



Report
Full investigation - *Ombudsman Act 1972*

Complainant	City of Tea Tree Gully
Council member	Mayor Kevin Knight
Council	City of Tea Tree Gully
Ombudsman reference	2021/01843
Council reference	21/1203
Date referrals received	20 April 2021 and 13 May 2021
Issues	<ol style="list-style-type: none">1. Whether Mayor Knight failed to comply with a finding of inappropriate behaviour under Part 2 of the Code of Conduct for Council Members.2. Whether Mayor Knight engaged in repeated or sustained inappropriate behaviour, as listed in Part 2 of the Code of Conduct for Council Members.

Introduction

In early 2021, the elected members of the City of Tea Tree Gully (**the council**) referred two matters to my Office for investigation. The matters concerned the alleged conduct of the council's Mayor, Kevin Knight.

It was alleged that Mayor Knight had failed to comply with a finding of the council that he had engaged in inappropriate behaviour under Part 2 of the Code of Conduct for Council Members made pursuant to section 63 of the *Local Government Act 1999* (**the Code of Conduct**)¹. Further, it was alleged that Mayor Knight had engaged in repeated or sustained inappropriate behaviour as listed in Part 2 of the Code of Conduct. The council considered both issues may amount to a breach of Part 3 of the Code of Conduct and requested that I investigate the matters. Connected to the allegations were a number of investigations that had been conducted in accordance with council's procedure for investigating alleged breaches of Part 2 of the Code of Conduct.

I commenced an investigation of the two allegations and provided notice of my investigation to the parties on 6 September 2021. Mayor Knight's legal representative provided a

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

response, which raised concerns about the manner in which the Part 2 investigations had been conducted. Before taking any further action in relation to my investigation, I considered it necessary to assess the issues raised by Mayor Knight's legal representative and accordingly opened a separate complaint file, the outcome of that assessment having direct relevance to whether I would continue this investigation.

On 22 October 2021, I advised the parties that my investigation would be placed on hold, pending the outcome of my assessment of the issues raised by Mayor Knight's legal representative. That assessment process concluded on 27 May 2022.

On 1 June 2022, I advised the parties that I intended to recommence my investigation. I requested any further submissions from Mayor Knight as to the allegations forming the basis of my investigation. I also asked Mayor Knight whether he would be willing to undertake the actions recommended by the council that are relevant to issue 1.

My consideration of the matters referred to my Office and the responses received from the parties to this investigation are included in my report below.

After completing my investigation, my view is that at the time of the council's complaint to my Office:

- Mayor Knight failed to issue an apology as set out in paragraph 4(a) of Resolution 388 of the council's meeting of 24 March 2020, contrary to clause 2.6 of the Code of Conduct; I do not consider that this was a failure to comply with a finding of inappropriate behaviour for the purposes of 3.18 of the Code of Conduct
- Mayor Knight failed to attend sexual harassment in the workplace training as set out in paragraph 4(d) of Resolution 388 of the council's meeting of 24 March 2020, thereby failing to comply with a finding of inappropriate behaviour under Part 2 of the Code of Conduct, amounting to misconduct under Part 3 of the Code of Conduct
- Mayor Knight engaged in repeated or sustained inappropriate behaviour as listed in Part 2 of the Code of Conduct, amounting to misconduct under Part 3 of the Code of Conduct.

Jurisdiction

The two matters referred to my Office allege a breach of Part 3 of the Code of Conduct. An act of a council member that may constitute grounds for complaint under the Local Government Act is taken to be an 'administrative act' for the purposes of the Ombudsman Act.²

Issue 1 concerns 'repeated or sustained breaches of Part 2' of the Code of Conduct, for the purposes of clause 3.18 of the Code of Conduct, which provides:

A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under [Part 3]

The matter was referred to my Office in the form of a complaint dated 20 April 2021, in accordance with clause 2.22 of the Code of Conduct.³

² *Local Government Act 1999* s 263A(4); *Ombudsman Act 1972* s 3.

³ While a complaint for the purposes of clause 3.17 of the Code of Conduct requires a referral to be made via a resolution of the council, no such requirement is placed on a referral of a matter concerning clause 3.18 of the Code of Conduct.

Issue 2 concerns 'repeated or sustained breaches of Part 2' of the Code of Conduct, for the purposes of clause 3.17 of the Code of Conduct, which provides:

At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.

The matter was referred to my Office following resolution of the council on 4 May 2021, in accordance with clauses 2.23 and 3.17 of the Code of Conduct.

The matter attracted the protections of the *Public Interest Disclosure Act 2018*.

My role in this investigation is not to re-investigate the alleged breaches of Part 2 of the Code of Conduct. Rather, my role is to investigate:

1. Whether Mayor Knight failed to comply with a finding of inappropriate behaviour under Part 2 of the Code of Conduct, thereby engaging in misconduct under Part 3 of the Code of Conduct.
2. Whether Mayor Knight engaged in repeated or sustained inappropriate behaviour, as listed in Part 2 of the Code of Conduct, thereby engaging in misconduct under Part 3 of the Code of Conduct.

