have been forced into such an uncomfortable and unprincipled position. But I'm still of a mind to forgive you if you are able to start to act with integrity and honesty.

Please call me. Call me anytime and look after yourselves. God bless.²⁷²

332. On 26 August 2017 Mayor Parkin circulated a ratepayer email that commented on the 'disruptive' behaviour of another attendee at the council's 22 August 2017 ordinary meeting. In circulating that email, Mayor Parkin commented (referring to the 'disruptive' party):

This is the gentleman several of you wish to install as CEO!

I receive many such emails and I have sent a courteous response to the sender.²⁷³

333. On 26 August 2017 Cr Bagster responded to Mayor Parkin by way of the following email to the elected members, copied to Mr Spearman, Mr Cooper, Mr Cant and the council ratepayer (emphasis in original):

Dear Mayor of Burnside,

Your last e-mail is another shocking and atrocious example of you attempting to damage the good name of a private citizen of Burnside and an innocent and upstanding member of our community.

[Name omitted] has only been making key observations and speaks the truth when he interjects in Council against your unlawful, undemocratic and immoral practices.

²⁷¹ LB197.

²⁷² LB199.

²⁷³ LB200.

[Name omitted] has recently been exonerated of any wrong-doing in an almost decade-long dispute: a 'David and Goliath' battle of him verses unscrupulous past DAP members and the BCC itself.

Your extended vilification and besmirchment of [name omitted], in this way, is unbecoming of you and, as Mayor, you should know better.

You should not be sharing your prejudiced views with senior Council administrators or any one [sic] else. I hereby state my complete disassociation from you and your defamatory and biased comments.

Whilst you say that you are being "courteous" in replying to comments made by an observer in the gallery at the last Council meeting; you are merely using this as a platform and prop to suit your prejudicial opinion; know that you do not speak for me or Council in any way. I will not add any weight, or credence to your vile words. You can no longer speak on my behalf, nor on behalf of the Burnside Community.

Who did you say your colleagues were!? It appears that your fellow elected members no longer fall into that esteemed group, if they ever did!

You should issue an immediate and public apology to [name omitted] for your appalling personal attack.

You have missed the point and general idea; no one has proposed installing [name omitted] as the new Burnside CEO. I truly wish that you would learn to read properly Mr Mayor. Perhaps YOU SHOULD BE DRINKING LESS OF THE FREE BOOZE THAT THE RATEPAYERS OF BURNSIDE PROVIDE YOU!

Allow me to recap in ENGLISH... the proposition which has certainly been related to you in the recent past: [name omitted] would make an ideal mentor for the CEO.

[Name omitted] has a great deal of experience in local government and a comprehensive understanding and familiarity with the LG Act, BCC policy and procedures.

He has also previously been a Mayor of Burnside and an ordinary Councillor at Burnside. he [sic] is a long-term resident and ratepayer of Burnside.

[Name omitted] attends most Council meetings and has maintained a strong connection with the Council and the Burnside community over a very long period of time.

[Name omitted] is both willing and available to undertake the role of mentoring the CEO.

[Name omitted] is ideally positioned and qualified to undertake this difficult and challenging role as the CEO's mentor.

Please believe me that we have searched far and wide for suitably qualified people to fill that role, and there haven't been too many willing to even consider taking on that difficult but necessary role.

If [Name omitted] can be appointed in the role of the CEO's mentor, you would also do well to listen to his sagely advice and take advantage of his long experience and understanding of the BCC. I state this because you seem to routinely disregard the LG Act and the BCC's own policies and procedures. You have been a key contributor to the Council's present chaotic dysfunction.

So that there is absolutely no confusion, this (below) is the proposed Motion I had in mind for the Special Meeting of last Monday which torpedoed by your unlawful "ring-around":

Proposed Motion:

That:

1. The CEO be issued WARNING over his breaches of his Code of Conduct, breaches of his employment agreement, substandard performance, unsatisfactory conduct and poor management of the Burnside City Council (BCC) Administration;
2. Council express its LOSS OF CONFIDENCE in the CEO for his current poor performance, attitude and unsatisfactory conduct;

3. The BCC APPOINTS A SPECIAL MENTOR, [name omitted] [...] or Mr Ron Green (former CEO of the Unley City Council) for a period of 6 months to provide the CEO with personal and professional guidance and advice Mr [sic] Paul Deb with a view to the extrication of Council from its current dysfunction and back to being an efficient and effective Council and Council Administration.
4. The appointed mentor, in his role as a special mentor to the CEO, and for the six-months duration:
 - a. meet with the CEO at least 3 times a week (at the mentor's and Mr Deb's mutual convenience during working hours) for periods of at least one hour to facilitate candid and confidential discussion of the CEO's performance and any other relevant issues that the mentor and Mr Deb choose to broach;
 - b. provide monthly updates to Council on the CEO's performance;
 - c. be given special access to Council records that mirrors the CEOs;
 - d. be provided with unfettered access to the CEO and any material or issue the CEO deals with during the 6-month mentoring period (with the same and usual constraints of confidentiality that constrains the CEO in his usual day to day business); and
 - e. has a BCC IT account established that mirrors the CEO's account for the duration of the period of mentoring.
5. The CEO be STOOD DOWN with full pay and entitlements until the above matters are addressed and the mentoring program established and the Council is assured by way of a special mentor's report and specialist medical advice to Council that the CEO is well and fit to resume his important and demanding role.

Now there is no way that you can say you have not seen this proposed Motion if it comes up as MWON. You cannot disallow this Motion being put to the Council.

The sooner the LG Minister can appoint an administrator to replace this dysfunctional Council and administration ... the better!²⁷⁴

334. On 29 August 2017 Cr Bagster sent the following email to Mayor Parkin:

Please see below a series of 'numbered' QONs for the next Council meeting for the agenda of 5 Sep 2017:

1. How much has BCC spent and will spend on the engagement of Ms Theresa Hines for her all of unique and industrial relations and HR Services?
2. What are Ms Theresa Hines [sic] professional qualifications and accreditations in psychiatry, psychology, the law, and in human and industrial relations?
3. Which BCC Administration staff sourced, engaged, briefed and instructed Ms Theresa Hines and why was she selected?
4. Was Ms Theresa Hines hired by BCC for the sole purpose of 'mediating' the relationship between Cr Bagster and the CEO, Mr Paul Deb? If not, what additional tasks was she given?
5. Why was Ms Theresa Hines retained as 'mediator' well after the time Cr Bagster informed her and the Acting Burnside CEO that he: no longer trusted her; wished to participate in mediation; or believed that she was genuinely attempting to mediate between Cr Bagster and the CEO, after the CEO failed to attend two organised mediation sessions?
6. How much has it cost the ratepayers of Burnside to fund the development of complaints against all elected members over the last 2 years (Burnside Code of Conduct [sic], SafeWork SA, SAPOL, ICAC, Ombudsman SA, the Fair Work Commission, the Minister and any other agency)? Please state your answer and

²⁷⁴ LB200.

breakdown of costs terms of legal fees, staff hours, costed staff hours, application fees.

7. How much has Council Administration spent on alcoholic beverages in the last two years for the Mayoral parlour and elected members rooms.
8. What was spent on alcoholic beverages at the end-of-year staff functions and EM functions in the last two years?
9. Does the CEO have a bar fridge in his new office stocked with alcoholic beverages?
10. How many of Council staff have been randomly Drug and Alcohol tested in the last 12 months, and has the CEO has ever been randomly tested? When did this occur?
11. What target does BCC have for random Drug and Alcohol testing per employee per year?
12. What legislation (either statute or regulation) entitles the Mayor to unilaterally change the Council's Meeting Agenda?
13. Can you please provide the legal advice that you have received in this regard and its cost?
14. Given Regulation 19 states that business adjourned from a previous meeting must be dealt with before any new business at a subsequent meeting, why have you failed on two successive meetings not to deal with adjourned business at the beginning of the subsequent meeting in accordance with the law?
15. Given that Councils may vary this regulation pursuant to Regulation 6, why have you not ensured that the code of practice has been altered by a two-thirds majority of Council to allow you the right to take adjourned business and move it to the end of the meeting if it be your belief that you should do so?
16. For ordinary Council meetings why have you shifted the questions without notice (QWONs) and motions without notice (MWONs) to the end of the meeting, when the questions may have a direct bearing on the matters to be debated, and the Motions may seek to clarify recommendations made later in the agenda?
17. Is it your intention to hamstring duly Elected Members by blocking their capacity to obtain information prior to debating important matters before the Council?
18. What Burnside City Council (BCC) resources have been used in the preparation of the of [sic] formal complaints made against Burnside Elected Members (EMs) to ICAC, Safe Work SA, SAPOL, the Minister or for Codes [sic] of Conduct complaints in the last 12 months?
19. What are the costs (especially legal costs and costed staff hours) consumed in the preparation and staffing of these complaints?
20. What are EM entitlements to the reimbursement of legal expenses should EMs be required to attend State Parliament, ICAC, the Ombudsman, SAPOL, Safe Work or other State Government agencies in answering questions or to attend interviews?
21. How do EMs claim reimbursement for such costs? How much reimbursement of these costs has been made since this current term of Council commenced (Nov 2014)?
22. Who approves reimbursement for such costs?
23. What are the BCC staff entitlements to reimbursement of legal expenses should staff members be required to attend State Parliament, ICAC, the Ombudsman, SAPOL, Safe Work or other State or Federal Government agencies in answering questions or to attend interviews?
24. How do staff claim reimbursement for such costs? How much has reimbursement of these costs been made since this current term of Council commenced (Nov 2014)?
25. Who in BCC approves the reimbursement for such costs?
26. What were the reasons for the agenda and the outcomes of the meeting (which included the CEO, Manger Urban Services [sic], Acting Manager for HR Issues (Mr Matthew Spearman), Cr Henry Davis and Cr Mark Osterstock) that took place at the

Robin Hood Hotel (Norwood) and at which Mr Cant was taking notes on his BCC issued laptop, after the ordinary Council Meeting on 27 Jun 2017?

27. Why was the 27 Jun 2017 meeting at the Robin Hood Hotel closed to other elected members?
28. Is it correct that Cr Henry Davis shouted "Fu'k off" to Cr Bagster; and is it correct that Cr Osterstock asked Cr Bagster if he "still had a job" when he attempted to join the meeting the 27 Jun 2017 meeting at the Robin Hood Hotel?
29. What are the latest outcomes of Council staff complaints against Cr Ford, Cr Bagster or other Councillors to SAPOL; Safe Work SA; the Ombudsman SA; the LG Minister; and apparently to ICAC?
30. What applicable Council regulation, government legislation or Council Motion did you rely upon to submit each of these complaints?
31. At the end of the Council meeting on 26 Jul 2017, Mayor Parkin revealed to Cr Bagster that Mayor Parkin had apparently made complaints against Cr Bagster to the Local Government (LG) Minister, the Ombudsman, SAPOL, Safe Work , other State Government agencies, and the Fair Work Commission; Mayor Parkin advised Cr Bagster that "he deserved it". Cr Bagster interpreted these multiple complaints as undeserved, vexatious, and cruel and unusual treatment. Can you explain why and how you believe that this constitutes fair and respectful treatment of a ratepayer and citizen of Burnside City, and your fellow elected member and colleague?
32. Is it correct that the SA Police refused to investigate the complaint made by Mayor Parkin and or the BCC CEO against Cr Bagster because they regarded the allegations as baseless?
33. Is it correct that SAPOL described the complaint that Mayor Parkin raised was, in fact, an example of the apparent bullying, harassment, cruel and unusual treatment that the Burnside Council has subjecting Cr Bagster to?
34. When will you provide EMs with copies of all written external complaints against elected members and all the Code of Conduct complaints that you have signed, since the commencement of this term of office (Nov 2014)?
35. Given Council Resolution C11055 is confidential, why does the CEO continue to act in violation of that Resolution and how are we to deal with this confidential Motion that he insists on breaching?
36. Why is it appropriate that Cr Bagster continue to be apparently punished under C11055 when the CEO appears to continue to act with impunity and is apparently unshackled by any restrictions to his communications?
37. When do you think it would be appropriate for the CEO to be held accountable for apparent breaches of his code, the Act, his employment agreement and Resolutions of Council?
38. Why does Cr Bagster continue to be sent anonymous e-mails with no history attached (as e-mail strings) and who in the 'Executive Team' is entitled to send these e-mails to Cr Bagster?
39. Do you believe that this is lawful communications practice in accordance with the State Records Act - to send unidentified emails to Cr Bagster?
40. Does the 'Exec team' include the CEO? If not, why not?
41. Is the CEO able to access emails sent to or from the LJBAdmin account?
42. Has the CEO accessed the LJBAdmin account? If so, to what purpose and on how many occasions?
43. Does the CEO have unfettered access to all emails sent to the Mayor's e-mail address (dparkin@burnside.sa.gov.au)?
44. Does the CEO have unfettered access to other emails sent to the EMs' e-mail addresses ending @burnside.sa.gov.au? If not, which EM's e-mail accounts does the CEO have access to?
45. How often has the CEO accessed these accounts and to what purpose?

46. Have BCC Administration staff been instructed by the CEO to leave 'en masse' when Cr Bagster attends any meeting as appears to be the case - including a last number of meetings of Council when they were present at the commencement of the meeting, but left when Cr Bagster entered the room?
47. Why have BCC Administration staff been instructed this way, given this action is apparently defamatory toward Cr Bagster and given the CEO has a defamation action pending against him from Cr Bagster?
48. At recent meetings, how is the Acting CEO now able to attend Council Meetings in the presence of Cr Bagster, whereas he was previously instructed to remove himself apparently because being in Cr Bagster's presence represents a significant personal danger to him? Has this danger now ceased to exist for Mr Martin Cooper and will it re-appear once the CEO returns from his unexplained leave?
49. How do you believe that this is not contributory towards that defamation and how much longer will you allow the CEO to continue this apparent serial defamation?
50. When will BCC Administration staff make available to all EMs a copy of the CEO's the current employment agreement?
51. When can EMs expect to receive from BCC Administration copies of all the correspondence between BCC and the LGA Mutual Liability Scheme (MLS) between 1 Nov 16 and 30 Jun 17?
52. Has the Burnside Council CEO, Mr Paul Deb, discussed tendering his resignation to Council with you, as he now appears to presiding over an apparently dysfunctional Council and Administration?
53. When will the CEO and the Burnside Mayor issue Cr Lance Bagster an open, public apology for their apparent false and defamatory allegations and statements against Cr Bagster?
54. How many days has the CEO had off duty in the last 24 months (including annual leave)? This tally should include: holidays, sick days, stress leave, special leave; or any other type of leave.
55. Was all the CEO's leave in the last 24 months documented, provided to and approved by Council?

Please be aware that I have gone to great lengths and sought the advice of several different parties in order to ensure that the questions are appropriate, respectful and legitimate.

I note that you have refused to answer any of my Questions On Notice or agenda my Motions On Notice in the last two months. You have also interfered with the ordinary Council agenda putting Questions WithOut [sic] Notice and Motions WithOut [sic] Notice to the very back end of the meeting and then your refuse to hear any questions or Motions. I hope that you soon come to your senses.

Many thanks in anticipation for your inclusion of these QONs and respective answers in the next Council Meeting agenda.²⁷⁵

335. On 30 August 2017 Cr Bagster sent the following email to Mayor Parkin, copied to Mr Cooper and the then-Minister for Local Government:

Dear Mr Mayor,

It was a great special meeting tonight by all accounts! You must really believe you're doing good things for Burnside City and community. I read in the paper that you haven't made a bad decision in the last 7 years; that is not outstanding achievement. As a result, I'm thinking about writing to the Pope to ask for your beautification [sic]. "Saint Parkin" has a certain ring to it! Maybe a legacy for you after all!

I'd really appreciate knowing if there's any more ammunition you and your colleagues intended to expend; against me and my attempts to fix Council's dysfunction, corruption

and broken culture!? Any more complaints, spies, malfeasance, defamation, bullying and harassment coming my way?

The purpose of this email is to add to the previous QONs. Here they are:

Q56. Was there ever a time when the CEO identified himself to Burnside Council Elected Members as Mr Andrew McDeb? This especially around the period of his original recruitment as the CEO.

Q57. At the last ordinary Council meeting, Cr Osterstock moved to defer consideration of my application for a leave of absence, citing that there would be a release of information adverse to me within the next fortnight. Who provided Cr Osterstock with that information and what 'release' was Cr Osterstock referring to?

Please answer these questions. Your non reply to my QONs over the last few months isn't kosher.²⁷⁶

336. On 30 August 2017 Cr Osterstock sent the following email to Mr Cooper, Mayor Parkin and the elected members:

Hello Martin / David

Can you please ensure that this latest contribution is forwarded to Safework SA, Fairwork [sic] and, in keeping with councils [sic] resolution tonight, any other agency in line with councils [sic] legal obligations.²⁷⁷

337. On 1 September 2017 Cr Bagster responded by way of email to Cr Osterstock:

Wow, that's heavy stuff Brevet SGT Mark Osterstock. I'm trembling!

When did you learn to be such a bully?

I don't get it. I have some very senior SAPOL friends that are the sweetest, gentlest people. They are so unlike you!

Have you had any contact from the Police Ombudsman yet?²⁷⁸

338. Shortly afterwards, Cr Osterstock emailed Mr Cooper:

Good morning Martin

Can you please provide [sic] Safework SA, Fairwork [sic] and in light of Council's resolution of Tuesday, any other agency as deemed appropriate.²⁷⁹

339. Shortly afterwards, Mr Cooper responded to Cr Osterstock:

Good morning Mark - yes, will do.²⁸⁰

340. On 5 September 2017 Cr Bagster responded to Mr Cooper by way of email copied to the elected members:

Dear Mr Martin Cooper,

You do what you feel you must.

Thank you for your service to the City of Burnside as A/CEO and your offers of support and assistance to at least 7 of the elected body.

You have certainly left the City in a much changed state since the CEO's absence.

I'm guessing that makes you a 'change manager' now!?

²⁷⁶ LB201.

²⁷⁷ LB207.

²⁷⁸ LB207.

²⁷⁹ LB207.

²⁸⁰ LB207.

Best get that on your CV.²⁸¹

341. On 31 August 2017 Mr Cooper circulated a council media statement to the elected members, advising of the conclusions expressed in the Hines report and of the council's intention to seek an urgent meeting with the then-Minister for Local Government.
342. On 1 September 2017 Cr Bagster responded by way of the following email to Mr Cooper, Mayor Parkin and the elected members (emphasis in original):

Dear Mr Martin Cooper,

Fire MSN BTY; fire for effect. Good shot - over. Good shot out! No ... that is not a threat!

Unfortunately I think I got in first with the Hon. Mr Brock! Bad luck ... and better luck next time.

Have you got any other ideas!? Maybe the United Nations or the Human Rights Commission would be interested. I hear Gillian Triggs is up for a new challenge and she might make an ideal follow-on from Theresa Hines. Perhaps Gillian is a little more articulate, coherent and fluent with government organisations!?

Maybe (just a thought) you could give SAPOL or the Ombudsman another 'tap on the shoulder' in your relentless and unlawful campaign against me. But beware the cautionary quote from Shakespeare, "the lady doth protest too much methinks.." If you need a translation just let me know. As I have already offered: I'm happy to meet you.... even at the Robin Hood as it's a Burnside Council thing I'm told.

Now... How did you put it to me at 9:50PM on 20 Aug 17... something like:

"Oh Dear - is this the best you can do? Seriously? You are clearly a very sick man and I refuse to engage with you any further."

I'd be happy that you stepped down from your position at any time. Clearly and evidentially you do not have the capacity or acumen for it; nor the 'rough and tumble' of local government.

Be assured that I am going to be on Council for a very long time. There's many things that need fixing at Burnside... but mainly the culture. Get on board and join with me to be on the right side of history.

Please call me anytime when you want to have an adult conversation about fixing Burnside's dysfunctional mess. Do you really think your current Coarse [sic] of Action is going to end well for the Burnside Council!? Do you even care for more than your career and bloated salary? Let me tell you... I care! And I am doing something about it!