Investigation

My investigation has involved:

- assessing the information provided by the council as part of its referral of matters one and two
 - seeking additional information from the council in relation to the referrals
 - providing Mayor Knight with notice of my investigation and requesting a response from Mayor Knight
 - providing the council with notice of my investigation and requesting further information from the council, and considering that further information
 - considering the response from Mayor Knight's legal representative
 - advising the parties that I would place my investigation on hold while I separately assessed matters raised by Mayor Knight's legal representative about the investigations that were conducted by the council
 - advising the parties that I had decided to recommence my investigation after concluding my separate assessment of matters raised by Mayor Knight's legal representative
 - inviting further comment and/or submissions from the council after recommencing my investigation and considering its response
 - requesting a further response from Mayor Knight in relation to matters one and two after recommencing my investigation and considering the response
 - considering:
 - the Ombudsman Act
 - the Local Government Act
 - the Code of Conduct
 - the agendas and minutes of various council meetings
 - investigation reports relevant to complaints about Mayor Knight's conduct
 - providing Mayor Knight and the council with my provisional report for comment, and considering their responses
 - preparing this report.
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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.⁴ 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...⁵

Procedural fairness

I provided a provisional report to Mayor Knight, the council's Deputy Mayor, Lucas Jones, the Chief Executive Officer (CEO) at the relevant time, Mr John Moyle, and succeeding CEO, Mr Ryan McMahon.

The council accepted my provisional findings and recommendation without further comment.

In response to my provisional report, Mayor Knight (through his legal representative) disagreed with my preliminary findings. I have addressed Mayor Knight's submissions as to my consideration of his conduct where appropriate in the body of this report. Ultimately, Mayor Knight's response did not persuade me to alter my conclusions.

Prior to responding to my provisional report, Mayor Knight engaged in the relevant sexual harassment in the workplace training relevant to Issue 1. I have taken this into account and have amended part of my recommendation to the council accordingly.

The current Local Government Act and Code of Conduct scheme

The system of local government within South Australia is established under the Local Government Act.

My investigation concerns the Local Government Act currently in force. However, I note at the outset that changes to the Local Government Act will commence in the near future, which will substantially change the Code of Conduct relevant to elected members.

Chapter 5, Part 4 of the Local Government Act provides for the general duties to be observed by elected members of a council. This includes a provision allowing for the creation of a Code of Conduct to be observed by the members of all councils in South Australia.⁶

The current Code of Conduct was published in the Government Gazette in August 2013.⁷ It is divided into three Parts.

⁴ This decision was applied more recently in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449 at pp 449-450, per Mason CJ, Brennan, Deane and Gaudron JJ.

⁵ *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

⁶ *Local Government Act 1999* s 63(1).

⁷ Government Gazette, 22 August 2013, pages 3536 -3540.

Part 1 provides an overarching statement of higher principles to be observed by elected members. This part does not constitute separate enforceable standards of conduct.

Part 2 is the 'Behavioural Code', for the management of conduct of elected members that does not meet 'reasonable community expectations'. It is envisaged by the legislative scheme that allegations about potential breaches of Part 2 are to be addressed and/or investigated by the respective council. Each council is expected to adopt a process for handling alleged breaches of Part 2.

Part 3 provides for conduct of an elected member that constitute 'misconduct'.⁸ It is envisaged by the legislative scheme that alleged breaches of Part 3 of the Code of Conduct are to be investigated by my Office.

Part 2 and Part 3 of the Code of Conduct contain linking clauses that allow an elected body to refer certain matters (that concern Part 2 matters) to my Office.

In my view, referral of a matter can occur when:

- a council has conducted an investigation into an alleged breach of Part 2 of the Code of Conduct and passed a formal resolution stating that the breach has been substantiated; and
- the council has passed a resolution to take certain actions as a consequence of the breach/es; and
- the elected member who was found to have breached Part 2 of the Code of Conduct has failed to comply with the resolution.⁹

This can also occur when:

- a council has conducted investigations of alleged breaches of Part 2 of the Code of Conduct in relation to a particular elected member; and
- the council has passed formal resolutions stating that the investigations have found that the elected member breached Part 2 of the Code of Conduct; and
- the council has decided to escalate the breaches of Part 2 of the Code of Conduct by an elected member to my Office as 'repeated or sustained' behaviour constituting 'misconduct'.¹⁰

The council has referred Issue 1 and Issue 2 to my Office for investigation on the above basis.

ICAC Act jurisdiction

A number of the investigations conducted by the council concerning alleged breaches of Part 2 of the Code of Conduct by Mayor Knight were referred to the council for investigation by the Independent Commissioner Against Corruption (**the Commissioner**). This is because in addition to the legislative scheme operating under the Local Government Act, at the relevant time, the ICAC scheme included a definition of misconduct in public administration that captured contraventions of the Code of Conduct.¹¹

⁸ The term 'misconduct' that appears within the Code of Conduct for Council Members is not to be confused with the definition of 'misconduct' that appears within the *Ombudsman Act 1972*. They are two separate definitions and are not interchangeable.

⁹ Clauses 2.22 and 3.18 of the Code of Conduct.

¹⁰ Clauses 2.23 and 3.17 of the Code of Conduct. As noted above, the term 'misconduct' that appears within the Code of Conduct for Council Members is not to be confused with the definition of 'misconduct' that appears within the Ombudsman Act. They are two separate definitions and are not interchangeable.

¹¹ The ICAC scheme has undergone substantial changes since the Commissioner referred initial allegations about Mayor Knight to the council in 2020.

Accordingly, the legislative scheme (in place at the relevant time) allowed for an alleged breach of Part 2 of the Code of Conduct to be investigated in the following ways:

- investigated in a manner the council sees fit under the Local Government Act scheme and the council's relevant Code of Conduct policy and procedure
- investigated in a manner as directed by the Independent Commissioner Against Corruption (should the Commissioner be of the view that the matters should be investigated by the council).

Issue 1: Alleged failure to comply with a finding of inappropriate behaviour under Part 2 of the Code of Conduct

1. At a council meeting on 24 March 2020, the elected body passed Resolution 388. That resolution was passed following an investigation into an alleged breach of Part 2 of the Code of Conduct by Mayor Knight. Resolution 388 included the following:
 3. That taking into account Mayor Knight's response to Council's preliminary findings and proposed actions, Council make a final determination that Mayor Knight's alleged conduct on 2 October 2019 was in breach of clauses 2.2, 2.3 and 2.11 of the Code of Conduct for Council Members.
 4. That Council takes the following action as a result of Mayor Knight's response and Council's final determination:
 - (a) requests Mayor Knight make a public apology within five (5) business days in relation to his response to Council's resolution from 10 March 2020 in which Mayor Knight raised irrelevant and unsubstantiated matters
 - ...
 - (d) requests Mayor Knight attend sexual harassment in the workplace training within one month of the date of Council's resolution.
2. In referring the matter to my Office for investigation, the council advised that Mayor Knight had not complied with the actions at paragraph 4(a) and 4(d) as stipulated within Resolution 388 from its meeting on 24 March 2020.
3. In response to my investigation,¹² Mayor Knight's legal representative stated:
 - 2.1 The underlying allegations which gave rise to the Council's resolution on 24 March 2020 relate to an incident which occurred on 2 October 2019 in which it was alleged that Mayor Knight "deliberately hit an employee on her bottom with a rolled up paper, document or the like, and that the contact was not a glancing flick."
 - 2.2 Mayor Knight denies this allegation. He always has. We do not wish to labour the submission which we previously made to [the investigator] regarding this allegation...
 - 2.3 Notwithstanding those submissions, [the investigator] found, contrary to the evidence of Mayor Knight and objective evidence to the contrary, that Mayor Knight had engaged in the conduct alleged and, in doing so, breached Clauses 2.2, 2.3 and 2.11 of the Code. In the light of those findings, [the investigator] recommended that Mayor Knight prepare a written apology to the employee in question and provide it to the Deputy Mayor for the Deputy Mayor to provide it to the employee in such a manner as he thought appropriate. On 30 March 2020, Mayor Knight provided this written apology...

¹² Email from Mayor Knight's legal representative to the Ombudsman, 27 September 2021.

- 2.4 [The investigator] published her Final Report in relation to the matter on 27 February 2021.
 - 2.5 However, prior to the publication of [the investigator's] Final Report, Council became aware that additional allegations had been made about Mayor Knight to the Office for Public Integrity ("OPI"). Those allegations included allegations regarding the "Incident on 2 October 2019", the "Incident on 4 October 2019" (currently the subject of your investigation in relation to Matter Two) and various other historical allegations regarding Mayor Knight's conduct.
 - 2.6 The provision of these documents to Council by ICAC before their consideration of [the investigator's] Final Report clearly infected Council's decision-making processes and resulted in them passing the resolutions referred to in your letter which required Mayor Knight to undertake significantly more onerous - and publicly demeaning - actions than those suggested by [the investigator] herself.
 - 2.7 In relation to the proposed "sexual harassment in the workplace training", Mayor Knight was willing to do this. However, Council staff failed to organize this within 1 month of the relevant resolution being passed as required. By the time that training had been organized, various other unsubstantiated allegations (many of which form the subject matter of Matter Two of your investigation) had been made against Mayor Knight and referred for investigation. In those circumstances, Mayor Knight did not consider it appropriate to undertake training until after *all pending investigations* had been finalised.
 - 2.8 Once these matters have been finalised, Mayor Knight will undertake that training if required to do so.
4. I asked the council what actions had been taken by the council and Mayor Knight after 24 March 2020 to comply with the resolution of the council, particularly noting Mayor Knight's submission that the council had not arranged sexual harassment training within a timeframe that would have allowed him to comply with the council's resolution.
 5. In response, the council explained that Mayor Knight had previously been granted leave of absence from his position from 5 March 2020 until 20 April 2020, which was taken.¹³
 6. The council provided information about its attempts to arrange sexual harassment in the workplace training, including:
 - on 25 March 2020, the council's Chief Executive Officer (**the CEO**) sent an email to Mayor Knight, advising him of the council resolution on 24 March, and that sexual harassment in the workplace training would occur by electronic means due to COVID19
 - on 15 April 2020, the Manager Governance and Policy sent an email to Wallmans Lawyers to request a fee estimate for a one-on-one coaching or a training session on sexual harassment in the workplace for Mayor Knight; a response was provided by Wallmans Lawyers that same day
 - on 17 April 2020, the Manager Governance and Policy communicated with Wallmans Lawyers about the sexual harassment training for Mayor Knight, including training content, length of training and method of training
 - on 20 April 2020, Wallmans Lawyers requested that the Manager Governance and Policy provide copies of the council's policies and procedures regarding behavioural standards and the Code of Conduct for Council Members.

¹³ Letter from City of Tea Tree Gully to the Ombudsman, 20 September 2021.

7. On 20 April 2020, the Manager Governance and Policy sent an email to Mayor Knight which stated:

Hi Kevin,

Council's resolution from 24 March 2020, section 4(d) of the resolution requested that you attend sexual harassment in the workplace training within one month of the date of Council's resolution. I apologise for the oversight as I initially thought it was two months.

I recognise that this is coming somewhat late, however we could schedule a 1 hour session customised for you which could be run (via Zoom or something similar) with you on Thursday or Friday this week.

If you could please get back to me regarding a suitable time to attend the session, that would be great. I understand you had some views about attending such a session, and would appreciate if you are able to inform us of next steps in order to organise the training session for you.