Bye bye,

Cr Lance Bagster

PS: can one of you factional folk please forward this to your mate... [email address omitted]. She'd love that. Or maybe Safe Work SA...²⁸²

343. Shortly afterwards, Cr Bagster sent the following email to Mr Cooper, copied to the elected members, the Local Government Association, the then-Minister for Local Government, the SafeWork SA help centre and the Fair Work Commission:

Dear all,

The only thing of any accuracy or validity in this corrupted and defamatory Burnside Council media release is the word 'campaign'. This media release is a new and egregious example of the Burnside Council's campaign of defamation and character assassination against me and other Councillors. These are elected members that dare speak up or try to 'shine a light' on the corrupt or unlawful practices being conducted at the Burnside City

²⁸¹ LB2017.

²⁸² LB202.

Council... unabated and continuing since the 'bad old days' of the McPherson [sic] report era.

Again, I call on the SA Local Government Minister, Hon Geoff Brock, to appoint an interim administrator to replace the Burnside Council and the senior staff until the elections next year and until such time that persons of honesty and integrity can be installed in Council Administration. I also appeal for the long-overdue release of the McPherson [sic] report which will shed a bright light on the continuing practices at the Burnside Council.²⁸³

344. Shortly afterwards, Cr Bagster sent the following email to the same parties:

Dear Mr Marti [sic] Cooper,

I have had a very close look through the Theresa Hines "mediation" report (that you paid for) this evening and this morning.

I can declare with every confidence that the propositions that Ms Hines makes are completely concocted. In fact they are 'bollocks'. There is in nothing in that so-called 'report' that shows that I have acted in any other way than as a person of integrity and as a Councillor with his electorate at heart.

Your claims that you somehow feel "harassed, threatened or unsafe" by me are nothing more than a feigned pantomime. You remind me of a European soccer player who has curled himself in up in a ball on the field; claiming that he can't ever walk again. Yet miraculously ... when the referee awards the penalty.... you get up from your death bed and kick a goal.

You are a deceitful, untrustworthy person. I will need a deal of time to come to terms with you.²⁸⁴

345. On 4 September 2017 Mr Deb sent the following email to the elected members and the council's Leadership Team:

As advised by Martin last week, I have returned from Annual Leave refreshed and recharged.

I was fortunate enough to spend some wonderful time with my partner and children as well as family and friends.

I have spent this morning being briefed on all the things that have been happening over the last three weeks and am ready to get stuck into the business of Council.

A big thanks to Martin and the entire team for the wonderful work that they have done in the past few weeks in my absence.

The organisation is healthy and fighting fit and ready to take on the opportunities and challenges that lie ahead.

It's great to be back!²⁸⁵

346. That evening, Cr Bagster responded by way of email to Mr Deb, the elected members and the council's Leadership Team:

Dear CEO,

Wow, you must tell me what pills they have given you because I want some too - who's your doc?

The facts are that Council is: fractured; your administration's morale is as low as it is possibly; and the Council is in complete dysfunction.

Coops has been erratic but brave enough to have faced that nasty bullying, threatening, harassing and stalking Councillor.

²⁸³ LB203.

²⁸⁴ LB203.

²⁸⁵ LB205.

I am wondering whether you have yet considered an complaint [sic] to the United Nations... I am really keen to know what your next Joker or Trump card is... and when you want me to start playing a serious role.

All in all I am pleased to see that you have recovered sufficiently to alleviate Mr Cooper of his stress and other issues so he can retreat to the comfort of the back room.

Several quotes come to mind on this auspicious occasion of your triumphant return:

“this ain’t the Army mate’
 “is that the best you can ... “
 “I’ll show you steeping [sic] up to the mark”
 “are you on your meds”

These are all a small grabs that show the comedic nature of what this whole smear campaign you have orchestrated.

Now that yo [sic] are better, please resign soon. This for the grater [sic] good of the City of Burnside and the long suffering rate-payers.²⁸⁶

347. It appears that Cr Bagster sent the following SMS messages to Mr Deb over the course of 2 and 3 September 2017:

Message sent on 2 September 2017 at 9:13pm:

Hi Paul mate, are you doing okay ☺. I hope that you are with friends and family at this difficult time. Please let me know if you are fine. It’ll be great to have you back to work and in one piece. Cheers[.]

Message sent on 2 September 2017 at 9:17pm:

In your absence from Council, I have met a number of people who have known you for alot [sic] longer than me. They have been very forthcoming with information and ideas. I feel like I now know you a great deal more than ever. It’ll be great to see you back on deck and working for the good people of Burnside once again. I hope that Council can get you the help and support that you need to progress.

Call me anytime you like.

Message sent on 3 September 2017 at 7:23am:

Hi Martin Paul [sic], early morning I know. I thought I’d make an early start on Council work this morning. Would you like to meet up with me for coffee this morning in Norwood? It’ll be my shout for breakfast. I’m also getting together with [name omitted] whose [sic] a lovely chap and keen to catch up with you too. How’s 8:30 at ARGOs grab you? I could swing by [Mr Deb’s address omitted] and then drop you back home. Fairly keen to run through your employment agreement. Lemme know soon. Cheers[.]

Message sent on 3 September 2017 at 10:45am:

Happy father’s Day BTW Paul. Missed you for coffee and breakfast this morning! How about coming over to my place for beers this arvo. You’ll have the address in the Hines’ [sic] Report. Come over anytime. We can play political games all afternoon. Cheers, LJB
 ☺²⁸⁷

348. On 4 September 2017 Mr Cant emailed the council’s elected members:

Elected Members, I send you this email without the permission or prior knowledge of Paul or the rest of the Executive Team.

²⁸⁶ LB205.

²⁸⁷ Attachment to LB206; attached in full to Cr Bagster’s response to my provisional report.

Please see attached the latest two text messages from Cr Bagster to Paul, sent and received yesterday on Fathers [sic] Day.

Surely enough is enough?

Surely not one of you can condone this ongoing 'campaign' of harassment, bullying and stalking from one Elected Member to the CEO.

To specifically draw attention to the CEO's home address is at best intimidation, and at worst, well, I hate to think what the motivation behind that would be?

I am personally asking you, on behalf of Paul and the rest of the organisation, to help us stop this.

We need your assistance as Employers to protect all Employees from receiving inappropriate and intimidating emails and messages.

Paul has today returned from his period of Annual Leave and looks refreshed and ready to go.

He doesn't need or deserve to be at the receiving end of this nonsense, particularly after the latest Report and findings have come to light.

Paul can block the messages, but in all honesty, he shouldn't have to.

All of this is one way, and the poor behaviour, in my opinion seems to be escalating.

I thank all of you for your serious consideration of this email and the attached text messages.²⁸⁸

349. On 5 September 2017 Cr Bagster responded by way of the following email to Mr Cant, copied to the elected members and various external agencies:

Dearest Mr Barry Cant,

Yet again, you are not being Switzerland - an objective neutral observer.

I am merely a concerned Councillor. I don't want to see the CEO suffering necessarily. Council and I have an obligation to look after the CEO's welfare whilst he's our (only) employee.

Other than [sic] a select few (of which I [sic] am not one) I have only heard that the CEO took short notice 'stress leave'.

I know the warning signs - I have recently lost a close friend to suicide and I don't want to be held responsible for anything that may happen to the poor Mr Andrew Deb [sic].

You have again misrepresented my intent and place an adverse spin on what was actually intended and written.

I certainly would like to see Mr Deb leave council after Council has given him every opportunity to recover and improve.

Be Switzerland please.... Italy does not suit you.

I am getting quite sick of your offensive suggestions that I am attempting to intimidate (or "worse") the CEO or anyone. In fact, your allegations and assertions are defamatory and well off the mark!

I met someone today who said they saw the CEO looking "pale, sickly, agitated and nervous". I am not sure I trust your interpretation. I would be happier if Council was provided a medical certificate of his health before he re-takes on the very difficult tasks of his office.

Enough is enough, but we are obliged to get poor Mr Deb through his present rough part and then help move him into a position where he can best use his many talents.

What is it you want to stop? All I am after is "Outstanding, Fair and Accountable" local government. However, all Paul Deb appears to be after is any opportunity to defame me, commit malfeasance and to bully and harass me and other elected members.

When he's better, Council should seriously consider what to do with Mr Deb.

Your opinion counts for nothing in this highly politicised campaign ... a good old smear campaign of me initiated and orchestrated by Mr Deb.²⁸⁹

350. On 5 September 2017 Mr Cant forwarded Cr Bagster's email to the council's Executive Group with the following comment:

Exec - Just an FYI

I'm not sure why Cr Bagster chose to remove you from the cc list, so please find below for your convenience.

I'm also not sure why Cr Bagster continually refers as me as Switzerland and Italy, however they are both on my 'must do destination' list, and I look forward to visiting both one day.

My opinion apparently counts for nothing, however I will continue to offer it when I believe I am duty bound to do so, regardless of the advice received below from Cr Bagster.

I make the following statement and I would like it to be very clear:

I am not playing 'politics', and I have no interest in doing so.

I will however not stand by and allow poor and inappropriate behaviour to be continuously directed towards me, and/or my colleagues.

With respect to Cr Bagster's following statement " I am getting quite sick of your offensive suggestions that I am attempting to intimidate (or "worse") the CEO or anyone. In fact, your allegations and assertions are defamatory and well off the mark!" , I maintain that my remarks made earlier (below) are completely appropriate and I stand behind them.

If Cr Bagster wishes to no longer be counselled by me with respect to his poor behaviour, I suggest he desists in continuing to send inappropriate emails to me.²⁹⁰

351. On 8 September 2017 Cr Bagster responded by way of email to Mr Cant, copied to the council's Executive Group and various external agencies:

Dear Mr Cant,

Indeed, I no longer and have never wished to be 'counselled' by you Mr Cant, GM Urban Services, BCC.

Who are you to presume that this was ever your role, right or duty?

the [sic] very suggestion from you is offensive in the extreme and absolutely inappropriate.

In my clear view you are entering the highly political fray and defending the indefensible.

Stay away from politics, it isn't your game!

The only poor behaviour is that of the 'terrible trifecta' of the CEO, Mr Cooper (his faithful Lieutenant) and the Mayor.

They are the real bullies, the true harassers and the ones who have tried their best to defame and besmirch me.²⁹¹

352. On 6 September 2017 Cr Bagster emailed Ms Hines:

Dear Ms Theresa Hines,

Regarding your recent engagement by the Burnside City Council (BCC) Administration, I request your indication, in reply, if you have:

²⁸⁹ LB206.

²⁹⁰ LB209.

²⁹¹ LB209.

1. any professional indemnity provided to you by the BCC Administration or via the (LGA's) Mutual Liability Scheme; or
2. professional liability insurance.

If you haven't already, can you please make these inquiries and get back to me, with an indication of your exposure, by this Friday, 8th September 2017? I have a meeting with Jaak Oks on Friday to discuss my options for potential future action as a result of the mediation process that you conducted. If you would prefer, you could contact Jaak Oks directly on these issues. I have previously provided you his contact details.

Again, thank you for your open-ended offer to help me and your statement to me and my wife that you are ultimately "on my side" and "just concerned about my welfare". Please feel free to contact me at any time. To reciprocate your care, I am after this information only in order to look after your best interests.²⁹²

353. On 7 September 2017 Mr Cooper forwarded a copy of Cr Bagster's email to the elected members with the following comment:

Dear Members

For your information Ms Theresa Hines has reported to me that she has been receiving numerous unwanted texts and emails from Cr Bagster. The example below is one of these.

I have reported this to SafeWorkSa [sic] this morning.²⁹³

354. On 8 September 2017 Cr Bagster responded by way of email to Mr Cooper, the elected members and Ms Hines:

Dear Mr Martin Cooper,

1. Yes, certainly I sent that correspondence (below) to Ms Theresa Hines.
2. The fact that she now declares it "unwanted" is of no concern of mine nor Council's.
3. Please re-read the e-mail! In that e-mail I try to ascertain the extent of Ms Hines' liability as a result of the job she did on your personal behalf (do you remember that briefing and material you gave her to help her mediate between me and Paul!?)
4. My intent in writing to Ms Hines was that I genuinely don't want Ms Hines to unnecessarily suffer in the event of my intended future actions. I very much see her as an unsuspecting victim of a Council Administration hell-bent of my character assassination and in a long and vicious campaign against me; which includes vicious bullying, harassment and defamation against me.
5. The "Hines Report" is mealy [sic] the last in a long line of actions you, the CEO and the Mayor have taken against me. They are unwarranted, unjust and apparently illegal. Your actions are merely a revengeful response to me having laid claim for damages against you and the CEO in letters of concern and for me 'whistleblowing' of the CEO for his breached of his Code, employment agreement, Council Resolutions, and various laws. I have also repeated called [sic] on the CEO to resign.
6. In your last you making [sic] the simply [sic] assertion that it is "unwanted"; is that supposed to somehow add weight to your own already weighty smear campaign against me?
7. I suppose now there is no-one like Theresa that you can "did' [sic] me too, you appear to have run out of options - you and your associated have [sic] already made complaints to eight (8) different agencies.
8. Yes, I have made one phone call to Ms Hines and it was to ask her to consider providing me that information contained in that privileged communication (below) and to let her know that I will be attempting to stop her for ever [sic] doing the same

²⁹² LB208,

²⁹³ LB208.

'assassination' job on anyone else. I certainly hope that BCC never hires her again and that no other local government does either.

9. Please be aware that Ms Hines made me the previous and open ended offer (in front of my wife) that I should contact her anytime. Please also be aware that she stated to me and my wife that she was "on my side" and "only wanted the best for me". In addition to these (now obviously outrageous lies, [sic] she stated about the same time that in her belief and from her vast experience in these matter, I had committed "high-end" bullying and harassment" and I was "most certainly" going to be "convicted" and probably face" jail time, a heavy fine and a have a criminal record". What a piece of work!
10. If Ms Hines thinks she's got a case, she should complain to the proper authority, and not be bleating to you. As you have done, I would encourage her to go to anyone she feels will listen to her. Perhaps you could best advise her in this regard!? Maybe SAPOL, the Ombudsman, ICAC, Fair Work, Safe Work, the LG Minister, the AG, the press, Mr Paul Deb, the Mayor, the Pope, President Trump. You might even be able to give her your complaints as a templated solution.
11. You are already so conflicted in your dealing with me and in breach of the LG act and other laws; you are the very last person who should be involving yourself in this issue. are [sic] you really that desperate!?
12. I would commend that you and all the EMs re-read all of the correspondence in the Hines "Report" ...not just the recommendations. It is shock [sic]... but not for the reasons you would have anyone believe. it [sic] is shocking because it is the BCC betraying confidence, breaching privacy, breaking many laws.
13. That report shows only the length that council administration is prepared to go to in silencing democracy and one of the elected members who's prepared to speak up. the [sic] report has nothing to do with the mediation between me and the CEO. Therefore, it is not the report that Council asked for or should have to have paid for. The expenditure of \$10K on that report was therefore a misappropriation of public funds and other things that start with the letters "m" and "c".
14. I hope that Ms Hines make the [sic] most of her ill-gotten gains, as it may have to last a long time.
15. I have been very restrained and subdued in my actions as a response to your relentless bullying, harassment and defamatory actives [sic] against me. please [sic] let me know when you want me to take real action against you.
16. Again Mr Cooper, I have already indicated that you have not been on my list of priorities ... your boss is. But you are now pushing the boundaries of my patience and tolerance. Please stop!
17. I look forward to seeing you at the next directions hearing on Monday. I hope it goes as well as the last time.
18. You have no right to run this smear campaign against me ... and you never did.
19. Please stop playing politics... you are an administrator! Start doing the right thing!
20. Enough is enough! This bullying, harassment, defamation and malfeasance has to end!²⁹⁴

355. It appears that Cr Bagster participated in the following SMS message exchange with Mr Cant over the course of 10 September 2017:

Message sent by Cr Bagster to Mr Cant at 8:01pm:

Hiah Bazza. Are you still being Italy, or have you moved closer to Switzerland yet. See you Tuesday night. Are you going to be cowering behind a locked door?

Message sent by Mr Cant to Mr Bagster shortly afterwards:

²⁹⁴ LB208.

Really? Nothing else to do on a Sunday night?????

Message sent by Cr Bagster to Mr Cant shortly afterwards:

Hiah Bazza. No mate, I've done everything else this weekend. Time for some fun. In fact the hard work is done now I have picked apart the friggin' Hines report. You should read it cover to cover.

Remember, doing the right thing can't be wrong.

Hopefully you are doing well.

Please pass on to your good chums that I have only just got started. They asked for this battle. Now they have their wish come true.

Bazza, I just want you to survive the onslaught. Please be Switzerland.

Message sent by Mr Cant to Cr Bagster shortly afterwards:

Please stop texting me and others. I have nothing to say on this topic so would appreciate if you ceased. Thank you.

Message sent by Cr Bagster to Mr Cant shortly afterwards::

Barry, Please stay well clear of the politics. Trust me; this won't end well for Paul. I wanted you to remain neutral and maintain your integrity. There's nothing going to save Paul and I'm determined to seek justice. Paul stand in [sic] the way of that. He's so greatly offended me, I'm never going to give up the good fight to see the Council rid of him and his kind.

That's my Sunday night. Hopefully yours is less stressful and anxious.

I'm also very disappointed with you adding to the crap that is the Hines' [sic] mediation report. Do you want to know by how much?

Message sent by Mr Cant to Cr Bagster shortly afterwards:

Just so I am absolutely clear, is that a personal threat?

Message sent by Cr Bagster to Mr Cant at 8:35pm:

No absolutely not, I've never threatened you or anyone.

Message sent by Mr Cant to Cr Bagster shortly afterwards:

Ok, then please respect my request above. No more text messages, I will not engage any more with you on this topic.

Successive messages sent by Cr Bagster to Mr Cant shortly afterwards:

Perhaps if you believe Paul Deb's crazy bullshit [sic], you should give this text string to Theresa Hines, SAPOL, the Ombudsman, ICAC, SafeWork, the Fair Work Commission, make CoC complaint. It's never stopped any of your good buddies.

I'll respect that when you, Martin and Paul all resign and leave me the hell alone to represent my community.

You're relentless and underhanded. You and your buddies have spent 10s of thousands of ratepayer dollars in hounding me and promoting Deb's corrupted agenda. Please stop harassing me and my constituents, and leave Council. That'll be great. Thanks[.]²⁹⁵

356. On 9 September 2017 Cr Osterstock forwarded to the council's Executive Group and elected members a copy of an email sent by Cr Bagster on 14 June 2015, commenting:

I came across this email from Cr Bagster to Cr Lord from June 2015.

I think it speaks volumes in light of the Cr Bagster's "campaign" against the CEO, Mayor, the Executive, and elected members who disagree with his behaviour, actions and comments.

"....I don't have anyone's bone to pick ... unless they disagree with me of course :-) ... and then I will pick their bones for eternity ... that is the way it is supposed to happen!? Is it not?"

Martin - I suspect that the content of this email exchange from Cr Bagster to Cr Lord may be significant in light of the multiple investigations that are currently occurring in respect to Cr Bagster's inappropriate conduct.²⁹⁶

357. On 17 September Cr Bagster responded by way of email copied to Mayor Parkin, Mr Cooper and Mr Cant:

Dear Mark,

1. Regarding your last email Councillor / Brevet SGT Osterstock - do you now really believe it appropriate to drag up mud from June 2015?
2. I'll have you know that I now understand that gentleman like [name omitted] and ladies like Cr Lord have been fighting bullies like you and the CEO for many years. I admire their spunk and tenacity in the face of people like you.
3. So, you just "thought" that; You think it "speaks volumes" do you!? You "suspect" do you!?
4. Let me tell you - my former friend - that you are just plain wrong.
5. I would have expected a lot better from you, a fellow who has also worn a uniform and has a sworn duty to do what is right.
6. Just remember that "doing the right thing can't be wrong".
7. Please don't be on the wrong side of history!

God save the Queen[.]²⁹⁷

358. Later that day, Cr Osterstock sent the following email to the elected members and the council's Executive Group:

Members

Sadly, yet another inappropriate communication from Cr Bagster. The tone and content of his email speaks for itself.

Martin - I have no appetite to received [sic] any further direct email communications from Cr Bagster.

I, like the majority of Council, am appalled at his continued behaviour and have no confidence in his ability to properly discharge his duties and responsibilities as an elected member of the City of Burnside.

The evidence is overwhelming and irrefutable.

Can you please have our IT department 'block' Cr Bagster's ability to send me email correspondence - directly - both from his 'burnside account' and his 'gmail' account.²⁹⁸

359. On 10 October 2017 Cr Bagster responded by way of email copied to Mr Spearman and several of the council's elected members:

²⁹⁶ LB216.

²⁹⁷ LB216.

²⁹⁸ LB216.

Marcus, et al

Sadly, depressingly, yet another inappropriate communication (diatribe.. piece of drivel) from Brevet SGT Osterstock.

The tone and content of his email speaks for itself.

I have no appetite to received [sic] any further direct email communications from Brevet SGT Osterstock.

I, like the silent majority and the right-minded folks on Council, am appalled at Brevet SGT Testosterone's [sic] continued behaviour and have no confidence in Brevet SGT Testosterone's ability to properly discharge his duties and responsibilities as an elected member of the City of Burnside.

The evidence is overwhelming and irrefutable.

Can you please have our IT department 'block' Brevet SGT Osterstock's ability to send me email correspondence - directly - both from his 'Burnside account' and his 'gmail' account.

Mark, you are a real bugger and one the [sic] key bullies and protagonists on Council. I really hope that the electorate sees you for the awful person that your are [sic]!

Up yours buddy! Hope that it doesn't hurt too much! But the splinters from the barrel must sting a bit!²⁹⁹

360. On 19 September 2017 Cr Bagster was made subject to a number of interim intervention orders prohibiting him from, *inter alia*, contacting or communicating with several [persons].
361. On 21 September 2017 Mr Spearman sent the following email to the elected members, copied to the council's Executive Group:

Dear Elected Members,

Due to the communication complexities of the interim intervention order [sic], it is important to note that I have been in the process of disabling the Elected Member - DG email group.

Intended recipients will need to be added manually going forward. If you have sent something to Elected Members - DG in the past day it may not have reached all the intended recipients.

Apologies for any inconvenience.³⁰⁰

362. On 10 October 2017 Cr Bagster responded by way of email to Mr Spearman, copied to the elected members:

Matthew... that's ridiculous... this is ridiculous ... and you well know it.

i [sic] don't know how you can live with yourself following these goons.

I used to like and respect you.

What happened to you!³⁰¹

363. On 12 October 2017 Cr Bagster sent the following email to Ms Tracy Riddle of KelledyJones Lawyers, the law firm acting for the protected persons:

Ms Riddle,

²⁹⁹ LB216.

³⁰⁰ LB217.

³⁰¹ LB217.

Please see the attached email. I assume that this parcel was dispatched by you or the dardardly [sic] firm that you work for.

If you and your grubby associates at Kelledy-Jones have anything to do with this, would you kindly provide me an indication of where the parcel is and how it gets delivered to me?

I remind you that I haven't yet sighted the Affidavits from your five unscrupulous clients; the applicants for the subject Interim intervention orders against me, a duly Elected Member of City of Burnside. I look forward to seeing those affidavits at some point in the next few days if they come via you or your firm.

You may alternatively decide as a more certain option to re-hire the gorilla in a leather jacket that you hired to serve me the interim intervention orders within hours of them being struck on 19th of September 2017. I'm sure that if Kelledy-Jones is still trackmy [sic] whereabouts it'll be no trouble for me to be similarly served with the affidavits.

As another alternative, why not have your man, the disgraced Mr Griffin, a fornicator with prostitutes and associate of underworld figures, come over and deliver them himself. I'll even give him a beer and have a chat about why I told him he's a paid assassin. It might make a nice change from his usual daily business. You know where I live, send the fella over... I'm told he knows his way around the Eastern suburbs pretty well. 😊👉

I know that I gave your clients the heads up on the whole intervention order thing; but I'm not sure if they have considered a complaint to the Human Rights Commission. I couldn't suggest much more than that. Why not give that idea a burl? It should also be a bit of fun and amusement, if only for me.

Lastly, have you heard the latest regards the Council's complaint to the Fair Work Commission against me? How much a part of that little effort was yours or Kelledy-Jones'? It was a real humdinger, what a laugh.

Cool. Well it's been lovely chatting, but I must be off to bed soon. However, please do let me know as soon as you can when you plan to report yourself to the Legal Practitioners Conduct Commission [sic], saving someone else the bother.³⁰²

364. On 19 October 2017 Cr Bagster sent the following email to Mr Mark Griffin QC, copied to various external parties (emphasis in original):

Dear (Disgraced District Court Judge & Fornicator) .. Marcus Griffinus [sic], QC

As a fornicator with prostitutes, and underworld associates ... I thought you would probably understand and enjoy this purgative clip... [hyperlink omitted]

Alleluia 2 U my fiend... C U in the Coitus [sic].

Are you still claiming to be an officer of the Court!?

Do you also claim to be a fornicating scoundrel and ratbag-us?? Mm-mm ..no... thought so... How proud your mother must be.... Just like TR's.

You, trace [sic], and KJL have my lowest possible regards[.]³⁰³

365. On 9 October 2017 Cr Bagster was notified of the completion of a preliminary assessment report into a complaint concerning his conduct made by Mr Cooper. That report, which was prepared by Mr Anthony Kelly of Mellor Olsson, found that Cr Bagster had bullied Mr Cooper within the meaning of clause 2.11 of the Code and recommended that Mr Cooper's complaint be referred for further investigation.
366. On 10 October 2017 Cr Bagster sent the following email to Mr Kelly, copied to various council officers and external parties:

³⁰² LB218.

³⁰³ LB219.

Are you kidding me!? Oh, no you ain't! Good golly Ms Molly! You and legal firms like yours are undertaking the highly paid and relentless campaign or smear [sic], defamation and vilification against me. Your mum must be proud!

Trust me; this can only end in tears; and it won't be me crying...

So, we meet again in the online battlefield of the 'dripping roast of local government' ... ratepayers 'free & easy' money. I hope that you don't feel as compromised as the disgraced Mr Griffin, QC!?

In my common vernacular, I have to state that you have been sent on a mission as a very small part of a complete political smear campaign. You may also forgive my use of the term "bullshit" in the following.

I have comprehensively dealt with all these so-called 'complaints' and allegations in the past - that you now 'happen' to be dealing with as if they are fresh and new. Please note that none of the complaints could possibly be interpreted nor do they represent bullying, harassment, stalking or threats.

Please see the e-mailed explanation (as if it was needed) below that proves my point. It was written with legal representation once helped me write in response to the 'bullshit' you present as evidence.

I would like to dispense with the contrived complaints and the complete 'bullshit' that the CEO is putting us through... the lies perpetrated upon the poor ratepayers of Burnside...

Please have a good look at the Friday, May 26, 2017 3:11 PM e-mail below. It might just help job [sic] memories.

Please have a good look at the attached documents too while you're at it.

Be aware that Mr Cooper and the Burnside Council have already 'gripped up' these allegations and thrown them into the "Hines mediation report" (available online at the BCC website, under the 30 Aug 17 Minutes). Therefore, if you happen to use these false allegations; then you and Council will be in breach of the LG Act, s271(6) and you will be in as much poop as Kelliedy-Jones Lawyers now are. You won't just be up to your eyeballs in cow's excrement; you will be eating and breathing it.

I want to make you aware of the level of feigned paranoia that Mr Cooper and the Burnside Council Administration has and the lengths that they have gone to. General manager at Burnside and a servant of the CEO, Mr Cooper, has admitted to the Fair Work Commission that he's "had me profiles" [sic] because of my "military background" and because he was "worried [I] might have access to guns". How ridiculous! How insulting to me and to my community; and any veteran who has served and fought for his country.

In other words, the complaint you are dealing with is trumped up and complete and complete bovine excretion.

This complaint is false, vexatious, frivolous and made in absolute bad faith.

The complaint you are dealing with is identical, in every way, to the same complaints made by Mr Cooper or the Burnside Council Administration against me to: SAPOL, to the Ombudsman, ICAC, the Fair Work Commission, the LG Minister, Safework SA, etc. All these complaints have fallen flat on their face and been dismissed. Do you now dare make a decision that runs against the overwhelming tide of this opinion? Then again, you've perhaps you have already been briefed and paid to make [sic] a situated appreciation - similar to the many others i [sic] have seen emerge from MO over the last 3 years. After all; it isn't me paying for you and briefing (instructing) you... that is the job of the very people that have lodged the complaint. Do you not see the conflict here!?

I have been bombarded with a plethora of vicious and false complaints that all happen to emerge from the CEO who is directing this atrocious campaign of political smear against me. he [sic] is committing malfeasance, and he is misappropriating ratepayer money to satisfy his own personal revenge and vendetta against me.

If you make an adverse finding against me I will hold you personally responsible for a complete miscarriage of justice.

Please DO NOT ever contact me again regarding this issue. If you do, even in 'polite' acknowledgement or reply I will consider that to be bullying, harassment, threatening and stalking (yes... they are words i have learnt from the Burnside Council Administration).

If you decide [sic] to make any report, finding or assessment against me I will forever hold you and your firm culpable of joining the unsavory [sic] ranks of character assassins in the league of Kelledy-Jones.

I could not care less about this bullshit than I do right now. Do your best.. I have already written MO [sic] and KJL as a complete joke and a farce.

Please go and tell your fiends (sic) in KJL, MO, Griffin Lawyers and Wallmans that i [sic] don't give a toss whether you choose to be on the wrong side of history. But I dearly hope that you can [sic] all start to act with some integrity and honesty. Lastly, please remember that you actually work for the Council and the people - not the CEOs that sign the cheque.³⁰⁴

367. Shortly afterwards, Cr Bagster sent the following email to Mr Kelly, copied to various external parties, including my Office and the Legal Profession Conduct Commissioner:

Anthony,

Seriously, get real... this is mere garbage... all paid for by the poor Burnside ratepayer.

Please read my previous.

You are [sic] a willing participant in a very public and very expensive smear campaign designed for the futile attempt to save the job of one man: the Burnside CEO.

Be on the right side of history! Get real!

In my book, you and MO are a complete disgrace!³⁰⁵

Alleged breach of confidentiality

368. It is separately alleged that on 23 May 2017 Cr Bagster supplied a copy of the MinterEllison report (concerning the conduct of Mr Deb) to a member of the public.
369. As previously noted, the MinterEllison report was considered by the council during its 28 February 2017 ordinary meeting. My investigation was supplied with a copy of the minutes concerning that meeting. The minutes reflect that the council resolved under section 91(7) and (9) of the Local Government Act that 'the report, minutes, attachments and written submissions' relating to the matter were to remain confidential for a period of five years.
370. On 24 May 2017 a report appeared in *The Advertiser* newspaper that made reference to my decision not to investigate a complaint concerning the conduct of Mr Deb made by the Hon John Darley MLC. That report referred to and purported to quote certain of the conclusions expressed within the MinterEllison report:

In February, a special counsel for law firm Minter Ellison, found Mr Deb breached the Code of Conduct during dealings with Burnside councillor Lance Bagster, on two counts.

[...]

The preliminary assessment report says Mr Deb failed to "discharge duties in a professional manner' and act in a 'reasonable, just, respective [sic] and non-discriminatory way when dealing with all people".³⁰⁶

³⁰⁴ LB214.

³⁰⁵ LB215.

³⁰⁶ 'State Ombudsman Refuses to Investigate Burnside Council CEO Paul Deb Over Conduct Breach', *The Advertiser*, 24 May 2017.

371. I understand that at approximately 6:51am on 24 May 2017 several of the council's officers were 'blind carbon-copied' into an email from Cr Bagster. This email forwarded what appeared to be an earlier exchange between a person identifying themselves as Mr Robert Hasenohr³⁰⁷ (using the email address 'hasenohr@gmail.com') and an unknown recipient (emphasis in original):

From: Lance Bagster <lance.bagster@gmail.com>
 Sent: Wednesday, May 24, 2017 6:51 AM
 Subject: Fwd: Reports & complaint response

----- Forwarded message -----

From:³⁰⁸
 Date: 23 May 2017 14:50
 Subject: Fwd: Reports & complaint response
 To: "Bagster Lance" <lance.bagster@gmail.com>
 Cc:

FYI

Sent from my iPhone

Begin forwarded message:

From: Hasenohr <hasenohr@gmail.com>
Date: 23 May 2017 at 9:17 am AWST
To:
Subject: Fwd: Reports & complaint response

Read the Ombudsman's pathetic refusal to investigate claims of CEO Deb's possible breaches of contract!

Currently reforming a new complaint now [sic] based on the completed ME report for a second submission by way of MP Darley.

Similarly Advertiser has become interested in these outcomes.

Robert Hasenohr
 [mobile telephone number omitted]

IMPORTANT: This email is strictly confidential.

Begin forwarded message:

From: "Robert G. Hasenohr" <hasenohr@gmail.com>
 Date: 16 May 2017 6:00:27 pm ACST
 To:
 Subject: Reports

Here they are... ;)

--

regards, Robert
 [mobile telephone number omitted]³⁰⁹

372. Cr Bagster's email forwarding the above exchange to Cr Cornish and Mr Cooper included three attachments.
373. The first attachment, identified by the filename 'Minter Ellison finds Deb guilty.pdf', appears to be a scanned copy of the MinterEllison report.

³⁰⁷ Mr Robert Hasenohr is a former elected member of the council.

³⁰⁸ The text corresponding to this field appears to have been deleted in the version of the email forwarded by Cr Bagster. From records separately supplied to my investigation by Cr Bagster, I understand that it was Cr Peter Ford who first received Mr Hasenohr's 23 May 2017 email and who then forwarded this email to Cr Bagster.

³⁰⁹ Documents identified as L0141 and L0142 in records supplied by council.

374. The second attachment, identified as 'ombudsman response.pdf', is a copy of a letter I send to Mr Darley MLC on 9 May 2017.
375. The third attachment, identified as 'Bagster sues Deb.pdf', appears to be a copy of the concerns notice issued to Mr Deb on behalf of Cr Bagster on 14 February 2017.³¹⁰
376. My investigation was also supplied with a screen capture derived from the council's archived email records, which I understand was obtained in response to concerns raised by Cr Cornish and Mr Cooper on their receipt of the above email exchange. Mr Spearman advised my investigation that since approximately 28 July 2009 the council has operated software to capture and store all emails sent and received by council email accounts.
377. The screen capture in question records that on 7:22pm on 23 May 2017 Cr Bagster forwarded an email to 'hasenohr@gmail.com' that included three attachments, one being a document bearing the filename 'Preliminary Assessment Report - Final 16.2.17 (pdf)[1].pdf'. I note that the body of the email forwarded by Cr Bagster makes reference to the 'attached report from Minter-Ellison'.
378. At my request, Mr Spearman accessed the archived copy of the email in question to ascertain the contents of the relevant attachment. Mr Spearman subsequently confirmed the document in question to be a copy of the MinterEllison report.³¹¹
379. I also take note of the following information before my Office:
- although not recorded in the article appearing in *The Advertiser*, Mr Darley MLC's complaint to my Office was expressed as being made on behalf of Mr Robert Hasenohr
 - Mr Darley MLC's complaint included a copy of various emails sent from and between Mr Darley MLC, the Hon Steven Griffiths MP (being the former Shadow Minister for Local Government) and a person using the email address 'hasenohr@gmail.com', identifying themselves as Mr Robert Hasenohr
 - Mr Darley MLC's complaint also attached a copy of the concerns notice issued to Mr Deb on behalf of Cr Bagster on 14 February 2017, identified by the filename, 'Bagster sues Deb.pdf'; from the email trail, it appears reasonably clear that this document was supplied to Mr Darley MLC by the person identified as Mr Hasenohr.
380. I also take note of the email sent by Cr Bagster to the elected members on 17 March 2017 (referred to earlier in this report), in which Cr Bagster forwarded a copy of the MinterEllison report with the following comment:

Fellow EMs,

As a mind jogger, attached is that Prelim Assessment report that was sent to me prior to any resolution of confidentiality.

Please note that there are no caveats of confidentiality on the report or the e-mail on which it was sent.

The CEO's breach of his CoC is therefore a matter of public record.

Despite this, I would encourage you to keep it as 'close hold' and please do not forward it on. Under no circumstances would I want this to be leaked out of the Council.³¹²

³¹⁰ Email from Mr Spearman dated 24 May 2017.

³¹¹ Statement supplied by Mr Matthew Spearman dated 22 November 2017.

³¹² LB012.

381. I also take note of the following SMS messages from Cr Bagster to Mayor Parkin, sent shortly after publication of the article appearing in *The Advertiser*.

Message sent at 11:30pm on 24 May 2017:

How's that for schadenfreude? Do you really want me as an enemy?

Because at your stage David I would have thought you'd be trying to keep the friends you had.

Gimme a call when you have the balls.³¹³

Message sent at 11:37am on 25 May 2017:

Gentleman (Davis and Martin),

Just to be clear, I have never met or contacted John Darley. The Advertiser's article (on page 14 [sic] today) does not refer to any Ombudsman submission that I have made. I'm still planning on submitting a separate submission over C11055 directly to the Ombudsman.

I'm really sorry that Burnside has hit the news again for the wrong reasons and I am doing all I can to avoid bad news falling into the hands of the press. I hope that you can help me in that regard. Cr Lance Bagster.³¹⁴

Cr Bagster's response

382. On 21 March 2018 I wrote to Cr Bagster to provide notice of my investigation and to request a response to the various allegations.
383. Cr Bagster initially responded by way of email dated 13 April 2018. In this email, Cr Bagster expressed dissatisfaction with my investigation of the referral, submitting that I should instead turn my attention 'to the very serious issue of the complainants' Abuse of Public Office, Malfeasance, Misappropriation and their Maladministration.'

Appropriateness of communications with and involving council officers

384. In my letter dated 21 March 2018 I notified Cr Bagster of the specific items of correspondence I proposed to consider as part of my investigation. In doing so, I requested that Cr Bagster consider and address his compliance with clauses 2.2, 2.3, 2.4, 2.9, 2.10, 2.11 and 2.14 of Part 2 of the Code in turn.
385. When asked whether he considers he has acted 'in a way that generates community trust and confidence in the Council', as required by clause 2.2 of Part 2 of the Code, Cr Bagster responded:

Yes. I have always endeavored [sic] to ensure that all of my actions are consistent with generating community trust in council by highlighting the unethical actions of members of council and council staff. My constituents know that I will always strive to be open, honest and fully transparent when it comes to matters of council, however I try to ensure that, when making public comment, it is clear that they represent my own opinion. This means that my constituents can always trust that if the council has acted in a way that is unjust or unethical, I will work hard to ensure that the situation is rectified.

386. When asked whether he considers he has acted 'in a reasonable, just, respectful and non-discriminatory way when dealing with people', as required by clause 2.3 of Part 2 of the Code, Cr Bagster submitted:

³¹³ LB104.

³¹⁴ Screenshots attached to emails from D Parkin dated 7 August 2017.

Yes. I am always forthcoming with my personal opinion and views; however I always endeavor [sic] to treat people in a reasonable, just, respectful and non-discriminatory way. You will note from these communications that while I am firm and occasionally harsh in my tone, I am as respectful as is appropriate.

387. When asked whether he considers he has shown 'respect for others if making comments publicly', as required by clause 2.4 of Part 2 of the Code, Cr Bagster submitted:

Yes. There is not a single instance in the correspondence included with your letter to me that demonstrates otherwise. I always endeavor [sic] to show respect for others in all aspects of my communications, particularly those with members of the public.

388. When asked whether he considers he has endeavoured 'to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions', Cr Bagster responded:

Yes. You will note from my communications that I make numerous attempts to reconcile with all of the complainants [sic].

389. When asked whether he considers he has refrained from bullying or harassing specific council officers,³¹⁵ as required by clauses 2.10 and 2.11 of Part 2 of the Code, Cr Bagster responded:

No, I have not bullied, harassed or threatened any of the complainants at any time. While the tone of my communications can be direct and I freely express my opinions, I have never threatened, bullied, or harassed anyone. The majority of the communications attached are of a highly trivial and unrelated nature. The same communications submitted with the complaint lodged with ICAC and the Office of the Ombudsman were also submitted to SafeWork SA.