8. The council also advised my Office that:
- on 21 April 2020, Wallmans Lawyers provided the Manager Governance and Policy with a copy of the draft presentation slides for the sexual harassment training. Wallmans Lawyers also provided information about availability to undertake the training with Mayor Knight
 - on 21 April 2020, the Manager Governance and Policy advised Wallmans Lawyers that Mayor Knight had verbally indicated that he did not intend to complete the sexual harassment training 'at this point' and the council was awaiting on written confirmation from Mayor Knight about this
 - on 21 April 2020, Mayor Knight advised the Manager Governance and Policy that he would be responding to the training request on 22 April 2020, and requested more details about the training
 - on 28 April 2020, Cr Unger sent a query to the Manager Policy and Governance regarding comments by Mayor Knight at a recent council meeting about working with Governance on sexual harassment training. The Manager Policy and Governance explained in a response email that they had been mistakenly working toward a timeframe of two months to arrange the training instead of one month. The Manager Governance and Policy confirmed that they had had a few conversations with Mayor Knight about the training, and that Mayor Knight had verbally indicated that he would likely await the outcome of all investigations before undertaking any training.
9. The council has advised my Office that Mayor Knight has previously participated in Code of Conduct training on at least three occasions as well as attended Fair Work training on two occasions which addresses the 'required standards of behaviour that Council members must comply with'.¹⁴
10. At a council meeting on 12 May 2020, Cr Unger asked a Question Without Notice to Mayor Knight. The transcript from that meeting reflects:

Cr Unger: I have two questions Mr Mayor, they are to you. Um, Mr Mayor on the 24th of March this council unanimously found that you had breached clauses 2.2, 2.3 and 2.1 of the Code of Conduct for Council Members. As a result you were asked to attend sexual harassment training. Can

¹⁴ Letter from City of Tea Tree Gully to the Ombudsman, 13 May 2021.

you please advise the Chamber when you will be undertaking this training.

Mayor Knight: There are currently, uh, ongoing, er, investigations and I will not be making any comment until after those investigations. It is, it is silly to do so.

Mayor Knight: Go ahead.

Cr Unger: The council also asked that you issue two apologies. One to the victim of the alleged assault and the other an apology, ah sorry, the other a public apology relating to your correspondence to the council's 10th of March resolution. I understand the victim has received their apology and I thank you for undertaking this request. However I do not believe that a public apology has been made as yet. Can you please advise the Chamber when and by what manner you will be making that public apology.

Mayor Knight: No, I won't be. Thank you.

11. It is evident there was some delay in arranging the sexual harassment in the workplace training that may have prevented delivery of the training within the one month timeframe provided within the relevant council resolution.
12. I understand that as of February 2020, Mayor Knight was aware there were a number of additional matters being referred to the council for investigation, concerning alleged breaches of Part 2 of the Code of Conduct by Mayor Knight. This included an allegation that Mayor Knight's actions on 2 October 2019 not only contravened Part 2 of the Code of Conduct but also constituted misconduct in public administration for the purpose of the *Independent Commissioner Against Corruption Act 2012* (as it was at that time).
13. The additional investigations were concluded at a council meeting on 17 March 2021.
14. In June 2022, I wrote to Mayor Knight's legal representative and explained that:
 - clause 2.6 of the Code of Conduct required Mayor Knight to comply with all council policies, codes and resolutions
 - clause 2.22 and clause 3.18, collectively, required Mayor Knight to comply with a finding that has been adopted by the council
 - the Code of Conduct does not include a provision that would allow an exception to the above clauses
 - I was not persuaded that there is evidence to suggest that the elected members' consideration of the matter on 24 March 2020 was infected by the referral of additional matters to the council for investigation
 - the additional investigations that Mayor Knight's legal representative had referred to were concluded as of 17 March 2021
 - my assessment of Mayor Knight's complaint about those investigations had also concluded
 - I did not see anything preventing Mayor Knight from now complying with paragraphs 4(a) and 4(d) of the council's resolution on 24 March 2020
 - my current investigation should not preclude Mayor Knight from complying with the actions contained within that resolution and in fact, not doing so was of direct relevance to whether I would continue my investigation of issue 1.

15. I asked Mayor Knight's legal representative for confirmation of whether Mayor Knight would be willing to undertake those actions within the next month (from 1 June 2022). If Mayor Knight did not intend to undertake those actions, I requested a reason for this.

16. In response, Mayor Knight's legal representative submitted the following:

Mayor Knight did attempt to make a public apology [in response to the findings and recommendations made by [the investigator] at the Council Meeting on 10 March 2020. However, he was stopped by Elected Members part-way through doing so. Curiously, on 24 March 2020, Council then passed a resolution requiring Mayor Knight to publicly apologise, seemingly in respect of the public apology which he made on 10 March 2020. As we understand it, it is that resolution which Mayor Knight is alleged not to have complied with. Significantly, it has never been clear to Mayor Knight what it is he is being asked to apologise for. Again, he has already apologised to the alleged victim of the alleged "Incident on 2 October 2019" as he was requested to do so by [the investigator].

Notwithstanding this, Mayor Knight will make the requested public apology, once the issues in relation to which he [is] required to apologise are made clear to him.

Sexual Harassment in the Workplace Training

Mayor Knight is willing to undertake this training and, indeed, has already contacted the relevant members of Council staff to have this arranged. Once the necessary arrangements have been made, Mayor Knight will complete the requested training.¹⁵

17. On 6 June 2022, Mayor Knight contacted the council's Manager Governance and Policy about completing the sexual harassment in the workplace training. In his email, Mayor Knight said:

In the above resolution you were supposed to arrange for sexual harassment training within one month for me to undertake.

As you might recall this was an oversight on governance behalf and then other allegations arose and I put it on the to do list. I believe the "course" you offered at the time was a 1 hour on line course.

While I remain adamant that no sexual harassment took place then or ever from me I note it has become an issue for the Ombudsman and while at the moment I have little respect for his office I am willing to comply with this resolution all be it I consider it a complete waste of ratepayers money.