390. Cr Bagster directed my attention to a letter sent to him by SafeWork SA dated 6 March 2018, which advised of SafeWork SA's determination not to further investigate 'the allegations of bullying by the Burnside City Council [sic]' or the 'allegations made by the Burnside City Council against you.'

391. Cr Bagster further submitted:

You will also note that the communications submitted to you by the complainants require an immense and creative stretching of the imagination to construe even the slightest intimation of a threat or harassment. Of particular note, are my references to a movie "The Revenant". This was by no means a threat of violence but was rather intended to express only that I am seeking justice. While I admit that the reference was inappropriate and unprofessional, I am still seeking justice against a group of people who have perverted and manipulated Local Government for their own personal benefit and gains. No reasonable person would infer from my reference to neither the movie, nor my mention of a "target list" that I am implying violence.

392. Cr Bagster directed my attention to an article in the *Sydney Morning Herald* newspaper concerning the Australian Labor Party's self-styled 'hit list' on school funding, submitting:

This is a very similar phrase and yet no-one suspected he [Leader of the Opposition Mark Latham] was planning on physically attacking private schools. This is one of many examples where this expression, or this type of terminology has been used in politics and these allegations from Burnside City Council are clearly exaggerated for vindictive purposes. The idea that I have threatened anyone is deliberately concocted.

³¹⁵ Identified in my letter as Mayor Parkin, Cr Davis, Cr Osterstock, Mr Deb, Mr Cooper and Mr Cant.

On a number of occasions, I express my sincere concern for the welfare of my fellow Elected Members and council staff and even these messages have been twisted and intentionally misinterpreted by the complainants to sound as if they are threatening or malicious. This is particularly the case in the Teresa Hines Report, which I am sure you have read. Again, any interpretation of my written words beyond the literal or my described meaning is inappropriate. The complainants also allege that my sending of emails and text messages at odd hours of the night is harassment, this is obviously untrue. Any reasonable person can be assumed to have placed their phone on silent prior to going to bed and I made no demands that my messages be answered immediately. It is clear from reading the content of my communications included with your letter that I did not intimidate, bully, threaten or harass anyone. Any claim of psychological harm is also deliberated [sic] fabricated or concocted by false and highly embellished interpretations of my written words.

393. When asked whether he considers he has refrained 'from directing or influencing Council staff with respect to the way in which these employees perform their duties', Cr Bagster responded:

I have refrained from directing or influencing employees of the Council with accordance to clause 2.14 of the Code. I have only ever made requests of council staff and expressed my opinions and views. I have made no demands, or given any directions at any time.

394. Cr Bagster otherwise submitted:

I emphasise that any interpretation of my written word beyond the literal, or my described intent or meaning, is inappropriate and unjust. To find that any of my correspondence has harassed or bullied members of council or council staff would require substantial 'reading between the lines' and the attribution of meaning to words and phrases that are not my intention, such attribution would be subjective, and accordingly, not a basis for an objective and reasoned investigation.

I feel it important to highlight to you some key elements surrounding the Burnside City Council's current legal actions against me. Mayor David Parkin's complaint to ICAC that has precipitated your most recent letter to me is but one of a multitude of different retaliatory and retributory actions against me. The Burnside City Council has also made complaints through a variety of other agencies including ICAC, the Ombudsman, the Local Government Minister, the Attorney General, the Fair Work Commission, SafeWork SA, the Adelaide Magistrates Court, SAPOL, and a number of different State Government politicians. Burnside City Council has made it abundantly clear that they are happy to spend hundreds of thousands of taxpayers' dollars in pursuing me over trivial, frivolous and vexatious claims.

395. Cr Bagster supplied my Office with a spreadsheet commenting on each of the communications considered by my investigation. I do not set out in full the contents of the spreadsheet in this report. I have, however, had regard to Cr Bagster's characterisation of the communications at issue. I address certain of Cr Bagster's submissions later in this report.

396. Cr Bagster also objected to my investigation proceeding in the circumstances:

[T]he majority of these communications that you enclose have been put as affidavit evidence of my apparent wrong-doing (bullying, harassing and threatening behaviour) to the Adelaide Magistrates Court. As these matters are before this court, and have been unresolved for quite some time, it is not appropriate that your investigation also seeks to validate or otherwise these complaints.

397. Cr Bagster also expressed reservations at redactions applied to certain of the documents supplied to him. In this regard, he submitted:

[The] council administration and the Mayor have directly accessed my email account. This indicates that council administration could easily send, modify or print anything directly

from my account in lieu of my knowledge, or intent. Therefore, no one can be certain that the purported activities of mine via this account were actually mine. It is possible that council administration could have tampered with my email account or communications.

398. In the circumstances, I simply clarify that my Office applied the redactions in question.

Alleged breach of confidentiality

399. In my letter to Cr Bagster dated 21 March 2018 I separately raised the allegation of his alleged disclosure of the MinterEllison report. In doing so, I made reference to the publication that appeared in *The Advertiser* on 24 May 2017 and the allegation that the report had been supplied to an email address associated with Mr Hasenohr. I did not, however, disclose the archived email that had been obtained by the council.

400. In initially responding to the allegation, Cr Bagster submitted:

I confirm that on the 23rd May 2017 I sent an email to an email address associated with former elected member of the council, Mr Robert Hasenohr. This email did not contain any reference or attachments related to a confidential Preliminary Assessment Report concerning the conduct of the Chief Executive Officer of the City of Burnside (The MinterEllison Report). Having reviewed both my Burnside Elected Member email and my personal email, I have determined that Mr Robert Hasenohr had possession of the MinterEllison report as early as 16 May 2017. This fact can be corroborated by another Elected Member of Burnside Council.

This allegation is categorically false and has apparently been submitted to you with no supporting evidence.

401. When asked if he forwarded a copy of the MinterEllison report to any external party, Cr Bagster responded:

Yes. I provided a copy of the MinterEllison report to Griffins Lawyers and Thomson Geer Legal firm. This was done as part of the Section 270 Review into council resolution C11055. I do not recall, nor can I find evidence of having provided the MinterEllison report to any other parties.

402. Cr Bagster otherwise submitted:

As I did not forward a copy of the MinterEllison Report to Mr Hasenohr on 23 May 2017, I have complied with clause 3.3 of the code in this instance.

[...]

You will note that the MinterEllison report was dated 17 February 2017, eleven days prior to the confidentiality order occurring on 28 February 2017. You will also note that the 'publication' of the MinterEllison report in the Advertiser occurred on 24 May 2017, one day after it is alleged that I emailed the report to former Burnside Councilor [sic] Mr Robert Hasenohr. It seems highly unlikely that a single day is a sufficient period in which to prepare and print an article relating to the report.

403. On 16 May 2018 I wrote to Cr Bagster a second time, this time enclosing a copy of the archived email supplied by the council. In doing so, I repeated my previous questions concerning this allegation, referring Cr Bagster to section 24(c) of the Ombudsman Act.³¹⁶

404. By way of email dated 15 June 2018, Cr Bagster responded:

³¹⁶ Section 24(c) of the Ombudsman Act provides that '[a person shall not] wilfully make any statement that is false or untrue in a material particular to the Ombudsman or any other person acting in the exercise of powers under this Act.' Section 24(c) is an offence provision, carrying a maximum penalty of \$2,000.

I do not recall sending the email in question to Mr Robert Hasenohr on the 23 May 2017 as alleged and I did not find a record of this email while researching my response to your letter dated the 21 March 2018. It is possible that this was an oversight on my part and I believed that in my letter to you dated the 13 April 2017, I had answered your questions correctly.

405. Cr Bagster sought to draw my attention to the 16 May 2017 and 23 May 2017 emails from Mr Hasenohr (as set out earlier in this report). Cr Bagster submitted:

I had received an email early on the date of the 23 May 2017 (attached) that indicated that Mr Robert Hasenohr already had possession of the confidential MinterEllison Report. I cannot conceive as to why I would have emailed Mr Robert Hasenohr a copy of a document that I was already aware was in his possession.

[...]

In light of the screenshot received by your office, I must assume that I in fact forwarded a copy of the MinterEllison Report to Mr Robert Hasenohr on the 23 May 2017 as alleged.

406. Cr Bagster maintained the submission that he did not contravene clause 3.3 of the Code in this instance. Cr Bagster submitted that he did not 'release or divulge' the MinterEllison report to Mr Hasenohr because 'Mr Robert Hasenohr was already in possession of the document in question.'

Relevant law

407. 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.

408. 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.

409. Part 2 of the Code provides that council members must, *inter alia*:

- 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 publicly.
- [...]
- 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.
- [...]
- 2.11 Not bully or harass Council staff.

- 2.14 Refrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.

410. Clause 3.3 of Part 3 of the Code establishes that council members must:

- 3.3 Not release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence.

Consideration

411. Cr Bagster has objected to my investigation proceeding to consider the allegations concerning his conduct on the basis that similar allegations have been made to the Adelaide Magistrates Court in the context of the intervention order proceedings.
412. In the circumstances, I simply note that my investigation concerns Cr Bagster's compliance with the Code. My investigation is not an enquiry made under the Intervention Orders (Prevention of Abuse) Act, which involves the adjudication of different issues.³¹⁷
413. I do not consider there is any impediment to my investigation proceeding in the circumstances.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, bullied or harassed other council members, thereby committing misconduct in public administration

414. Clause 2.10 of Part 2 of the Code provides that council members must '[n]ot bully or harass other Council members.'

Defining bullying and harassment

415. The verbs 'bully' and 'harass' are not defined in the Code, nor are they otherwise defined in the Local Government Act. Accordingly, it is necessary to consider the ordinary meaning of each term.
416. Pursuant to section 22 of the *Acts Interpretation Act 1915*, it is also necessary to prefer a construction of each term that would promote the purpose or object of the Local Government Act over any construction that would not.

Bullying

417. In respect of the term 'bully', the *Macquarie Dictionary* (7th ed.) relevantly provides (emphasis in original):

bully [...] someone who intimidates or demeans another, especially as by repeated threats to their person, career, or social standing, or by harassment in person, on social networks, etc. [...] –*v.* (**bullied, bullying**) –*v.t* [...] to act the bully towards.

418. Within academia, it has been observed that:

³¹⁷ See section 6 of the Intervention Orders (Prevention of Abuse) Act ('There are grounds for issuing an intervention order against a person [...] if [...] it is reasonable to suspect that the defendant will, without intervention, commit an act of abuse against a person; and [...] the issuing of the order is appropriate in the circumstances.') 'Abuse' is defined in section 8 of the Act.

[D]efining bullying whether in law, policy or research remains a challenge. Nonetheless, the literature on workplace bullying generally recognises bullying as unreasonable behaviour that is repeated and highly detrimental and harmful to a person's safety and wellbeing.³¹⁸

419. There is considerable judicial authority on the application of the terms 'bullied' and 'bullying' to conduct within the workplace, as construed by reference to section 789FD of the *Fair Work Act 2009* (Cth). According to the Fair Work Act definition, a worker will be 'bullied at work' if an individual or group of individuals 'repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member' in circumstances where the behaviour 'creates a risk to health and safety.'³¹⁹

420. The Fair Work Commission in *Re SB* observed:

"Unreasonable behaviour" should be considered to be behaviour that a reasonable person, having regard to the circumstances, may consider to be unreasonable. That is, the assessment of the behaviour is an objective test having regard to all the relevant circumstances applying at the time.³²⁰

421. Hatcher VP in *Amie Mac v Bank of Queensland and Ors* opined that repeated unreasonable behaviour that constitutes bullying at work may include:

intimidation, coercion, threats, humiliation, shouting, sarcasm, victimisation, terrorising, singling-out, malicious pranks, physical abuse, verbal abuse, emotional abuse, belittling, bad faith, harassment, conspiracy to harm, ganging-up, isolation, freezing-out, ostracism, innuendo, rumour-mongering, disrespect, mobbing, mocking, victim-blaming and discrimination.³²¹

422. In *Re SB* it was also held that:

Having regard to the approach urged by the authorities, the concept of individuals "repeatedly behaving" unreasonably implies the existence of persistent unreasonable behaviour but might refer to a range of behaviours over time. There is no specific number of incidents required for the behaviour to represent "repeatedly" behaving unreasonably (provided there is more than one occurrence), nor does it appear that the same specific behaviour has to be repeated.³²²

423. It has been observed within the context of the Fair Work Act definition that a 'risk to health and safety' means the possibility of danger to health and safety.³²³ The risk must also be real and 'not simply conceptual'.³²⁴ There should be a causal link between the behaviour and the risk to health and safety.³²⁵

424. Separate and apart from the Commonwealth jurisdiction, the Supreme Court of Victoria in *Brown v Maurice Blackburn Cashman* considered and applied the following definition of 'bullying', as provided by a 2003 WorkSafe Victoria guidance note (emphasis in original):

³¹⁸ Worth, Rodney and Squelch, Joan, 'Stop the Bullying: The Anti-Bullying Provisions in the *Fair Work Act* and Restoring the Employment Relationship' (2015) 38(3) *UNSW Law Journal*, 1015 at 1016.

³¹⁹ This definition arose from a recommendation from the House of Representatives Standing Committee on Education and Employment on its inquiry into workplace bullying within Australia. See House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: We Just Want It to Stop* (2012) at 18. See also, Worth and Squelch, above, at 1019 ('The definition of bullying in the *FWA* reflects key elements of bullying as noted in the literature and corresponds with definitions found in workplace health and safety policies and guidelines.')

³²⁰ *Re SB* [2014] FWC 2104 at [43].

³²¹ *Amie Mac v Bank of Queensland and Ors* [2015] FWC 774 at [99].

³²² *Re SB* [2014] FWC 2104 at [43].

³²³ *Thiess Pty Ltd v Industrial Court (NSW)* (2010) 78 NSWLR 94 at [65]-[67].

³²⁴ *Re SB* [2014] FWC 2104 at [45].

³²⁵ *Re GC* [2014] FWC 6988 at [49].

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

Within this definition:

'Unreasonable behaviour' means behaviour that a reasonable person, having regard to all the circumstances would expect to victimise, humiliate, undermine or threaten.

'Behaviour' includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining or threatening.

'Risk to health and safety' includes a risk to the mental or physical health of the employee.³²⁶

425. According to the judgment of the Supreme Court, the trial judge 'noted this definition of workplace bullying does not have legislative force but [...] accepted that it was a reasonable working definition of workplace bullying against which to objectively analyse the allegations made with respect to [the alleged perpetrator's] behaviour.' That approach was accepted by the Supreme Court on appeal.³²⁷
426. I note that the *Commission of Inquiry into Greater Geelong City Council* adopted a substantially similar definition of 'bullying' for the purposes of its inquiry into cultural issues affecting the operations a local council in Victoria.³²⁸
427. I also note that the Local Government Association, in a September 2017 submission on reform to the code of conduct regime, proposed that the following definition of bullying be included within the Code:

Bullying occurs when:

A person or group of people repeatedly behaves unreasonably towards a council member or council employee and the behaviour creates a risk to health and safety. It may include offensive or inappropriate behaviour inside or outside council meetings.

Bullying does not include reasonable action carried out in a reasonable manner or robust debate within councils that is conducted courteously.

Harassment

428. In respect of the term 'harass', the *Macquarie Dictionary* (7th ed.) provides the following definition (emphasis in original):

harass [...] 1. to trouble by repeated attacks, incursions, etc., as in war or hostilities; harry; raid. 2. to disturb persistently; torment.

429. In *Henderson v McKenzie* the Supreme Court of the Australian Capital Territory considered whether the appellant had stalked another person 'with intent to harass', where Higgins CJ relevantly observed:

Harassment is not defined in the Crimes Act, nor, indeed, in the Criminal Code 2002 (ACT) (Criminal Code). However, it does seem in context to bear its usual meaning, ie "to trouble by repeated attacks; harry; (1) to worry or unnerve (an enemy) by continuous small attacks; (2) to disturb, worry, torment, distress with annoying labour, care or misfortune" (World Book Dictionary); "Vex by repeated attacks; trouble, worry" (Concise Oxford Dictionary).

³²⁶ *Brown v Maurice Blackburn Cashman* [2013] VSCA 122 at [13].

³²⁷ *Ibid* at [14].

³²⁸ Report of the *Commission of Inquiry into Greater Geelong City Council*, 31 March 2016 at pp. 15-16 ('Workplace bullying is repeated, unreasonable behaviour that creates a risk to health and safety. Unreasonable behaviour means behaviour that a reasonable person having regard to all the circumstances would expect to victimise, humiliate undermine or threaten. Risk to health and safety includes risk to the mental or physical health of an employee...').

The present provision was introduced in the context of an associated amendment to the Domestic Violence Act 1986 (ACT)(as it then was).

[...]

It was clearly intended that conduct, whilst falling short of being a discrete criminal offence, should be punishable if engaged in repeatedly so as to cause, or be likely to cause, fear and alarm in a person, if the conduct is so engaged in by a person knowing or being recklessly indifferent to that consequence.³²⁹

430. Slicer J in *Carnes v Visser*, when considering the term in a substantially similar context, observed:

The complaint itself referred to a number of physical acts which, in themselves, could be said to contribute a series of attacks or making of trouble. Brown L, *The New Shorter Oxford English Dictionary* 4th ed Clarendon Press, Oxford, 1993, also refers to “Now freq, subject to constant molesting or persecution.” It is the giving of trouble or stress to another which is the central import of the term.³³⁰

431. In the proceedings of *Kelson v Forward*, Finn J was highly critical of the definition of ‘harassment’ adopted by the respondent for the purposes of an inquiry into alleged workplace harassment within a Commonwealth agency. That definition provided that ‘[h]arassment is any type of behaviour that can be reasonably expected to cause a person to feel threatened, uncomfortable or unable to cope with their work environment.’

432. Finn J contrasted the impugned definition with the definition of workplace harassment provided in official guidelines promulgated by the Commonwealth Public Service Commission (described as providing ‘an officially sanctioned expression of behaviour which will be so regarded in Commonwealth employment’), before observing:

The definition adopted [by the respondent] is, in my view, an inherently flawed one. Far from being a common-sense, plain English one it would require significant qualifications to be grafted on to it before it could be rendered serviceable.

The definition is one which focussed upon the feeling of the person said to be harassed. Any behaviour that can reasonably be expected to cause the required feeling is harassment. It is not clear whether that behaviour needs to be specific or whether it should be directed at, or (to use the language of the Guidelines) “targeted at”, the person experiencing that feeling. [...] Of far greater concern though, is the complete lack of differentiation between possible causes of the required feeling. That feeling may be caused by wholly offensive or by wholly inoffensive behaviour. Depending on the reason for, or purpose of, its taking a budgetary decision, a personnel decision, a decision on performance, or a disciplinary decision may properly be described in a given instance as (i) a harassing decision which could reasonably be expected to cause a person to have the required feeling; or (ii) an entirely unexceptional decision notwithstanding it could reasonably be expected to cause a person to have that feeling.

[...]

To adapt the language of Gleeson C J in the Greiner case [...] to the present matter:

A conclusion that a person, whilst acting in a way which he believes is in all respects lawful (and which is not found to be unlawful) and in a way that would not be seen as contrary to known and recognised standards of honesty and integrity, is nevertheless acting [as an harasser] appears surprising. The explanation may be that there is something surprising about the definition of [workplace harassment].

[...]

³²⁹ *Henderson v McKenzie* [2009] ACTSC 39 at [6].

³³⁰ *Carnes v Visser* [2000] TASSC 136 at [2].

The definition [of the respondent] lacks that vital element which gives the pejorative connotation to behaviour that attracts the description of workplace harassment. This is that element which differentiates the offensive from the inoffensive.³³¹

What will constitute bullying or harassment for the purposes of the Code?