Accordingly will you please arrange a date and time for me to complete this part of the resolution.

18. In a return email to Mayor Knight on 9 June 2022,¹⁶ the Manager Governance and Policy confirmed they would organise the training, and asked if there were any particular days or times that suited. Mayor Knight did not respond to this email.

19. At the time of issuing my provisional report in August 2022, Mayor Knight had not attended sexual harassment in the workplace training.

20. On 31 August 2022, Mayor Knight emailed the Manager Governance and Policy stating (emphasis in original):

¹⁵ Letter from Mayor Knight's legal representative to the Ombudsman, 6 July 2022.

¹⁶ The Manager Governance and Policy was on leave between 6 and 9 June 2022.

On Monday the 6th of June I wrote to you asking you to arrange the above training in connection with a resolution of council, my email contained the following sentence that I have copied and pasted.

“Accordingly will you please arrange a date and time for me to complete this part of the resolution.”

On Thursday the 9th of June I had not received a response from you so I sent a follow up message to you asking if you had seen my email.

You responded with a one line that you would attend to it that day (9/6). Several hours later you sent a more detailed response and buried within this response was the question did I had any preferred days or times, which I did not.

I assumed you would just go ahead and arrange the training but this did not happen and I am now being blamed by the Ombudsman for once again not completing this training.

So for hopefully the last time will you please arrange this one hour on line course and I have no preferred days or times I just want to get it done.

21. The same day, the Manager Governance and Policy replied:

As you are aware, we already had presentation materials drafted with Wallmans Lawyers (from mid 2020), so my response to you on 9 June 2022 (attached) was primarily for the purpose of requesting days and times that you might be available to undertake training via MS Teams (noting that I am not privy to your schedule or calendar). This was in the first paragraph of my email from 9 June, so I wouldn't consider that the question about your preferred dates and times to do the training was 'buried' in my response to you as you have suggested.

I was not aware whether you had any other activities or appointments you may need to schedule around (hence the reason that I asked the question in the first place). You did not respond to my email from 9 June until today, so I was not aware that you didn't have a preferred day or time until today.

I am unclear why you assumed I would arrange training without knowing your schedule (or you responding to my email), however this is not the first time you have insinuated that the reason you have not attended the training since the Council resolution on 24 March 2020 was due to a lack of action or 'oversight' on behalf of governance staff. While staff have tried to support you in this process to date, I should remind you that the onus and accountability is on you to undertake the training in accordance with the Council resolution.

In order to remove any further potential allegations that staff have impacted your ability to undertake the training, I feel it would be more appropriate for you to contact ... Wallmans Lawyers directly ...

22. On 5 September 2022, Mayor Knight completed the required training with Wallmans Lawyers.

23. In response to my provisional report, Mayor Knight's legal representative submitted the following:

As to your findings in relation to Mayor Knight's purported failure to undertake sexual harassment in the workplace training, Mayor Knight has, again, been entirely consistent in his position that he *will* undertake the required training.

Mayor Knight's initial position was that he would complete that training, if required to do so, after the investigation into these allegations had been completed. With respect, it is wrong to suggest that those investigations were completed in March 2021 and that, if Mayor Knight were genuine in his willingness to complete the training, he would have done so at that time. Indeed, these matters remain under investigation by your office.

Notwithstanding this, as a show of good faith and having regard to the substantial delays in this matter, Mayor Knight proactively approached the Council on 6 June 2022 asking them to arrange the training, notwithstanding that these matters remained under investigation.

Your reliance on the fact that Mayor Knight failed to reply to an email from Council staff dated 9 June 2022 as evincing a refusal to undertake the training overlooks this fact and the fact that Mayor Knight followed up with Council staff after not having heard from them. In addition, Mayor Knight had a verbal discussion with a member of Council staff in which he said that any day would be fine, but that he would prefer it not to be a Tuesday.

In any event, I confirm that on 5 September 2022, Mayor Knight completed the required training with Mr Michael Kay of Wallmans Lawyers.

In the circumstances, we submit that, it cannot be said that Mayor Knight has failed or refused to comply with Council's resolution or otherwise committed misconduct pursuant to Part 3 of the Code.¹⁷

Issue 2: Alleged engagement in repeated or sustained inappropriate behaviour

24. On 17 March 2021, the council passed a resolution that concluded a number of investigations concerning Mayor Knight's conduct. The investigations were undertaken by the council in accordance with the council's procedure under Part 2 of the Code of Conduct.
25. The council has undertaken four¹⁸ separate investigations over a period of approximately 13 months (February 2020 to March 2021) regarding alleged inappropriate behaviour by Mayor Knight towards council staff and an elected member between November 2018 and October 2020.
26. The investigations were finalised at three separate times by way of council resolution:
 - on 24 March 2020, the first investigation concluded and the council issued findings and requested action of Mayor Knight pursuant to clause 2.25 of the Code of Conduct
 - on 27 October 2020, the council finalised a number of additional investigations and made findings about the alleged Part 2 breaches; the council chose not to pass a resolution requiring additional action from Mayor Knight (in accordance with clause 2.25) at that time, instead choosing to delay requiring further action from Mayor Knight until the completion of all investigations
 - on 17 March 2021, the remaining investigations concluded.
27. In its meeting on 17 March 2021, the council passed the following motion:
 4. That Council, in considering the matter from a holistic perspective, noting that Mayor Knight has been found to have committed misconduct on 14 matters

¹⁷ Letter from Mayor Knight's legal representative to the Ombudsman, 13 September 2022.

¹⁸ This does not include investigation/s into Mayor Knight's alleged misconduct in public administration.

investigated (which equates to 31 individual breaches of the Code of Conduct for Council Members), and has failed to comply with Council's previous Code of Conduct determination on 24 March 2020, reinforces its previous decisions relating to Mayor Knight and:

- (a) Moves another vote of no confidence in Mayor Knight, and
- (b) Again requests Mayor Knight to do what is in the best interests of the City of Tea Tree Gully and resign from his elected position as Mayor prior to close of business on 19 March 2021.

5. That Council notes that Section 264(2) of the Local Government Act 1999 creates a statutory limitation whereby Council (through its Chief Executive Officer) cannot lodge a complaint alleging grounds for a complaint against a member of Council under Part 1 of Chapter 13 of the Local Government Act 1999 (including an alleged contravention of Section 63(2) of the Local Government Act 1999 by way of a contravention of the Code of Conduct for Council Members) with the South Australian Civil and Administrative Tribunal unless the matter has been investigated by the Ombudsman or the Independent Commissioner Against Corruption.

...

7. Accordingly, in the event the Mayor makes the decision to not resign from his elected position of Mayor within the timeframe specified in point 4(b), Council instructs the Deputy Mayor to write to the Independent Commissioner Against Corruption requesting that she undertake an investigation in respect of the matters within the scope of Referrals 2020/005321, 2020/002094, 2020/002486, 2020/003501, 2020/003535, 2020/003646 in addition to considering the failure to comply with the Code of Conduct determination on 24 March 2020 and, should the Independent Commissioner Against Corruption indicate she is unable or unprepared to undertake such an investigation, that the Deputy Mayor be instructed to write to the Ombudsman seeking that he undertake such an investigation instead.

- 28. At a subsequent special council meeting on 4 May 2021, the council unanimously resolved to refer breaches of parts 2.2, 2.3, 2.10, 2.11 and 2.14 of the Code of Conduct by Mayor Knight, to my Office. In its referral, the council submitted that the totality of these investigation findings should be referred to my Office for investigation under section 263 of the Local Government Act, as amounting to repeated or sustained inappropriate behaviour as listed in Part 2 of the Code of Conduct.
- 29. Accordingly, my investigation is confined to alleged breaches of Part 2 that have been investigated, and where the council has subsequently passed a resolution to state that a breach of Part 2 of the Code of Conduct by Mayor Knight has been found.
- 30. The relevant breaches of Part 2 of the Code of Conduct substantiated after an investigation by the council (conducted by an external investigator) into Mayor Knight's conduct are detailed in the following table (Table 1).¹⁹

¹⁹ Adapted from information provided by the City of Tea Tree Gully council to the Ombudsman, 20 April 2021, 13 May 2021, 20 September 2021.

Table 1: Substantiated breaches of Part 2 of the Code of Conduct for Council Members by Mayor Knight				
Breach no.	Date	Incident	Finding	Council resolution
1	13 November 2018	Allegation that at a council function, Mayor Knight made comments to an elected member about her being 'his type' and how he would have 'gone for [her] if he were her age'.	Mayor Knight breached clauses 2.2, 2.3 and 2.10 of the Code of Conduct	Resolution 776, 17 March 2021
2	22 February 2019	Allegation that at an event, Mayor Knight told an elected member that he had been told not to take 'rides from pretty ladies anymore' and suggested that the elected member had been for 'plenty of rides with boys'.	Mayor Knight breached clauses 2.2, 2.3 and 2.10 of the Code of Conduct	Resolution 776, 17 March 2021
3	5 March 2019	Allegation that at an elected member workshop, Mayor Knight pulled an elected member's skirt away from her waist, which was slightly too big for her after recently losing weight, and said, 'plenty of room in there, can I jump in'.	Mayor Knight breached clauses 2.2, 2.3 and 2.10 of the Code of Conduct	Resolution 776, 17 March 2021
4	2 October 2019	Allegation that Mayor Knight deliberately hit an employee on her bottom with a rolled-up paper, document or the like, and that the contact was not a glancing flick.	Mayor Knight breached clauses 2.2, 2.3 and 2.11 of the Code of Conduct	Resolution 388, 24 March 2020 Resolution 664, 27 October 2020 ²⁰
5	4 October 2019	Allegation that during a conversation with the CEO of the council in the council cafe, Mayor Knight blamed the council's management for the way that a certain employee dresses, referred to the employee as dressing like a '\$2 tramp', stuck his middle fingers up in an obscene gesture and stated 'well you can all get'.	Mayor Knight breached clauses 2.2 and 2.3 of the Code of Conduct	Resolution 664, 27 October 2020

²⁰ On 27 October 2020, the council passed a second resolution that the council make a determination that Mayor Knight breached clauses 2.2, 2.3 and 2.11 of the Code of Conduct for Council Members. For clarity, the subsequent council resolution was in response to an ICAC referral. The council resolved pursuant to that referral that in breaching the Code of Conduct, Mayor Knight's actions constituted misconduct for the purposes of the ICAC Act. This finding had not been made within Resolution 388 on 24 March 2020.