433. I have had regard to the specific objects of the Local Government Act as enumerated in section 3 of the Act, which include:
- providing a legislative framework for an effective, efficient and accountable system of local government in South Australia
 - ensuring the accountability of councils to the community
 - defining the powers of local government and the roles of council members.
434. I have also had particular regard to the preamble to Part 2 of the Code, which provides that:
- the behavioural code is intended for the management of conduct that does not meet the reasonable community expectations of the conduct of council members
 - robust debate within councils that is conducted in a respectful manner is not a breach of the behavioural code.
435. I have considered the ordinary meaning of the terms 'bully' and 'harass' as provided in the dictionary definitions quoted above. Neither definition invites a consideration of the objective reasonableness of the behaviour at issue. In my view it is necessary to read in such a consideration for the Code to function as intended. The alternative would be to proscribe conduct that may be capable of meeting the reasonable community expectations of the conduct of council members.
436. I note that it is a common requirement in the various definitions of bullying considered by the authorities outlined above that the conduct in question creates a 'risk to health and safety'; whereas the dictionary definition refers to conduct that 'intimidates or demeans' the subject. On the whole, I prefer the former construction, insofar as it appears better directed towards identifying conduct that merits intervention by a council or external agency,³³² and insofar as it is consistent with the model proposed by the Local Government Association as relevant to the system of local government within this State.³³³
437. Based on the foregoing, I have adopted the following definition of bullying for the purposes of the present investigation:
- the council member has engaged in repeated unreasonable behaviour directed towards a relevant person (especially by repeated threats, intimidation or demeaning behaviour); and
 - the behaviour creates a risk to health and safety (including a risk to mental health).
438. Similarly, and in the absence of any particular legislative definition to draw from, I have adopted the following definition of harassment for the purposes of the present investigation, drawn from the dictionary definition:
- the council member has persistently and unreasonably disturbed a relevant person; and
 - the behaviour could reasonably be expected to trouble or stress that person.

³³¹ *Kelson v Forward* (1995) 60 FCR 39.

³³² In this regard, I note that section 107(2)(f) of the Local Government Act requires that a chief executive officer of a council ensure 'that employees are provided with safe and healthy working conditions'.

³³³ The Local Government Association being a public authority constituted for the purpose of promoting and advancing the interests of local government; clause 1(3) of Schedule 1 of the Local Government Act.

439. There is, of course, the potential for considerable overlap between the two definitions I have settled upon.

Has Cr Bagster bullied or harassed other council members?

440. In my notice of investigation I notified Cr Bagster that I proposed to consider whether he had bullied or harassed Mayor Parkin, Cr Davis and Cr Osterstock. I settled upon this approach upon a preliminary consideration of the communications relevant to my investigation.

Mayor Parkin

441. It is evident that Cr Bagster directed a considerable amount of correspondence to Mayor Parkin in the wake of council resolution C11055. During this period, Cr Bagster variously expressed his dissatisfaction with the terms of the resolution, agitated for the rescission of the resolution and attempted to persuade Mayor Parkin to arrange for Mr Deb to issue a public apology.

442. I note that during this period Mayor Parkin made repeated efforts to impress upon Cr Bagster the nature and extent of his role and functions as mayor.

443. While it may not be inappropriate for an elected member to seek to discuss a particular council decision with the mayor, the nature and volume of Cr Bagster's communications with Mayor Parkin in the immediate aftermath of resolution C11055 was clearly unreasonable. It was inappropriate for Cr Bagster to request that the mayor take action to 'undo' the subject resolution. It was similarly inappropriate for Cr Bagster to personalise the matter by reference to Mayor Parkin's presiding over the motion or his relationship with the chief executive officer.

444. Even if one accepts the premise that resolution C11055 was in some way unreasonable or unfair to Cr Bagster (a conclusion I do not make), the manner in which Cr Bagster sought to raise the council's revisiting the matter was clearly belligerent and counterproductive to achieving that purpose.

445. In this respect, Mayor Parkin's suggestion to Cr Bagster that he seek a review of the resolution was entirely appropriate. In reviewing the correspondence between the two individuals relating to this period, I am frequently struck by the patience and civility displayed by the mayor.

446. I note the various, escalating personal attacks that Cr Bagster has directed towards Mayor Parkin over the course of the period relevant to my investigation, including:

...Just because I do things a little differently than you would prefer and I don't guzzle wine with you and your pals, and I don't go putting my arm around the CEO...³³⁴

...I hold you [...] in very low regard...³³⁵

...the CEO and David Parkin have a very cosy relationship...³³⁶

...at your stage David I would have thought you'd be trying to keep the friends you had...³³⁷

...Gimme a call when you have the balls...³³⁸

³³⁴ LB017.

³³⁵ LB047.

³³⁶ LB103.

³³⁷ LB104.

³³⁸ LB104.

*...If you also resigned with Paul, we might be able to clean up Council Administration and BCC culture by the next election. You, Paul and the three dickheads...*³³⁹

*...You are lazy...*³⁴⁰

*...I believe you sly, conniving and unfair to me...*³⁴¹

*...You play favourites and you thumb your nose at the democratic processes of local government...*³⁴²

*...as cowardly and unbecoming as your behaviour after the last Council meeting...*³⁴³

*...Good luck with your circus performance, make sure your hearing aids are in good working order...*³⁴⁴

*...You continue to inappropriately, and devoid of honesty, honour, courage, integrity... disseminate your perverted ramblings...*³⁴⁵

*...You really should think more wisely and circumspectly before being so ill-advised by such corrupted and partisan personal agendas...*³⁴⁶

*...search the remnants of your corrupted soul... those bits that Beelzebub hasn't purchased from you...*³⁴⁷

*...stop being so damn immoral and wicked...*³⁴⁸

447. This culminated in August 2017 with Cr Bagster likening Mayor Parkin to the architects of the Holocaust. In his response to my provisional report, Cr Bagster submitted that in drawing this analogy he was:

cautioning [the mayor], using exaggerations, in joining them [Hitler, Himmler, Goering, Goebbels and Mengele] in “the wrong side of history” by following a path that would ultimately be proven to be morally, ethically and legally wrong.

448. It is hardly necessary to dwell on the offensiveness of that comparison.

449. In his response to my investigation Cr Bagster sought to characterise these and other statements as being merely representative of his opinion, or as involving the expression of ‘clear sarcasm and humour’. I am not persuaded by these submissions. It is plainly inappropriate for a public officer to be directing such remarks towards his or her colleagues.

450. I note that Cr Bagster made frequent recourse to his ability to direct questions to and raise motions with the council and that, in doing so, Cr Bagster appears to have sought to perpetuate various personal grievances with the mayor. I consider that the nature and volume of Cr Bagster’s requests of this kind amount to an abuse of the privileges afforded to him as an elected member.

451. I note that Mayor Parkin appears to have repeatedly requested that Cr Bagster desist from communicating with him by way of SMS message. I note Cr Bagster’s apparent

³³⁹ LB149.

³⁴⁰ LB162.

³⁴¹ LB162.

³⁴² LB162.

³⁴³ LB177.

³⁴⁴ LB183.

³⁴⁵ LB186.

³⁴⁶ LB186.

³⁴⁷ LB186.

³⁴⁸ LB186.

refusal to heed those requests. I note that many of the messages sent to Mayor Parkin appear to have been calculated to taunt or goad the mayor.

452. I note that several of the messages were sent very late in the evening and well outside of ordinary business hours. I accept that elected members may occasionally be required to attend to council business late into the evening. It was not necessary or appropriate that Cr Bagster insult and harangue the mayor during such times.³⁴⁹
453. I note in particular the message sent to Mayor Parkin on 24 May 2017 concerning *The Revenant*. I have personally viewed that film and accept that, on one reading, it speaks to the manner in which an individual may persevere in obtaining personal justice. I note that it is simultaneously a story of violent, personal revenge. Regardless of Cr Bagster's specific intentions in referring the mayor to the film, it should have been apparent that his message had the potential to cause Mayor Parkin significant alarm. I note that Cr Bagster has conceded that his reference to the film was 'inappropriate and unprofessional'.

Cr Davis

454. I note that Cr Bagster has at various times directed personal attacks towards Cr Davis. He has variously belittled Cr Davis for his opinions and sought to impugn Cr Davis' motivations in questioning or challenging his behaviour:

*... you obviously have not comprehended the situation...*³⁵⁰

*...your corrupted opinion...*³⁵¹

*...you should refrain from supporting such crazy ideas and start working in the best interests of your colleagues and the community you are supposed to represent...*³⁵²

*...your unsolicited views and dreadful opinions...*³⁵³

*...Please butt out and cease offering your incredibly biased and baseless assessments...*³⁵⁴

*...you should be mature enough to understand...*³⁵⁵

*...you are most definitely never welcome at my home and if I could I would gladly have nothing more to do with you. I really only want to work with folks who have the best interests of Burnside at heart. I really don't believe that that is you right now...*³⁵⁶

*...Cr Davis (who's never paid a single cent in rates to Burnside)...*³⁵⁷

*...your apology is for contrived and disingenuous reasons...*³⁵⁸

455. In his response to my provisional report, Cr Bagster submitted that his behaviour towards Cr Davis was 'not unwarranted in the highly politicised environment' of the council. I reject that submission. Such conduct does not in my view amount to 'robust debate [...] conducted in a respectful manner', of the kind tolerated by the Code.

³⁴⁹ See, e.g. LB177 (sent at 11:05pm: 'You are a terrible Mayor...'); (sent at 12:51am: 'will you fess up to supporting your good buddy Paul Deb at any cost to your soul and dying breath!?). Contrary to Cr Bagster's response to my provisional report, I do not consider it of material consequence that Cr Bagster did not 'expect or demand an immediate response' to these communications.

³⁵⁰ LB013.

³⁵¹ LB013.

³⁵² LB013.

³⁵³ LB044.

³⁵⁴ LB109.

³⁵⁵ LB109.

³⁵⁶ LB112.

³⁵⁷ LB158.

³⁵⁸ LB195.

456. I note Cr Davis' apology to Cr Bagster on 30 March 2017. I note that Cr Bagster's response to that apology was to direct further gratuitous remarks towards Cr Davis.
457. I note Cr Bagster's attempts to call into question the legitimacy of Cr Davis' election to the council. Cr Bagster submitted to my investigation that this was 'not inappropriate' in the circumstances. In my view, Cr Bagster's conduct in this regard was plainly retaliatory and unwarranted. I note that, even after withdrawing the claim, Cr Bagster continued to direct various gratuitous comments towards Cr Davis' candidacy and living arrangements.
458. I note that Cr Bagster has repeatedly questioned Cr Davis' capacity and fitness to serve as an elected member of the council. On the information before me, those comments appear wholly gratuitous.
459. I note that Cr Bagster appears to have repeatedly ignored Cr Davis' request³⁵⁹ that he desist from directing emails towards Cr Davis' personal email account³⁶⁰ I note that Cr Bagster continued to taunt Cr Davis in correspondence following this request.³⁶¹
460. Cr Bagster in his response to my provisional report adverted to discourteous remarks allegedly made by Cr Davis during a 27 June 2017 altercation at the Robin Hood Hotel. I do not consider that these remarks, if indeed they were made, would meaningfully mitigate the conduct described above.

Cr Osterstock

461. I note that Cr Bagster has repeatedly sought to impugn Cr Osterstock's motivations in challenging and drawing attention to his behaviour.
462. I note that Cr Bagster has directed various insults and gratuitous remarks towards Cr Osterstock, calling into question Cr Osterstock's interests in representing the Burnside community and his fitness to serve as an elected member:

...your comments and assertions which are most certainly incorrect and inappropriate...³⁶²

...You should probably keep your suspicions and assertions to yourself, given that you are (yourself) on the boundaries of acceptability of appropriateness and potentially in breach of the Code of Conduct and definitely in breach of acceptability of collegiality...³⁶³

...your partisan support of the CEO and the Mayor...³⁶⁴

...This communication to the CEO is inappropriate and unbecoming of you both as a fellow Councillor [sic] someone who purports to know the law...³⁶⁵

...Mark Osterstock, a uniformed police officer, cowering in his seat - it is a laughable sight to be sure!..³⁶⁶

...Members like Cr Osterstock (who no longer even lives in the City of Burnside)...³⁶⁷

...Cr Osterstock's similar goading and encouragement in the plethora of formal complaints...³⁶⁸

³⁵⁹ LB112.

³⁶⁰ LB170.

³⁶¹ LB195.

³⁶² LB071.

³⁶³ LB071.

³⁶⁴ LB071.

³⁶⁵ LB112.

³⁶⁶ LB158.

³⁶⁷ LB158.

*...You truly are a gem - working for the greater good of your community! Since you haven't lived in Burnside City for years - I am not exactly sure which community that is...*³⁶⁹

*...don't you feel somehow conflicted or compromised in any of these affairs, especially in perpetuating these horrendous and false allegations and in stirring up those with lesser abilities than yourself to rationalise and think strategically...*³⁷⁰

*...When did you learn to be such a bully? I don't get it. I have some very senior SAPOL friends that are the sweetest, gentlest people. They are so unlike you...*³⁷¹

*...fighting bullies like you and the CEO for many years. I admire their spunk and tenacity in the face of people like you...*³⁷²

*...I would have expected a lot better from you, a fellow who has also worn a uniform and has a sworn duty to do what is right...*³⁷³

*...yet another inappropriate communication (diatribe.. piece of drive!) from Brevet SGT Osterstock...*³⁷⁴

*...Brevet SGT Testosterone's [sic]...*³⁷⁵

*... you are a real bugger and one the key bullies and protagonists on Council. I really hope that the electorate sees you for the awful person that your are [sic]...*³⁷⁶

*...Up yours buddy...*³⁷⁷

463. I note that Cr Bagster has made various gratuitous references to Cr Osterstock's occupation and rank.
464. I note that Cr Bagster also appears to have taunted Cr Osterstock about a threatened or actual complaint to the Police Ombudsman.³⁷⁸

Conclusion

465. I have considered Cr Bagster's response to my investigation. I do not accept Cr Bagster's submission that 'an immense and creative stretching of the imagination' is necessary to find that he has bullied or harassed the officers specified.
466. I note and accept that Cr Bagster feels profoundly aggrieved by the imposition of resolution C11055 and the various events that have followed. That sense of outrage does not justify his behaviour. He is himself primarily responsible for his present circumstances.
467. There are mechanisms in place that provide for the review of council decisions and the investigation of alleged misconduct by council officers. Outside of these mechanisms, council officers, including individual elected members, must observe and respect the

³⁶⁸ LB186.

³⁶⁹ LB188.

³⁷⁰ LB188.

³⁷¹ LB207.

³⁷² LB216.

³⁷³ LB216.

³⁷⁴ LB216.

³⁷⁵ LB216.

³⁷⁶ LB216.

³⁷⁷ LB216.

³⁷⁸ In his response to my provisional report, Cr Bagster submitted that these comments were made in response to comments from council officers, including Cr Osterstock, to the effect that they would make difficulties for him with his employer and the Attorney-General's Department (in the latter case, owing to his appointment as a Justice of the Peace). I remain of the view that Cr Bagster's threats to approach the Police Ombudsman were gratuitous and inappropriate.

lawful decisions of the council's elected body, notwithstanding any personal dissatisfaction.

468. There is no place for insults, intimidation or name-calling within public office. Such conduct does not meet reasonable community expectations and is counterproductive to effective public administration.
469. I have so far refrained from passing comment on the merits of the communications protocol established by council resolution C11055. The terms of the referral do not require me to assess the reasonableness or otherwise of the restrictions placed upon Cr Bagster's communications with council staff. I simply note that Cr Bagster's conduct following the imposition of the protocol would appear to speak to the necessity of such measures.
470. On all of the information before me, I am satisfied that Cr Bagster has engaged in repeated unreasonable behaviour directed towards Mayor Parkin, Cr Davis and Cr Osterstock. I make it clear that in reaching this conclusion, I have considered the nature and volume of the communications at issue and the overall surrounding context.
471. I am also satisfied that Cr Bagster's conduct has created a risk to health and safety in respect of each officer, insofar as I am satisfied that the communications at issue were largely calculated to demean each officer and could reasonably have been expected to cause distress, anxiety and alarm to each officer.
472. I am accordingly satisfied that Cr Bagster has bullied Mayor Parkin, Cr Davis and Cr Osterstock.
473. I am also satisfied that Cr Bagster has harassed Mayor Parkin, Cr Davis and Cr Osterstock, insofar as I consider that Cr Bagster has persistently and unreasonably disturbed each officer and that, on an objective assessment, Cr Bagster's behaviour could reasonably have been expected to trouble and stress each officer. In reaching this conclusion, I have had regard to the persistence of Cr Bagster's conduct in the face of reasonable requests that he desist.
474. I am therefore satisfied that Cr Bagster has committed three separate contraventions of clause 2.10 of Part 2 of the Code by:
- bullying and harassing Mayor Parkin
 - bullying and harassing Cr Davis
 - bullying and harassing Cr Osterstock.
475. I am accordingly satisfied that Cr Bagster has in each case committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
476. It also follows that I consider Cr Bagster's conduct was in each case contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that:

- by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mayor David Parkin
- by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Cr Henry Davis

- by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Cr Mark Osterstock.

It is also my final view that:

- Cr Bagster's conduct in bullying and harassing Mayor David Parkin was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act
- Cr Bagster's conduct in bullying and harassing Cr Henry Davis was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act
- Cr Bagster's conduct in bullying and harassing Cr Mark Osterstock was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, bullied or harassed council staff, thereby committing misconduct in public administration

477. Clause 2.11 of Part 2 of the Code provides that council members must '[n]ot bully or harass Council staff.'
478. In my notice of investigation I notified Cr Bagster that I proposed to consider whether he had bullied or harassed Mr Deb, Mr Cooper and Mr Cant. As in the case of my consideration of clause 2.10, I settled upon this approach upon a preliminary consideration of the communications relevant to my investigation.
479. For the purposes of my consideration of clause 2.11, I have adopted the same working definitions of bullying and harassment as applied to my consideration of clause 2.10, above.

Mr Deb

480. It is clear that Cr Bagster bears considerable animosity and resentment towards Mr Deb. It is also clear that the difficulties between the two gentlemen significantly predate the communications considered as part of this investigation.
481. I acknowledge and accept that Cr Bagster may have felt offended and hurt by Mr Deb's December 2016 comments. I simply note that those comments were the subject of an external assessment under the relevant code of conduct; were accordingly considered and determined to be of an isolated nature; and that the terms of the council's 28 February 2017 resolution appear wholly consistent with the recommendations made by the Preliminary Assessor. This is the process envisaged by the Code of Conduct for Council Employees and the council's own complaints handling procedures. It is where the matter ought to have rested.
482. Cr Bagster's response to the resolution of his complaint and his subsequent behaviour in my view evidences a fundamental misunderstanding of the complaints process under the Local Government Act. It is not a mechanism intended for the pursuit of personal vendettas. It is a process that is intended to promote the effective performance of a council's official functions in the representation of local and wider community interests.
483. I note the repeated, sustained personal remarks that Cr Bagster has directed towards Mr Deb, variously made in communications distributed to other council officers and to Mr Deb himself, including:

*...allowing a CEO to get away with his horrendous breaches of his Code which could see him sacked or at the very least strongly reprimanded...*³⁷⁹

*...he has chosen to be belligerent and unwilling to do that and to be accountable for his own actions...*³⁸⁰

*...your perverted instructions to your staff...*³⁸¹

*...his [sic] actions were not just delatarious [sic] to me, they represent a slap in the face to the people and the community I represent...*³⁸²

*...the CEO continues to act duplicitously...*³⁸³

*...he's not up to the job and lacks the necessary personal integrity and skills needed in the job...*³⁸⁴

*...a recalcitrant CEO who has flagrantly breached his CoC...*³⁸⁵

*...a cancerous growth...*³⁸⁶

*...I don't want to harm anyone's careers – with one key exception...*³⁸⁷

*...Please don't get too attached to him! A fish rots from the head...*³⁸⁸

*...I have been holding back on Paul in the hope that he turns around and does the right thing. I seriously have a number of very wealthy Burnsideans lining up; offering me their SCs and barristers to file an action against Paul. There is a big and growing discontent in our community mounting and I am resisting calls for his head on a platter...*³⁸⁹

*...if the CEO finds the intestinal fortitude to make a public apology...*³⁹⁰

*...mischievous and mean spirited on the part of the CEO. I have had enough of a beating from that man already...*³⁹¹

*...Let Paul drown in his own excrement...*³⁹²

*...I am the innocent victim of his childish, unlawful bullyboy tactics...*³⁹³

*...You don't have to agree to lick Paul's arse! I'm sure it's very bitter and will soon be necrotic...*³⁹⁴

*...I need to get rid of Paul Deb. He's my only target...*³⁹⁵

*...The CEO is playing a terrible and devisive [sic] game that goes well beyond bullying and harassment...*³⁹⁶

³⁷⁹ LB006.