Table 1: Substantiated breaches of Part 2 of the Code of Conduct for Council Members by Mayor Knight				
Breach no.	Date	Incident	Finding	Council resolution
6	15 December 2019; 31 January 2020; 28 August 2020; 14 June 2020	Allegation that Mayor Knight made comments to elected members and council employees to the effect that the CEO 'needs to go' including a statement that the CEO 'has to go because he has thrown me under the bus with the Complaint'. The alleged reason for Mayor Knight stating that the CEO 'needs to go' was directly as a result of the CEO's role in managing and progressing a complaint about Mayor Knight, and Mayor Knight's view regarding the CEO's role in an investigation of that complaint.	Mayor Knight breached clauses 2.2 and 2.3 of the Code of Conduct	Resolution 780, 17 March 2021
7	4 February 2020	Allegation that at a council workshop, Mayor Knight spoke to other elected members about the CEO's ongoing employment, and sought the support of other elected members to discontinue the CEO's employment. The alleged reason for Mayor Knight seeking the support of the other elected members to discontinue the CEO's employment was directly as a result of the CEO's role in managing and progressing a complaint about Mayor Knight, and Mayor Knight's view regarding the CEO's role in an investigation of that complaint.	Mayor Knight breached clauses 2.2 and 2.3 of the Code of Conduct	Resolution 780, 17 March 2021
8	15 October 2019; 22 September 2020; 13 October 2020	Allegation that on a number of occasions, Mayor Knight sought the employment of a particular council employee be discontinued.	Mayor Knight breached clauses 2.2, 2.3 and 2.14 of the Code of Conduct	Resolution 780, 17 March 2021
9	12 December 2019; 6 October 2020; 9 October 2020; 13 October 2020	Allegation that on a number of occasions, Mayor Knight sought the employment of particular witnesses (to other investigations above) be discontinued.	Mayor Knight breached clauses 2.2, 2.3 and 2.14 of the Code of Conduct	Resolution 780, 17 March 2021

Mayor Knight's response

31. At the time of notifying Mayor Knight of my investigation, I invited him to respond to issue 2. In my correspondence, I explained to Mayor Knight that my investigation is not intended to re-investigate the allegations about his conduct under Part 2 of the Code of Conduct. Rather, my investigation is focused on determining whether, on the balance of probabilities, the breaches of Part 2 amount to *repeated or sustained inappropriate behaviour* (i.e. repeated or sustained breaches of Part 2).
32. My Office received a response from Mayor Knight's legal representative, who was of the view that it was essential for me to re-investigate Mayor Knight's alleged breaches of Part 2 of the Code of Conduct. Mayor Knight's legal representative submitted:
- [I]n circumstances where the initial investigation of these matters by [the investigator] was so hopelessly flawed, you cannot safely rely on those findings as a basis for finding that Mayor Knight has committed "repeated or sustained: breaches of the Code.
33. Mayor Knight's legal representative provided detailed submissions about each of the investigations of Mayor Knight's alleged breaches of Part 2 of the Code of Conduct and why those investigations were purportedly procedurally and factually flawed. Mayor Knight's legal representative stated:
- 4.1 For the reasons set out above, we submit that you cannot safely rely upon the findings of [the investigator] as a basis for finding that Mayor Knight has committed "*repeated and sustained*" breaches of the Code under Part 3.
- 4.2 We respectfully submit that in order to make a finding that Mayor Knight has committed "*repeated and sustained*" breaches of the Code under Part 3 of the Code, you must investigate these matters afresh, at least insofar as is necessary to satisfy yourself that the alleged breaches of the Code did, in fact, occur as alleged. Again, for the reasons set out above, they did not.
- 4.3 As we have stated previously, Mayor Knight remains willing to participate in any truly independent and arm's length investigation of these matters. He intends to clear his name and restore his reputation.
- ...
4.5 Mayor Knight is gravely concerned that Council have spent tens of thousands of dollars on a procedurally flawed investigation to serve political ends.
- ...
4.7 With respect, this matter presents you with a unique opportunity to review, critique and make recommendations regarding the use of Councils of panel lawyers to investigate complaints, whether as against Council staff or elected members. In our respectful submission, a great public service could be served by you outlining the dangers inherent in this...The proper course in this case was that for which Mayor Knight had been consistently calling, namely the appointment of external lawyers who were not panel lawyers for the Council and who could approach these matters in an independent and objective manner without regard to their own commercial interests. The cosy relationship between Councils and select law firms should be a matter of both public comment and reform.
- ...
4.9 Again, Mayor Knight is more than happy to provide any further information which you may require. He also seeks the opportunity to be interviewed by you in relation to these matters and will make himself available for that purpose at any time which is convenient to you.²¹

²¹ I note that the submissions by Mayor Knight's legal representative refer to "repeated *and* sustained" breaches of the Code of Conduct. However, the required test is whether Mayor Knight's conduct may amount to "repeated *or* sustained" breaches. This distinction is important for the purposes of my investigation.

34. In light of these submissions, I decided to open a separate file²² to assess the processes and evidence relied upon within the Part 2 investigations, alongside the submissions made by Mayor Knight's legal representative. The parties relevant to this matter were advised that my investigation was to be put on hold, pending the outcome of that other matter.
35. I concluded my assessment of the matters raised by Mayor Knight's legal representative on 27 May 2022, with the view that:
- based on the evidence available I did not consider it likely that, if I were to commence an investigation, I could reasonably conclude that:
 - the investigator of the Part 2 matters was affected by a conflict of interest or bias, or could reasonably be perceived to be so affected, in their conduct of the investigations
 - the council had ignored these concerns, after being raised by Mayor Knight's legal representative
 - the investigator's findings, and the council's subsequent conclusions, were not sound because of the evidence that each relied upon
 - accordingly, I did not consider it in the public interest for my Office to undertake an investigation of the complaint.
36. At the recommencement of my investigation of this matter, I wrote to Mayor Knight's legal representative and invited Mayor Knight to provide any additional submissions in relation to issue 2. I reiterated that my investigation was not seeking to re-investigate the Part 2 allegations; issue 2 was focussed on addressing whether the Part 2 breaches determined against Mayor Knight could be concluded to be 'repeated or sustained'.
37. Along with a response authored by Mayor Knight, Mayor Knight's legal representative submitted (emphasis in original):

We respectfully submit that it is not open to you to find that Mayor Knight has engaged in repeated or sustained inappropriate behaviour without first satisfying yourself, on an independent review of all the relevant evidence, that each (or at least a sufficient number) of the alleged instances of inappropriate behaviour occurred as has been alleged. In the light of all the evidence before you - including the fresh evidence which has been recently produced by Mayor Knight - we respectfully submit that you cannot be so satisfied.