³⁸⁰ LB009.

³⁸¹ LB008.

³⁸² LB013.

³⁸³ LB026.

³⁸⁴ LB026.

³⁸⁵ LB034.

³⁸⁶ LB056. Cr Bagster in his response to my investigation sought to characterise this remark as being directed towards 'the undemocratic LJBAdmin account and protocols'. This may have been Cr Bagster's intent; however it is not how I read the relevant email.

³⁸⁷ LB056; LB057.

³⁸⁸ LB079.

³⁸⁹ LB103.

³⁹⁰ LB098.

³⁹¹ LB118.

³⁹² LB129. Cr Bagster in his response to my investigation characterised this comment as 'less than professional'.

³⁹³ LB145.

³⁹⁴ LB151.

³⁹⁵ LB151.

³⁹⁶ LB166.

*...After Council Meetings he meets secretly with his key staff and corrupted Councillors to plot and plan his next underhanded move...*³⁹⁷

*...these gangrenous elements...*³⁹⁸

*...I don't think he's yet ready for the inevitable period of long unemployment that will follow that event...*³⁹⁹

*...The CEO is therefore 100% compromised and conflicted. Are you aware that that's corrupt? The CEO definitely should be reported to ICAC and he should also be summarily dismissed...*⁴⁰⁰

*...the Mayor's good chum, the CEO, had had his dastardly hand in penning yet another serious complaint against me...*⁴⁰¹

*...the CEO's dark partisan political efforts...*⁴⁰²

*...your good mate and (hopefully future co-defendant and inmate Paul...*⁴⁰³

*...these unscrupulous people will stop at nothing...*⁴⁰⁴

*...ol' Debbie...*⁴⁰⁵

484. I note that Cr Bagster has frequently referred to Mr Deb by an apparently disdainful nickname.⁴⁰⁶
485. I note that Cr Bagster has been persistent and vocal in advocating for the termination of Mr Deb's contract of employment, including by way of communications involving members of the public. Whatever Cr Bagster's private views, the nature and volume of these comments was plainly unreasonable and incommensurate with the circumstances.
486. I take a particularly dim view of the apparent gratification with which Cr Bagster has described his efforts to tarnish Mr Deb's reputation and means of livelihood
487. I note that Cr Bagster appears to have continued to taunt Mr Deb by way of SMS messages during a period in which Mr Deb was known to be on sick leave, and notwithstanding the prohibition on his communicating directly with Mr Deb. This conduct is particularly reprehensible.
488. I note that Cr Bagster appears to have threatened to visit Mr Deb's private residence in at least one subsequent message.⁴⁰⁷ In his response to my provisional report, Cr Bagster submitted that 'there was no threat in this message and the tone was very friendly.' I find that submission to be entirely unbelievable.
489. I note with significant concern that in SMS messages to several council officers on 24 and 25 August 2017 Cr Bagster appears to have joked about Mr Deb committing suicide.

³⁹⁷ LB166.

³⁹⁸ LB166.

³⁹⁹ LB175.

⁴⁰⁰ LB177.

⁴⁰¹ LB185.

⁴⁰² LB185.

⁴⁰³ LB186.

⁴⁰⁴ LB211.

⁴⁰⁵ LB196.

⁴⁰⁶ Cr Bagster has submitted that he has reason to believe that this is Mr Deb's 'real name'. It is sufficient that I observe that Cr Bagster was clearly intending to be disrespectful towards Mr Deb, whatever his belief in this regard.

⁴⁰⁷ Attachment to LB206.

490. Cr Bagster has submitted that he sought to express his 'sincere concern' for Mr Deb's wellbeing. I wholly reject that submission. It is completely disingenuous and offensive.

Mr Cooper

491. I am particularly troubled by Cr Bagster's behaviour towards Mr Cooper.

492. Unlike elected members, council employees are directly answerable to the council's chief executive officer. Although certain staff may be delegated to receive requests for information, work or actions from individual elected members, council employees will for the most part carry out their functions within ordinary business hours and free from direct input from the council's elected body; under Part 2 of the Code, council members are explicitly prohibited from directing or influencing council staff with respect to the way they carry out their duties.

493. Also unlike elected members, council employees may come to depend on their position as a means of livelihood and in furtherance of a greater career within the local government sector.

494. Council employees are also expected to assist the council's chief executive officer in ensuring the timely implementation of the policies and lawful decisions of the council's elected body. They are otherwise largely divorced from the strategic decision-making functions of the council's elected body.

495. It is within this context that Mr Cooper was required to manage and respond to Cr Bagster's correspondence in compliance with the communications protocol established by resolution C11055. Clearly, he was placed in an enormously difficult position.

496. I note that Cr Bagster frequently sought to persuade Mr Cooper to refrain from observing the communications protocol and generally subjected Mr Cooper to a series of unreasonable and onerous requests.

497. I note Cr Bagster's response to the 24 March 2017 email reminding him of his obligations under the Code was to direct a series of unreasonable and litigious requests towards Mr Cooper and the council's wider administration.

498. I note the various personal comments directed at Mr Cooper, including:

...You, as a council administration officer (and proxy for the CEO) are not supposed to be interfering the [sic] political or democratic processes of Council. If you want to you should put yourself up for election at next year's local government elections due in Nov 2018...⁴⁰⁸

...Are you giving Grant Piggott or Mark Osterstock any new Resolutions to [run] at next Council meeting...⁴⁰⁹

...how dare you remove me from the list...⁴¹⁰

...What right do you have to scan mail...⁴¹¹

... Can I suggest that you turn your phone off when you sleep or perhaps turn off all alert notifications. I believe that alleging that I have harassed you because you received out of hours SMSs from me is a little 'contrived' and not at all a fair assessment. I am genuinely sorry that you have been upset by getting early morning SMSs, but this was not

⁴⁰⁸ LB101.

⁴⁰⁹ LB074.

⁴¹⁰ LB084.

⁴¹¹ LB084.

*'harassment' on my part nor was it my intent to harrass [sic] you, I will accept a swift apology from you and a retraction of that allegation...*⁴¹²

*...I really hope that you are able to begin to work with me rather than against me...*⁴¹³

*...my present problems on Council were previously nothing to do with you...*⁴¹⁴

*...defaming elected members and making false allegations against me is not part of their job descriptions or roles as CEO or GM...*⁴¹⁵

*...driven by some sense of revenge or retribution...*⁴¹⁶

*...if your (or the CEO's) plan is to again (unlawfully or without integrity) hold the application for my leave in the Confidential part of the next Council meeting...*⁴¹⁷

*... Do you not realise or appreciate that I am a citizen and ratepayer of Burnside. I have no power or authority over you. This and the other complaints against me are simply a form of revenge and retribution. What do you really expect of me...*⁴¹⁸

*...You have my lowest regard...*⁴¹⁹

*... paid for by Mr Martin Cooper (on behalf of the Burnside Council) in support of his many false and personal claims and complaints against me...*⁴²⁰

*...the revenge and retribution that Mr Deb and Mr Cooper (the two most senior Burnside Administrators) are determined to wreak upon me and upon Council...*⁴²¹

*...their similar dastardly [sic] deeds...*⁴²²

*...these unscrupulous people will stop at nothing, and take any opportunity, to quash the people who oppose them or dare speak out or speak the truth. They don't appear to understand that the Council is not their play thing or that they are not employed to suppress and silence duly elected members of the community...*⁴²³

*...Mr Cooper (Mr Deb's trusty lieutenant)...*⁴²⁴

*...blinded by their animus and possessed with a need for revenge...*⁴²⁵

*...wrecklessly [sic] betrayed the confidence, trust and privacy of innocent and unsuspecting citizens of Burnside...*⁴²⁶

*...your relentless and unlawful campaign against me...*⁴²⁷

*...I'd be happy that you stepped down from your position at any time. Clearly and evidentially you do not have the capacity or acumen for it; nor the 'rough and tumble' of local government...*⁴²⁸

412 LB098.
413 LB111.
414 LB111.
415 LB171.
416 LB189.
417 LB189.
418 LB198.
419 LB198.
420 LB211.
421 LB211.
422 LB211.
423 LB211.
424 LB211.
425 LB211.
426 LB211.
427 LB202.
428 LB202.

...Do you even care for more than your career and bloated salary? Let me tell you... I care! And I am doing something about it...⁴²⁹

...Your claims that you somehow feel "harassed, threatened or unsafe" by me are nothing more than a feigned pantomime. You remind me of a European soccer player who has curled himself up in a ball on the field; claiming that he can't ever walk again...⁴³⁰

...You are a deceitful, untrustworthy person. I will need a deal of time to come to terms with you...⁴³¹

...Coops has been erratic but brave enough to have faced that nasty bullying, threatening, harassing and stalking Councillor...⁴³²

...Your actions are merely a revengeful response to me having laid claim for damages against you and the CEO in letters of concern and for me 'whistleblowing' of the CEO...⁴³³

...your own already weighty smear campaign against me...⁴³⁴

...You are already so conflicted in your dealing with me and in breach of the LG act and other laws; you are the very last person who should be involving yourself in this issue. are [sic] you really that desperate...⁴³⁵

...I have been very restrained and subdued in my actions as a response to your relentless bullying, harassment and defamatory actives [sic] against me. please [sic] let me know when you want me to take real action against you...⁴³⁶

...Please stop playing politics... you are an administrator! Start doing the right thing...⁴³⁷

... the level of feigned paranoia that Mr Cooper and the Burnside Council Administration has...⁴³⁸

...General manager at Burnside and a servant of the CEO, Mr Cooper...⁴³⁹

499. I note that several of the above statements appear to have been circulated to parties external to the council, including the office of the Minister for Local Government.
500. I note that Cr Bagster's response to Mr Cooper's statement at the 23 May 2017 ordinary meeting that he felt harassed by Cr Bagster's behaviour was to threaten Mr Cooper with action under the Defamation Act. In the circumstances, I consider that response to have been wholly unmerited and unconscionable; there was nothing to suggest that the concerns expressed by Mr Cooper were anything other than honest and genuinely held.
501. I further note that, even once made aware of the impact his behaviour was having upon Mr Cooper, and in the face of quite reasonable requests that he desist, Cr Bagster continued to send unnecessary personal communications to Mr Cooper, variously objecting to or belittling Mr Cooper's concerns.
502. I note that Cr Bagster appears to have sent several SMS messages to Mr Cooper very late at night and in the early hours of the morning. I note that Cr Bagster's response on

⁴²⁹ LB202.

⁴³⁰ LB203.

⁴³¹ LB203.

⁴³² LB205.

⁴³³ LB208.

⁴³⁴ LB208.

⁴³⁵ LB208.

⁴³⁶ LB208.

⁴³⁷ LB208.

⁴³⁸ LB214.

⁴³⁹ LB214.

being made aware of the inappropriateness of this behaviour was to suggest that Mr Cooper make changes to his own routine.

503. I note with particular concern Cr Bagster's repeated references to *The Revenant*. Consistent with my previous remarks, I consider that it would have been entirely reasonable for Mr Cooper to have reacted with alarm to those comments.
504. I consider that Cr Bagster's communications to Mr Cooper betray a complete insensitivity to Mr Cooper's role and responsibilities as a council employee.
505. In his response to my provisional report, Cr Bagster submitted that:

[t]he inadequate implementation of Council Resolution C11055 and its specific effects on the work load of Mr Martin Cooper can not [sic] reasonably be attributed to me.

506. I reject that submission. It is emblematic of the insensitivity described above.

Mr Cant

507. Mr Cant was similarly placed in a difficult position by the requirements of implementing resolution C11055 and in light of Mr Cooper's ostensible withdrawal from the process of coordinating responses to Cr Bagster's correspondence.
508. I note that, as with Mr Cooper, Cr Bagster made various attempts to persuade or request Mr Cant to abstain from complying with the communications protocol enacted in accordance with resolution C11055.
509. I note that Cr Bagster has directed various insults and personalised remarks to Mr Cant, including:

...Does it make you proud to be a part of personal retribution of an individual who have [sic] been found guilty of a significant breach of the Employee's Code of Conduct...⁴⁴⁰

...cease and desist from this deeply offensive practice...⁴⁴¹

...Are you deliberately trying to be patronising...⁴⁴²

...I can only assume that it's you I am engaging because Karishma can't possibly yet be contaminated by the contagion and hystoria [sic] gripping the Administration's Executive yet and she isn't a gullible or stupid woman by any means...⁴⁴³

...Please have the balls to identify yourself and own up to words you write; into the future...⁴⁴⁴

...I'll pray for you...⁴⁴⁵

...I saw you as fair minded and above Paul's personal retribution. I thought you might be a candidate for the interim CEO role when I Deb [sic] is tossed. I thought [sic] you were playing 'Switzerland'. Now I think you're just being 'Italy'. You know that if you are asked to do something unlawful, immoral or underhanded... You should simply not do it. History will back you up...⁴⁴⁶

⁴⁴⁰ LB036.

⁴⁴¹ LB045.

⁴⁴² LB153.

⁴⁴³ LB155.

⁴⁴⁴ LB155.

⁴⁴⁵ LB155.

⁴⁴⁶ LB179.

...thanks for having the balls to put your name to that last email...⁴⁴⁷

...if you are taking some kind of offence from this, then I am 'gobsmacked': surely you jest and take false offence as this [sic] benign analogy? Maybe you should run it by the Burnside lawyers to determine whether the position you are taking is rational and reasonable. Until you have advice, I strongly advise you not to adopt the ridiculous posture taken by others in Burnside in this regard. C'mon mate, I was hoping that you, of all people, would be sane and reasonable...⁴⁴⁸

...I really hope that you are merely 'play acting' at the behest of your CEO!? But in that case, that would be most disappointing...⁴⁴⁹

...I am sorry it has had to come to this Barry and I hope that you won't become just another victim at the end of the day...⁴⁵⁰

...Yet again, you are not being Switzerland - an objective neutral observer...⁴⁵¹

...You have again misrepresented my intent and place an adverse spin on what was actually intended and written...⁴⁵²

...Be Switzerland please.... Italy does not suit you...⁴⁵³

...Your opinion counts for nothing in this highly politicised campaign...⁴⁵⁴

...I'll respect that when you, Martin and Paul all resign and leave me the hell alone to represent my community...⁴⁵⁵

...You're relentless and underhanded. You and your buddies have spent 10s of thousands of ratepayer dollars in hounding me and promoting Deb's corrupted agenda. Please stop harassing me and my constituents, and leave Council...⁴⁵⁶

...I clearly now see you as just another sycophant and ex-pommie wasting the money of the good people of Burnside...⁴⁵⁷

...You're now on the periphery of my radar...⁴⁵⁸

...You are now on the wrong side of history and I have a grievance against you. That's going to be difficult. I'm sorry it has had to come to this...⁴⁵⁹

510. I note that Cr Bagster appears to have sent various unsolicited SMS messages to Mr Cant, and that, in the face of Mr Cant's repeated, reasonable requests that he cease doing so, Cr Bagster responded by way of further messages seeking to pressure Mr Cant to resign from his position with the council.⁴⁶⁰

511. I note that Cr Bagster at one stage appears to have sarcastically referred Mr Cant to services known to provide mental health and suicide support.

⁴⁴⁷ LB180.

⁴⁴⁸ LB182.

⁴⁴⁹ LB182.

⁴⁵⁰ LB182.

⁴⁵¹ LB206.

⁴⁵² LB206.

⁴⁵³ LB206.

⁴⁵⁴ LB206.

⁴⁵⁵ LB212.

⁴⁵⁶ LB212.

⁴⁵⁷ LB211.

⁴⁵⁸ LB211.

⁴⁵⁹ LB211.

⁴⁶⁰ Cr Bagster submitted that his continuing to message Mr Cant 'cannot be construed as harassment' because Mr Cant did not 'discontinue responding to my messages'. I find this submission unconvincing.

512. I note with particular concern Cr Bagster's comment that Mr Cant risked becoming 'just another victim' of his campaign. In my view, it would have been reasonable for Mr Cant to have read this as a threat directed at his continued employment with the council.

Conclusion

513. I have considered Cr Bagster's response to my investigation. As in the preceding section of this report, I reject Cr Bagster's characterisation of his conduct as it pertains to Mr Deb, Mr Cooper and Mr Cant.

514. In my view, Cr Bagster's conduct towards each officer has been appalling.

515. In particular, it is wholly inappropriate and unconscionable for Mr Cooper and Mr Cant to have been exposed to such abuse in the course of carrying out their official duties and in the course of implementing an apparently lawful resolution of the council's elected body.

516. On all of the information before me, I am satisfied that Cr Bagster has engaged in repeated unreasonable behaviour directed towards Mr Deb, Mr Cooper and Mr Cant. I make it clear that in reaching this conclusion, I have considered the nature and volume of the communications at issue and the overall surrounding context.

517. I am also satisfied that Cr Bagster's conduct has created a risk to health and safety in respect of each officer, insofar as I am satisfied that the communications at issue were largely calculated to demean each officer and could reasonably have been expected to cause distress, anxiety and alarm to each officer.

518. I am accordingly satisfied that Cr Bagster has bullied Mr Deb, Mr Cooper and Mr Cant.

519. I am also satisfied that Cr Bagster has harassed Mr Deb, Mr Cooper and Mr Cant, insofar as I consider that Cr Bagster has persistently and unreasonably disturbed each officer and that, on an objective assessment, Cr Bagster's behaviour could reasonably have been expected to trouble and stress each officer.

520. In fact, I am satisfied that Cr Bagster persisted to harass Mr Deb and Mr Cooper in the specific knowledge that his conduct was having such an effect. This is of significant concern.

521. I am satisfied that Cr Bagster has committed three separate contraventions of clause 2.11 of Part 2 of the Code by:

- bullying and harassing Mr Deb
- bullying and harassing Mr Cooper
- bullying and harassing Mr Cant.

522. I am accordingly satisfied that Cr Bagster has in each case committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.

523. It also follows that I consider Cr Bagster's conduct was in each case contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that:

- by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mr Paul Deb
- by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mr Martin Cooper
- by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mr Barry Cant.

It is also my final view that:

- Cr Bagster's conduct in bullying and harassing Mr Paul Deb was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act
- Cr Bagster's conduct in bullying and harassing Mr Martin Cooper was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act
- Cr Bagster's conduct in bullying and harassing Mr Barry Cant was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to act in a way that generates community trust and confidence in the City of Burnside, thereby committing misconduct in public administration

524. Clause 2.2 of Part 2 of the Code provides that council members must '[a]ct in a way that generates community trust and confidence in the council.'
525. Cr Bagster submitted that his actions have been consistent with clause 2.2 'by highlighting the unethical actions of members of council and council staff'. He submitted that he has endeavoured to ensure that his public comments are clearly identifiable as representing his own opinion.
526. Although clause 2.2 is not expressly constrained to the manner in which an elected member behaves when dealing with members of the public,⁴⁶¹ in the circumstances I have elected to limit my consideration of this clause to Cr Bagster's interactions with or involving members of the public during the period relevant to my investigation.
527. In this respect, I have considered the various comments made by Cr Bagster in his communications involving members of the public.
528. I note that in an email to a member of the public dated 29 May 2017 Cr Bagster stated that he had been 'very tied up with small minded politics and legal issues with Council recently' and further appeared to mock the protocols enacted by the council arising from his references to *The Revenant*.
529. I note that in an email to a member of the public dated 29 June 2017 Cr Bagster stated or expressly implied that:
- he was 'trying to fix a broken culture and corrupted attitudes' within the council

⁴⁶¹ For example, elected members should have regard to the application of the *Freedom of Information Act 1991* to correspondence created in the course of official functions.

- the council was ‘a quagmire of bad blood and bad attitudes’
- the council’s chief executive officer was ‘playing a terrible and devious [sic] game that goes well beyond bullying and harassment’; was ‘attempting to turn the entire council against me’; was meeting ‘secretly with his key staff and corrupted Councillors to plot and plan his next underhanded move’; and was acting in a manner inconsistent with ‘helping the Council achieve the best outcomes for the City and for Council’
- the chief executive officer’s conduct was a ‘disgusting and partisan display from a man who has breached his own code of conduct; his employment agreement and the Act’
- the council’s mayor was ‘actively assisting the CEO in his devious and corrupted course of action’ and had ‘mimicked the CEO’s baseless allegations against me’
- the council’s mayor was acting in this way because he was ‘good mates’ with the chief executive officer
- the council was infected with ‘gangrenous elements’
- ‘[b]astardry abounds and is thriving’ at the council.

530. I note that in an email circulated to a ratepayer on 12 July 2017 Cr Bagster stated or expressly implied that:

- he had been made subject to a council resolution that was intended to punish him
- the chief executive officer had previously committed ‘misdemeanours’ and ‘breached his code’ and, by including him in the exchange with the ratepayer, had also committed a ‘flagrant breach of Resolution C11055, his code and his employment agreement’
- the ‘facts, tone, level and style’ of the chief executive officer’s email to the ratepayer were unsatisfactory
- the chief executive officer had not afforded the ratepayer ‘a fair or balanced consideration of their valid and pressing concerns’
- the chief executive officer’s email was ‘unsatisfactory, terse and dismissive’
- the mayor had made a ‘cowardly and baseless’ complaint about Cr Bagster’s conduct to my Office, which ‘fell flat on its face’
- the chief executive officer (referred to as ‘Paul McDeb’) had complained about Cr Bagster’s conduct to SA Police and SafeWork SA
- the chief executive officer had referred the ratepayer to my Office in the knowledge that the ratepayer would not obtain ‘justice’ through such a course
- the chief executive officer had given the ratepayer ‘terrible advice’
- he expected the chief executive officer ‘to change his attitude and tone when addressing residents of my Ward’
- the mayor needed to ‘get off your easy chair, put down your free wine (paid for by the people of Burnside)’ and help the ratepayer
- the chief executive officer had approached the ratepayer’s concern with bias and his ‘behaviour and attitude’ were an ‘intolerable burden for the residents of my Ward.’

531. I note that in an email circulated to a ratepayer on 26 August 2017 Cr Bagster stated or expressly implied that:

- the mayor circulation of the ratepayer’s email was a ‘shocking and atrocious example’ of his attempts to damage the reputation of another Burnside resident
- the mayor had engaged in ‘unlawful, undemocratic and immoral practices’
- the council and its Development Assessment Panel had previously engaged in ‘unscrupulous and immoral practices’
- the mayor had engaged in ‘extended vilification and besmirchment’ of a ratepayer
- the mayor held ‘prejudiced views’ and had made ‘defamatory and biased comments’

- the mayor had circulated the ratepayer's message of support 'as a platform and prop to suit your prejudicial opinion' and did not speak for the council
- the mayor had engaged in an 'appalling personal attack' against a ratepayer
- the mayor had been consuming alcohol at ratepayer expense and his comprehension was possibly affected by this
- the mayor had routinely disregarded the Local Government Act and the council's policies and procedures
- at the previous council meeting the mayor had 'torpedoed' Cr Bagster's motion by 'unlawful "ring-around"'
- the mayor was a 'key contributor' to the council's 'present chaotic dysfunction'
- the council's chief executive officer required a mentor, which would prove to be a 'difficult and necessary role'
- the council's chief executive officer had breached the Code of Conduct for Council Employees, his employment agreement and had engaged in 'substandard performance, unsatisfactory conduct and poor management' of the council
- the council should express its loss of confidence in the chief executive officer
- the chief executive officer deserved to be stood down unless and until matters had been addressed 'by way of a special mentor's report and specialist medical advice to Council that the CEO is well and fit to resume' his role
- the council's elected body and administration were dysfunctional and warranted the appointment of an administrator.

532. I further note the successive iterations of the autoreply Cr Bagster implemented in respect of his council email account, which variously referred to a 'temporarily corrupted ICT System' and a 'corrupted protocol' implemented by the council.
533. I note that in the above communications Cr Bagster frequently made reference to internal dysfunction within the council and to various alleged improprieties by senior council officials. Many of those comments appear highly defamatory.
534. In my view, Cr Bagster's comments were plainly counterproductive to generating 'community trust and confidence' in the council. The emails in question overwhelmingly presented an image of a council that was in disarray and that was being led by unscrupulous and dishonest individuals. I consider that this was the image that Cr Bagster intended to convey to the individuals in question.
535. I consider that Cr Bagster in sending the communications at issue must have known that they were detrimental to public trust and confidence in the council and in particular the council's senior leadership.
536. Cr Bagster has submitted that some of the emails identified above do not constitute 'public comment' because they were sent to 'dear' or 'close' friends of his and were not intended for further dissemination. I do not consider this to be a relevant consideration for the purposes of clause 2.2 of the Code.⁴⁶²
537. I also reject Cr Bagster's submission that he was acting in accordance with clause 2.2 by 'highlighting the unethical actions of members of council and council staff'. Even if one accepts that Cr Bagster held genuine concerns about the behaviour of certain council officers, this was not the appropriate mechanism through which to raise them.

⁴⁶² Cr Bagster reiterated this position in his response to my provisional report, submitting that his private communications 'do not constitute public comment for the purpose of clause 2.2 of the Code.' I wish to emphasise again that, notwithstanding my approach to this clause in the matter at hand, clause 2.2 is not, in my view, limited to an elected member's interactions with the public.

538. In the circumstances, I am satisfied that Cr Bagster has contravened clause 2.2 of Part 2 of the Code by failing to act in a way that generates community trust and confidence in the council.
539. I am accordingly satisfied that Cr Bagster has committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
540. It also follows that I consider Cr Bagster's conduct was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to act in a way that generates community trust and confidence in the council.

It is also my final view that Cr Bagster's conduct in failing to act in a way that generates community trust and confidence in the council was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to act in a reasonable, just, respectful and non-discriminatory way when dealing with people, thereby committing misconduct in public administration

541. Clause 2.3 of Part 2 of the Code provides that council members must '[a]ct in a reasonable, just, respectful and non-discriminatory way when dealing with people.'
542. Clause 2.3 appears directed towards a council member's dealings at large, in the sense that it is not limited to a council member's interactions with members of the public or with other council officers.
543. In the preceding sections of this report I have identified and listed many of the personal remarks Cr Bagster has directed towards his fellow council officers.
544. In the circumstances, I have elected to focus my consideration of clause 2.3 on Cr Bagster's conduct towards parties external to the council.
545. In doing so, I note that a substantial number of Cr Bagster's communications with his fellow council officers also give rise to potential breaches of clause 2.3. On the whole, however, I consider that Cr Bagster's conduct in this regard is sufficiently addressed by my consideration of clauses 2.10 and 2.11, above.
546. I note the content of Cr Bagster's 6 September 2017 email to Ms Hines and his follow-up email copied to Ms Hines on 8 September 2017, insofar as Cr Bagster:
- appears to have threatened legal action against Ms Hines in response to the contents of the Hines report
 - sarcastically suggested that his requests of Ms Hines were intended 'to look after [her] best interests' and to ensure that Ms Hines did not 'unnecessarily suffer in the event of my intended future actions'
 - stated that he intended 'to stop her for ever [sic] doing the same "assassination" job on anyone else'

- expressed his desire 'that BCC never hires her again and that no other local government does either'
 - referred to Ms Hines' previous expressions of support as 'outrageous lies'
 - characterised Ms Hines' concerns about his conduct towards her as 'bleating'
 - stated that he hoped 'Ms Hines make the [sic] most of her ill-gotten gains, as it may have to last a long time.'
547. I note that content of Cr Bagster's 20 October 2017 email to Ms Riddle of KelledyJones Lawyers, insofar as Cr Bagster, in apparent response to the involvement of KelledyJones and Mr Griffin QC in the intervention order proceedings brought against him:
- directed various insults and personal remarks towards Ms Riddle, KelledyJones and Mr Griffin QC⁴⁶³
 - appears to have threatened to report Ms Riddle to the Legal Profession Conduct Commissioner.
548. I note the content of Cr Bagster's 19 October 2017 email to Mr Griffin QC, wherein Cr Bagster directed various further insults towards Mr Griffin QC and Ms Riddle.
549. I note the content of Cr Bagster's 10 October 2017 email to Mr Kelly of Mellor Olsson, insofar as Cr Bagster, in apparent response to a preliminary assessment report prepared by Mr Kelly:
- asserted that Mr Kelly was 'undertaking the highly paid and relentless campaign or smear [sic], defamation and vilification against me'
 - stated that 'this can only end in tears; and it won't be me crying'
 - suggested that Mr Kelly had received 'free & easy' money from the council
 - suggested that Mr Kelly should feel 'compromised' by his conduct
 - asserted that if Mr Kelly 'used' the allegations contained within the Hines report Mr Kelly would be 'in breach of the LG Act, s271(6)'; would 'be in as much poop as Kelledy-Jones lawyers now are'; and would be 'up to your eyeballs in cow's excrement; you will be eating and breathing it'
 - cast various aspersions on the quality of the preliminary assessment report and on the quality of Mellor Olsson's previous work for the council
 - suggested that Mr Kelly had been 'briefed and paid' for a particular outcome
 - suggested that Mr Kelly had been conflicted by his engagement with the council
 - stated that in the event Mr Kelly made an adverse finding against him he would hold Mr Kelly 'personally responsible for a complete miscarriage of justice' and would 'hold you and your firm culpable of joining the unsavory [sic] ranks of character assassins in the league of Kelledy-Jones'
 - described KelledyJones and Mellor Olsson as 'a complete joke and a farce'
 - described the persons working for KelledyJones, Mellor Olsson, Griffin Lawyers and Wallmans Lawyers as 'fiends'
 - stated that he did 'not give a toss whether you choose to be on the wrong side of history'
 - suggested that Mr Kelly was acting without 'integrity and honesty'.
550. I note the content of Cr Bagster's subsequent email to Mr Kelly, wherein Cr Bagster directed various further insults towards Mr Kelly and Mellor Olsson. I note that Cr Bagster appears to have copied this email to the Legal Profession Conduct Commissioner.
551. I note that in all of the above emails Cr Bagster appears to have retaliated against individuals he considers responsible for taking adverse action against him.

⁴⁶³ Cr Bagster has submitted that Mr Griffin QC 'is not a man who is deserving of my respect'. I do not consider this to be a relevant consideration.

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552. In each case, Cr Bagster has directed abusive comments and insults towards the relevant individual and has generally sought to personalise his dispute in respect of that individual.
553. I note that Cr Bagster has also generally threatened personal repercussions against each individual for adopting positions he considers adverse to his interests.
554. I simply note that if Cr Bagster had concerns about the conduct of any of the parties concerned there were other, more appropriate, avenues available to him. It was hardly necessary or appropriate that he threaten and insult each individual for the manner in which they carried out their respective duties.
555. In his response to my investigation Cr Bagster submitted that he 'always [endeavours] to treat people in reasonable, just, respectful and non-discriminatory way' and that 'while [he is] firm and occasionally harsh in [his] tone, [he is] as respectful as is appropriate.'
556. I am unable to accept Cr Bagster's characterisation of his conduct. In my view, it is wholly inconsistent with the manner and tone of his correspondence with the relevant parties.
557. Cr Bagster has also objected to my considering his communications of this kind on the basis that he has been acting as a 'private citizen defending myself against intervention orders served against me personally.' Cr Bagster reiterated this position more generally in his response to my provisional report. In the circumstances, I am satisfied that Cr Bagster's behaviour in sending the communications identified above was sufficiently connected to his position and responsibilities as an elected member so as to impart an obligation to comply with the Code.
558. In the circumstances, I am satisfied that Cr Bagster has contravened clause 2.3 of Part 2 of the Code by failing to act reasonably, justly and respectfully when dealing with each of the individuals identified above.
559. I am accordingly satisfied that Cr Bagster has committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
560. It also follows that I consider Cr Bagster's conduct was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to act reasonably, justly and respectfully when dealing with people.

It is also my final view that Cr Bagster's conduct in failing to act reasonably, justly and respectfully when dealing with people was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to show respect for others when making comments publicly, thereby committing misconduct in public administration

561. Clause 2.4 of Part 2 of the Code provides that council members must '[s]how respect for others if making comments publicly.'
562. In the course of my consideration of clause 2.2, above, I identified several items of correspondence in which Cr Bagster has denigrated the council's senior officers to members of the public.
563. In particular, I note the comments made by Cr Bagster in his emails dated 29 June 2017, 12 July 2017 and 26 August 2017, as itemised earlier in this report.
564. In his response to my investigation Cr Bagster submitted that he has complied with clause 2.4 of the Code and that '[t]here is not a single instance in the correspondence [identified by my investigation] that demonstrates otherwise.'
565. I am unable to accept Cr Bagster's submissions on this issue. The relevant emails disclose a multitude of disrespectful remarks directed at the council's chief executive officer and mayor.
566. In my provisional report I opined that I was satisfied that Cr Bagster made those remarks publicly, insofar as Cr Bagster caused the relevant communications to be circulated to members of the public.
567. In his response to my provisional report, Cr Bagster objected to my reaching this conclusion, submitting:

It would be more apt to consider that comments made to the media or at a council meeting in front of numerous members of the public be referred to as made 'publicly'. Discussing my issues with council with a friend or family member should not be considered to be making a public comment.

The imposition of this rather significant adverse opinion of the author would result in complete secrecy of all council business, and the inability to discuss council issues with friends and family. Casual discussion such as this should not be regulated, and it is inappropriate and unwarranted to attempt to do so.

568. I have given this matter further consideration in light of Cr Bagster's submissions.
569. The word 'publicly' and the phrase 'comment publicly' are not defined in the Code.
570. The *Macquarie Dictionary* defines the word 'publicly' as follows:

1. in a public or open manner. 2. by the public. 3. in the name of the community. 4. by public action or consent.⁴⁶⁴

⁴⁶⁴ 'Public' is defined as 'open to all the people: a public meeting. [...] open to the view or knowledge of all; existing, done, etc., in public: the fact became public.' 'Open' is defined as 'not shut, as a door, gate, etc. [...] not closed, covered, or shut up, as a house, box, drawer, etc. [...] not enclosed as by barriers, as a space. [...] able to be accessed by all: an open session.'

571. In my view, the plain and ordinary meaning of ‘comment publicly’ is to make remarks in a public manner. I do not consider this resolves the question to be determined in the present case.
572. The meaning of the phrase as it appears within clause 2.4 should be considered in light of the specific objects of the Local Government Act, which include:
- providing a legislative framework for an effective, efficient and accountable system of local government in South Australia
 - ensuring the accountability of councils to the community
 - defining the powers of local government and the roles of council members.
573. The phrase should also be read in light of the higher principles identified in Part 1 of the Code, which include the principle that elected members should act in a manner that, *inter alia*, ‘foster[s] community confidence and trust in Local Government.’
574. It is also appropriate to have regard to the preamble to Part 2 of the Code, which provides that:
- the behavioural code is intended for the management of conduct that does not meet the reasonable community expectations of the conduct of council members
 - robust debate within councils that is conducted in a respectful manner is not a breach of the behavioural code.
575. It is helpful to consider clause 2.4 in light of the context in which it appears within Part 2 of the Code. It is situated under the heading ‘General behaviour’. It follows the requirements that elected members ‘[a]ct in a way that generates community trust and confidence in the Council’ and ‘[a]ct in a reasonable, just, respectful and non-discriminatory way when dealing with people.’ It differs from clause 2.3 insofar as its application is expressly limited to comments with a public quality.
576. I consider that the purpose underpinning the provision, when considered in context, is to ensure that elected members do not engage in disrespectful discourse that is capable of bringing the council into disrepute. Whether clause 2.4 is to be given a narrow or expansive construction may be said to rest on the extent to which the provision goes in seeking to achieve that purpose.⁴⁶⁵
577. In my view, it is desirable to give clause 2.4 an expansive reading so as to apply to all comments made or distributed to members of the public. There are difficulties in adopting the alternative construction. For the Code to function as intended there needs to be a degree of certainty as to what constitutes a comment made publicly. There is also the need to recognise that a communication that is sent to a person external to the council may then be circulated more widely by the recipient.⁴⁶⁶

⁴⁶⁵ See, e.g., *Carr v The State of Western Australia* [2007] HCA 47 per Gleeson CJ at [7] (‘the general purpose of legislation of the kind here in issue is reasonably clear; but it reflects a political compromise. The competing interests and forces at work in achieving that compromise are well known. The question then is not: what was the purpose or object underlying the legislation? The question is: how far does the legislation go in pursuit of that purpose or object?’)

⁴⁶⁶ I note that this construction appears consistent with the guidelines applicable to the Commonwealth public service. See Australian Public Service Commissioner, *Values and Code of Conduct in Practice*, August 2017, pp.53-54 (‘The term ‘public comment’ has a broad meaning and includes comment made in forums or media such as: a. at public speaking engagements b. during radio or television interviews c. on online social media including blogs, social networking sites and other online media that allow user participation and interaction d. in correspondence with the press e. in books or notices f. in academic or professional journals g. in other forums where the comment is intended for, or may be accessed by, the community. Some comments may be intended as private communication, but are public comment nonetheless. For example, an email from a colleague to a personal friend may be intended to be private. However, if that friend then forwards the email, or publishes it, the impact is the same as if the employee had done so.’) See also the explanatory material available at <<https://www.apsc.gov.au/making-public-comment-social-media-guide-employees>> (‘Can I breach the Code through material in a private email that I send to a friend? Yes. There’s nothing to stop your friend taking a screenshot of that email, including your personal details, and sending it to other people or posting it all over the internet. Again, the breach of the Code is not in their subsequent publication of your material, but in your emailing that material in the first place.’)

578. All told, I consider that the expansive reading is more consistent with ensuring community confidence and trust in the system of local government. I recognise, however, that it may be necessary to consider the size and nature of the audience when assessing the gravity of a breach of clause 2.4.
579. In this case, I accept that Cr Bagster circulated the remarks at issue to a relatively limited audience. This is a mitigating factor. On the other hand, I note the degree of disrespect towards council officers manifested in the remarks.
580. I am satisfied that Cr Bagster has contravened clause 2.4 of Part 2 of the Code by failing to show respect for others when making comments publicly.
581. I am accordingly satisfied that Cr Bagster has committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
582. It also follows that I consider Cr Bagster's conduct was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to show respect for others when making comments publicly.

It is also my final view that Cr Bagster's conduct in failing to show respect for others when making comments publicly was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, failed to establish and maintain a respectful relationship with all council members, regardless of differences of views and opinions, thereby committing misconduct in public administration

583. Clause 2.9 of Part 2 of the Code provides that council members must '[e]ndeavour to establish and maintain a respectful relationship with all Council members, regardless of differences of views and opinions.'
584. In the course of my consideration of clause 2.10, above, I identified various personal remarks and insults that Cr Bagster has directed towards Mayor Parkin, Cr Davis and Cr Osterstock.
585. I note that Cr Bagster has also directed various insults and disrespectful remarks towards other members of the council's elected body, including:

To Cr Piggott:

*...[the mayor] seems to already have your undying support and assistance in even the most dastardly and undemocratic of Motions...*⁴⁶⁷

*...It is about time you realised you cannot lord it over me or any other peer on Council. You have no right to even consider that you are somehow superior in any way to me or any other Councillor. That is a conceited attitude. Your advice and encouragement [to the mayor] is inappropriate and especially unwarranted in coming from you...*⁴⁶⁸

⁴⁶⁷ LB186.

⁴⁶⁸ LB186.

...I hope that you can start to act and sound more collegial and work in the City's best interests rather than the CEO's...⁴⁶⁹

To Cr Davey:

...You of all people know what it's like to be targeted by unscrupulous forces on Council; I would have expected your sympathy and help; not your capitulation...⁴⁷⁰

...I hope you and all the other right-minded Councillors can reach down into the deep dark corners of their minds and finally support me in my righteous campaign and efforts to rid Council of its necrotic and gangrenous culture and elements...⁴⁷¹

...If you cannot clearly see what is going on, like you claim to with your recent epiphany with the CEOs dark partisan political efforts...⁴⁷²

Referring to Cr Lemon:

...Cr Helga Lemon spat vitriol from her thin lips...⁴⁷³

To Mayor Parkin and collectively referring to Crs Osterstock, Lemon, Davis and Piggott:

...If you also resigned with Paul, we might be able to clean up Council Administration and BCC culture by the next election. You, Paul and the three dickheads.. Mark, Helga and Henry. Could you also please seek Grant's departure too...⁴⁷⁴

586. In his response to my investigation, Cr Bagster submitted that he has complied with clause 2.9, submitting that the communications identified by my investigation evidence that he has made 'numerous attempts to reconcile with all of the complainants [sic].'
587. I am unable to accept Cr Bagster's submissions in respect of this issue. In my view, the communications considered by my investigation suggest that Cr Bagster has no real interest in maintaining a respectful relationship with any of the elected members he perceives as acting in support of the council's senior administration.
588. In this regard, Cr Bagster appears to have made no genuine efforts to understand or tolerate views different to his own.
589. I am satisfied that Cr Bagster has contravened clause 2.9 of Part 2 of the Code by failing to maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
590. I am accordingly satisfied that Cr Bagster has committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
591. It also follows that I consider Cr Bagster's conduct was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to maintain a

⁴⁶⁹ LB186.

⁴⁷⁰ LB185.

⁴⁷¹ LB185.

⁴⁷² LB185.

⁴⁷³ LB170.

⁴⁷⁴ LB149.

respectful relationship with all Council members, regardless of differences of views and opinions.

It is also my final view that Cr Bagster's conduct in failing to maintain a respectful relationship with all Council members, regardless of differences of views and opinions was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster, by way of his communications with and involving council officers between 1 March 2017 and 25 October 2017, directed or influenced council staff with respect to the way in which they perform their duties, thereby committing misconduct in public administration

592. Clause 2.14 of Part 2 of the Code provides that council members must '[r]efrain from directing or influencing Council staff with respect to the way in which these employees perform their duties.'

593. I note that Cr Bagster made numerous requests of Mr Cooper, Mr Cant and Mr Spearman that they refrain from implementing the communications protocol established in accordance with resolution C11055, including:

...it would not be appropriate for the Council to implement the Resolution until after this review. Also, as I have indicated my intention to submit a Complaint to the Ombudsman, it would also not be appropriate to implement the Resolution before this review has run its course...⁴⁷⁵

...Matthew, Can you please close this LJB Admin account and disable it being seen by anyone on the BCC e-mail server...⁴⁷⁶

...Martin, please cease and desist from sending me correspondence via the LJB Admin address...⁴⁷⁷

...Please treat me in the way and manner you would treat any other Elected Member and correspond with me directly and not through this invalid and unwarranted account...⁴⁷⁸

...please reverse the implementation of this terrible scheme...⁴⁷⁹

...I kindly and respectfully request that you reverse the implementation of the subject resolution and cease communications with me in this indirect manner (via the "LJBAdmin" account and from the "Exec Team"). I view that your continuing to do so is insulting and humiliating to me. It is therefore inappropriate...⁴⁸⁰

...Can I kindly ask you not to send me any correspondence through the LJB Admin account...⁴⁸¹

...cease and desist from sending me correspondence through the "LJB Admin" account. I have already made my points very clear. There is no resolution that requires ANY Council Officer to communicate with me in such a manner...⁴⁸²

594. I note that, in addition to the above requests, Cr Bagster made various other requests of council staff pertaining to their management of his email settings, in which he

⁴⁷⁵ LB005.

⁴⁷⁶ LB018.

⁴⁷⁷ LB019.

⁴⁷⁸ LB019.

⁴⁷⁹ LB026.

⁴⁸⁰ LB027.

⁴⁸¹ LB045.

⁴⁸² LB050.

appears to have suggested that council employees were entitled to disregard or object to instructions from more senior staff, for example:

...Please don't interfere with my e-mail account settings, or allow your staff to make such changes. I consider that any Council officer doing that, or requiring my personal settings to be changed is in breach of the privacy provisions. Please be careful with this, and if you are again instructed to do so, you should point out to whomever is making that request that this is not permitted...⁴⁸³

595. I note that Cr Bagster appears to have also requested that Mr Cooper disregard determinations from the mayor pertaining to matters for addition to council meeting agendas, including:

...You have no right (nor does the Mayor) to prevent this Motion from being considered by Council. The Mayor has no right (and is not entitled) to judge or declare 'ultra vires' and not 'accept' the MON which was proffered for distribution for tonight's meeting IAW our policies and the Act. Please remove the 'justification' component' and put the motion up for the 2nd meeting in June as a MON and have it available electronically for tonight...⁴⁸⁴

...Assuming that the Motion most certainly is within the powers of Council, until you can prove otherwise, I will run it as a MWON on the 23 May 17. Please have it available for that event...⁴⁸⁵

...Please have the text of the Motion here available for me to run as a MWON at the next meeting -- in the absence of a valid legal opinion. I does not seem appropriate that the Mayor has the option to pick and choose what his peers see fit to put up as a Motion in Council. It is not appropriate that you have not put this Motion in the Agenda pending appropriate legal advice...⁴⁸⁶

596. Cr Bagster in his response to my investigation submitted he has 'only ever made requests of council staff and expressed [his] opinions and views'. Cr Bagster further submitted that he has 'made no demands, or given any directions at any time.'
597. Although one might object to Cr Bagster's characterisation of certain of the above examples, in the circumstances it is not necessary that I determine the precise threshold between a request and a direction – I simply note that clause 2.14 goes further in prohibiting a council member from 'influencing' a member of staff with respect to the way in which they perform their duties.
598. In the circumstances, it is clear that Cr Bagster has persistently attempted to influence several council employees to variously ignore the communications protocol established in accordance with resolution C11055; refrain from making certain alterations to his email account settings; and arrange for items to be included in council meeting agendas contrary to determinations made by the council's mayor.
599. I note that in doing so, Cr Bagster appears to have been attempting to persuade council staff to variously circumvent or ignore council resolutions, directions from the council's administration and determinations made by the council's mayor.
600. In his response to my provisional report, Cr Bagster objected to my reaching the above conclusion, reiterating that he 'only made requests and stated my opinions.' I do not accept this submission. Cr Bagster's intention to influence the relevant council employees is manifested in the tone and frequency of the communications at issue.

⁴⁸³ LB046.

⁴⁸⁴ LB101.

⁴⁸⁵ LB081.

⁴⁸⁶ LB082.

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601. I am satisfied that Cr Bagster has contravened clause 2.14 of Part 2 of the Code by seeking to influence council staff with respect to the way in which they perform their duties.
602. I am accordingly satisfied that Cr Bagster has committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act.
603. It also follows that I consider Cr Bagster's conduct was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Opinion

It is my final view that by way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by seeking to influence council staff with respect to the way in which they perform their duties.

It is also my final view that Cr Bagster's conduct in seeking to influence council staff with respect to the way in which they perform their duties was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Whether Cr Lance Bagster supplied a copy of a confidential Preliminary Assessment Report to a member of the public, thereby committing misconduct in public administration

604. It is alleged that on 23 May 2017 Cr Bagster supplied a copy of the MinterEllison report to a member of the public and that, in doing so, Cr Bagster contravened clause 3.3 of Part 3 of the Code.
605. Clause 3.3 provides that council members must '[n]ot release or divulge information that the Council has ordered be kept confidential, or that the Council member should reasonably know is information that is confidential, including information that is considered by Council in confidence.'
606. Having reviewed the confidential minutes relating to the council's 28 February 2017 ordinary meeting, I am satisfied that the MinterEllison report was considered in confidence by the council. I am also satisfied that on this occasion the council resolved that the MinterEllison report was to remain confidential for a period of five years.
607. As I have not been made aware of any subsequent order of the council in respect of the document, I am satisfied that, on 23 May 2017, the existence and contents of the MinterEllison report was 'information that the Council has ordered be kept confidential' within the meaning of clause 3.3 of the Code.
608. I note the contents of the archived email recovered by the council's administration. I am accordingly satisfied that on the evening of 23 May 2017 Cr Bagster forwarded to Mr Hasenohr a copy of the MinterEllison report. Cr Bagster has largely conceded this point.
609. Cr Bagster has submitted that he did not 'release or divulge' confidential information to Mr Hasenohr because there is evidence to suggest that Mr Hasenohr possessed a copy of the MinterEllison report on 16 May 2017, prior to the email the subject of this allegation.

610. In my view, an elected member's responsibility to observe an order made under section 91 of the Local Government Act is a strict one. In this regard, I do not consider that the fact or possibility that Mr Hasenohr had previously been supplied with a copy of the MinterEllison report relieved Cr Bagster of the responsibility to observe the confidentiality order made by the council.
611. In his response to my provisional report, Cr Bagster objected to my reaching the above conclusion, submitting:
- Both words 'release' and 'divulge' insinuate that the recipient was not already in possession of the subject confidential information and as such I did not 'release or divulge' the confidential information to former Councillor Mr Hasenohr.
612. I am not persuaded by this submission. I note the remarks of Smith DCJ in *Ward v Courts Administration Authority*.
- In my view, the plain and ordinary meaning of "divulge" is to disclose. It does not necessarily convey the imparting of that which is previously unknown. [...] Its meaning should not be confined to the disclosure of otherwise unknown or secret information. It should include that. There are difficulties in the qualified construction. [...] [S]uch a narrow interpretation would require the agency to indulge in what I would regard as an intolerable task of speculating about what the applicant may or may not know.⁴⁸⁷
613. Smith DCJ's remarks were delivered on a consideration of the objectives and principles underpinning the *Children's Protection Act 1993*, however they are in my view apposite to the present matter.⁴⁸⁸
614. In my view, Cr Bagster by his email dated 23 May 2017 'released or divulged' a copy of the MinterEllison report to Mr Hasenohr, being information that the council had ordered be kept confidential at its 28 February 2017 ordinary meeting.
615. I am satisfied that Cr Bagster has contravened clause 3.3 of Part 3 of the Code by releasing or divulging information that the council ordered be kept confidential.
616. It also follows that I consider Cr Bagster's conduct was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
617. I accept that it appears that Mr Hasenohr may have already been in possession of the relevant report. Although one may be tempted to speculate as to how Mr Hasenohr first obtained the report, I acknowledge that the fact of its earlier disclosure may be a mitigating factor in the circumstances.

Opinion

It is my final view that by supplying a copy of a confidential Preliminary Assessment Report to a member of the public, Cr Bagster committed misconduct in public administration.

It is also my final view that Cr Bagster's conduct in supplying a copy of the Preliminary Assessment Report to a member of the public was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

⁴⁸⁷ *Ward v Courts Administration Authority* [2003] SADC 18 at [57].

⁴⁸⁸ In the present case, I consider my construction of clause 3.3 is most consistent with the objectives of the Local Government Act, insofar as a strict application of the clause would better promote an 'effective, efficient and accountable system of local government in South Australia'.

Summary

My final views are that:

1. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mayor David Parkin.
2. Cr Bagster's conduct in bullying and harassing Mayor David Parkin was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
3. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Cr Henry Davis.
4. Cr Bagster's conduct in bullying and harassing Cr Henry Davis was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
5. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Cr Mark Osterstock.
6. Cr Bagster's conduct in bullying and harassing Cr Mark Osterstock was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
7. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mr Paul Deb.
8. Cr Bagster's conduct in bullying and harassing Mr Paul Deb was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
9. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mr Martin Cooper.
10. Cr Bagster's conduct in bullying and harassing Mr Martin Cooper was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
11. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by bullying and harassing Mr Barry Cant.
12. Cr Bagster's conduct in bullying and harassing Mr Barry Cant was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
13. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to act in a way that generates community trust and confidence in the council.

14. Cr Bagster's conduct in failing to act in a way that generates community trust and confidence in the council was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
15. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to act reasonably, justly and respectfully when dealing with people.
16. Cr Bagster's conduct in failing to act reasonably, justly and respectfully when dealing with people was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
17. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to show respect for others when making comments publicly.
18. Cr Bagster's conduct in failing to show respect for others when making comments publicly was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
19. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by failing to maintain a respectful relationship with all Council members, regardless of differences of views and opinions.
20. Cr Bagster's conduct in failing to maintain a respectful relationship with all Council members, regardless of differences of views and opinions was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
21. By way of communications sent between 1 March 2017 and 25 October 2017, Cr Bagster committed misconduct in public administration by seeking to influence council staff with respect to the way in which they perform their duties.
22. Cr Bagster's conduct in seeking to influence council staff with respect to the way in which they perform their duties was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.
23. By supplying a copy of a confidential Preliminary Assessment Report to a member of the public, Cr Bagster committed misconduct in public administration.
24. Cr Bagster's conduct in supplying a copy of the Preliminary Assessment Report to a member of the public was contrary to section 63(2) of the Local Government Act and, accordingly, contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act.

Final comment and recommendations

Over the period relevant to my investigation Cr Bagster has subjected council staff and several of his fellow elected members to an appalling course of behaviour.

In many of his communications with the relevant parties, and in his response to my investigation, Cr Bagster has sought to characterise his conduct as being in the greater interests of ratepayers.

He is wrong.

His conduct has in fact resulted in an enormous waste of public resources.⁴⁸⁹ His behaviour has been entirely self-centred and counterproductive to the council's efficient discharge of its functions. His behaviour falls far short of reasonable community expectations.

Cr Bagster's position as an elected member of the council is no longer tenable. Even he must surely recognise this.

The circumstances in which an elected member may be involuntarily removed from office are understandably limited.

The Governor is empowered to remove an elected member from office on the ground of incapacity to carry out official duties satisfactorily.⁴⁹⁰ It appears unlikely that misconduct by an elected member will suffice as grounds for removal under this provision.⁴⁹¹

The District Court on the hearing of a complaint under Chapter 13 Part 1 of the Local Government Act may suspend or disqualify an elected member from office if satisfied that there is proper cause to do so.⁴⁹² Such a complaint may only be filed by a designated person and in circumstances where the matter has already been investigated by the Ombudsman or the Independent Commissioner Against Corruption.⁴⁹³

As matters presently stand, I believe that such a complaint is warranted.

I note that this mechanism appears ill-suited to halting behaviour by a councillor that creates a risk to health and safety because the Code envisages that in the ordinary course allegations of bullying and harassment by an elected member will be dealt with by the council rather than my Office. In any case, a substantial period of time will elapse before such a matter reaches the point at which the District Court may make an order suspending or disqualifying an elected member from office.

The Fair Work Commission may make orders to prevent bullying in a workplace, however its power to do so is limited to bullying that occurs 'at work in a constitutionally-covered business' within the meaning of section 789FD(3) of the Fair Work Act. I understand that the Fair Work Commission dismissed applications made by Mr Cooper and Cr Bagster on the basis that the council is not such an entity.⁴⁹⁴

SafeWork SA may investigate and issue statutory notices in respect of breaches of the Work Health and Safety Act however I understand there may be some difficulty in applying these measures to the conduct of a council member. I note that SafeWork SA appears to have

⁴⁸⁹ The council estimates that it has spent approximately \$400,000 in managing and responding to Cr Bagster's conduct from March 2017 to present; email from R Dabrowski dated 28 May 2018.

⁴⁹⁰ Local Government Act, section 54(1)(c).

⁴⁹¹ In this regard, it is instructive to contrast the construction of section 54(1)(c) with clause 8(2) of Schedule 1A of the Local Government Act, which empowers the Minister to remove a member of the board of the Stormwater Management Authority from office on grounds of misconduct or for 'failure or incapacity to carry out official duties satisfactorily' (emphasis added).

⁴⁹² Local Government Act, section 267(1)(d) and (e).

⁴⁹³ Local Government Act, section 264(1) and (2).

⁴⁹⁴ *Cooper v Bagster* [2017] FWC 5974.

declined to investigate complaints made by Mr Cooper and Mr Bagster upon taking Crown advice in respect of the matter.⁴⁹⁵

An intervention order issued under the *Intervention Orders (Prevention of Abuse) Act 2009* may provide relief to a person affected by bullying or harassment by an elected member, providing that a court is satisfied that grounds for such an order exist under section 6 of the Act. One difficulty with such an approach is that the behaviour of the elected member, as in this case, may be directed towards multiple individuals or may be redirected towards others on the making of an intervention order. Also as in this case, the making of an intervention order may have consequences for the manner in which a council operates under the Local Government Act.

On the whole, the existing statutory framework appears ill-equipped towards dealing with conduct of an elected member that creates a risk to health and safety.

Meanwhile, it is recognised that persons who experience bullying within the workplace suffer significant personal costs.⁴⁹⁶ There is a 'plethora of mental, physical and economic consequences for the targets of workplace bullying.'⁴⁹⁷ Bullying may also have a significant impact upon an organisation's productivity.⁴⁹⁸

In the circumstances, I make the following recommendations to the council under section 25(2)(f) of the Ombudsman Act and sections 263B(1)(a) and (d) of the Local Government Act:

1. That the council, by means of a public statement, reprimand Cr Bagster for each breach of the Code; and
2. That the council write to Cr Bagster and extend to him a period of seven days in which to resign from office, at the expiration of which, if Cr Bagster has not so resigned, the council should ensure that a complaint is lodged against Cr Bagster in the District Court seeking the following orders:
 - that Cr Bagster be disqualified from office; and
 - that Cr Bagster be disqualified from becoming a member of a council for a period not exceeding five years.

The operation of the second recommendation is complicated by the upcoming local government elections. At time of writing, the period for nominations is underway. I am not aware if Cr Bagster has nominated, or otherwise intends to nominate, as a candidate for the purposes of the upcoming elections. My understanding is that Cr Bagster would not be at liberty to withdraw any such nomination once the period for nominations has concluded.

⁴⁹⁵ Letter from SafeWork SA to Mr Deb dated 22 February 2018; letter from SafeWork SA to Cr Bagster dated 6 March 2018.

⁴⁹⁶ House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: We Just Want It to Stop* (2012) at 12 citing Caponecchia and Wyatt, *Preventing Workplace Bullying* (2011) at 41 ('The extent of these costs is influenced by the nature of the bullying behaviours, their duration, and the efficacy of responses. These costs are also influenced by factors intrinsic to the 'target' – their coping styles, perceptions and reactions as well as the personal support systems provided by family and friends.'). The Committee further observed that '[p]eople who have been exposed to bullying at work have been found to experience the following: post-traumatic stress disorders; depression; anxiety; sleep disturbances; lowered self-esteem; anger; chronic fatigue; suicidal thoughts; irritability; feelings of nervousness, insecurity and victimisation; burnout; musculoskeletal complaints and muscular tension; headaches; nausea; stomach upset; and social withdrawal.'

⁴⁹⁷ Worth, Rodney and Squelch, Joan, 'Stop the Bullying: The Anti-Bullying Provisions in the *Fair Work Act* and Restoring the Employment Relationship' (2015) 38(3) *UNSW Law Journal*, 1015 at 1020, citing Cowie, Helen et al, 'Measuring Workplace Bullying' (2002) 7 *Aggression and Violent Behaviour* 33 at 34.

⁴⁹⁸ House of Representatives Standing Committee on Education and Employment, *Workplace Bullying: We Just Want It to Stop* (2012) at 10.

It is necessary, therefore, that I make one further recommendation to the council:

3. That, in the event that Cr Bagster resigns from office and is then re-elected to the council as a result of the 2018 local government elections, the council write to Cr Bagster and extend to him a period of seven days in which to resign from office, at the expiration of which, if Cr Bagster has not so resigned, the council should ensure that a complaint is lodged against Cr Bagster in the District Court seeking the same orders as identified above.

I also make a recommendation under section 25(2)(f) of the Ombudsman Act that the State Government:

1. Cause a review of the Local Government Act and Work Health and Safety Act so as to determine whether either Act should be amended to more adequately address bullying or harassment committed by elected members; and
2. Take such action as may be necessary to give effect to any recommendations arising from that review.

I now report Cr Bagster's misconduct to the principal officer of the council, as required by section 18(5) of the Ombudsman Act.

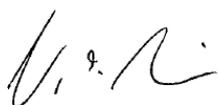
In accordance with Part 3 of the Code, this report must be provided to a public meeting of the council within two ordinary meetings of the council receiving my report.

In accordance with section 25(4) of the Ombudsman Act, the council should report to me by **13 January 2019** on what steps have been taken to give effect to the recommendations directed at the council above; including:

- details of the actions that have been commenced or completed
- relevant dates of the actions to implement the recommendations

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

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

13 September 2018