With respect, it is insufficient for you to find, by reference to the mere fact of Council resolutions to the effect that Mayor Knight has committed a breach of the Code, that Mayor Knight has in fact engaged in inappropriate behaviour which is either repeated or sustained. This is all the more so in circumstances where you are now privy to further evidence which was not available to Council at the time it passed the resolutions on which you propose to rely and which directly contradicts the accounts given by the so-called "witnesses".

...

We respectfully submit that in the light of Mayor Knight's further response, the additional (and independent) evidence which he has obtained and the lack of any true corroborative evidence to support the accounts given by the various complainants and so-called "*witnesses*"; it is simply not open to you to be satisfied that Mayor Knight has engaged in repeated or sustained inappropriate behaviour, whether as alleged or at all.

²² Ombudsman reference 2021/06170.

38. In Mayor Knight's direct response, he provided my Office with his account of the incidents relevant to breaches 1, 2, 3 and 7 in Table 1, denying the version of events as alleged and investigated by the council. Mayor Knight concluded his submission, stating:

The utterly false allegations which [an elected member] has made against me have had a very serious effect on both me and my family. They are nothing more than premeditated, manufactured and malicious allegations directed solely at forcing me to resign as Mayor.

...
[T]he conclusions which [the investigator] reached were not only wrong, but the product of an inadequate and procedurally unfair investigation ... [the] allegations were not supported by any direct or independent evidence whatsoever.

I urge you to look carefully at the facts of this matter and the further credible and independent evidence which I have produced to support my account. In the light of that evidence, I submit that you cannot safely rely upon the evidence given ...

39. Mayor Knight's further submissions, and that of his legal representative, reassert the view that I am unable to consider whether Mayor Knight has engaged in repeated or sustained inappropriate behaviour contrary to the Code of Conduct, without investigating (or re-investigating) the alleged Part 2 breaches.
40. In my provisional report, I expressed the view that Mayor Knight has had ample opportunity to present information he considered relevant to the allegations against him at the time they were investigated. Further, that presenting 'fresh evidence' to my Office in response to this investigation in my view undermines the processes that have gone before it. I concluded that I was not persuaded to alter the scope of this investigation and did not consider it necessary to reflect much of Mayor Knight's response in the provisional report.
41. In response to the provisional report, Mayor Knight's legal representative stated:

we submit that it is not open to you to find that Mayor Knight has engaged in "*repeated or sustained*" inappropriate behaviour without first satisfying yourself, to the requisite standard and on an independent review of all of the evidence before you, that each (or at least a sufficient number) of the alleged instances of inappropriate behaviour did, in fact, occur as alleged. This is particularly so in circumstances where:

1. the initial investigation of these matters was so hopelessly flawed and beset by a conflict of interest and/or a reasonable apprehension of bias on the part of the investigator; and
2. you are now in possession of fresh and compelling evidence which directly contradicts the evidence given by the Complainant in relation to certain ... allegations and the evidence given by various ... so-called "*witnesses*".

We submit that to ignore that fresh and compelling evidence on the sole basis that Mayor Knight is said to have "*had ample opportunity to present information he considered relevant to the allegations against him at the time they were investigated*" would constitute a gross denial of procedural fairness and undermine the very purpose of your office being referred these matters for investigation.

For the reasons set out in our previous submissions, we respectfully submit that it is not reasonably open to you to find that Mayor Knight has engaged in repeated or sustained inappropriate behaviour.²³

²³ Letter from Mayor Knight's legal representative to the Ombudsman, 13 September 2022.

42. I do not accept these arguments and reject the assertion that my decision not to separately investigate this 'fresh and compelling evidence' as presented by Mayor Knight in his response to my investigation amounts to a 'gross denial of procedural fairness'.
43. I have already noted my views that the local government scheme does not envisage that my Office investigate alleged breaches of Part 2 of the Code of Conduct by council members. While it may be in exceptional circumstances that I depart from this, I consider it appropriate that my Office rely on valid resolutions of the elected council that a council member has breached Part 2 of the Code to determine whether that council member has engaged in 'repeated or sustained inappropriate behaviour'. While I have considered the information presented by Mayor Knight, I do not consider that there are exceptional circumstances that would lead me to depart from this general practice and make further enquiries into the allegations against Mayor Knight, which have previously been investigated by the council. I also note that most of the information presented by Mayor Knight in relation to my investigation could have been submitted by him as part of the council's investigations.
44. I also note that I have previously considered submissions made by Mayor Knight that the external investigator who examined his conduct had a conflict of interest and/or was bias, in Ombudsman matter 2021/06170. Having already provided my assessment of those submissions to the relevant parties in May 2022, I do not consider it necessary or appropriate to repeat that assessment in this report.
45. Accordingly, the scope of my investigation has remained the same as that which was originally communicated to the parties in September 2021.

Relevant law/policies

46. 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.

263—Grounds of complaint

- (1) There are grounds for complaint under this Part against a member of a council if the member has contravened or failed to comply with Chapter 5 Part 4.

263A—Investigations of grounds of complaint by Ombudsman

- ...
- (2) Any person may make a complaint to the Ombudsman setting out matters alleged to constitute grounds for complaint under this Act against a member of the council.

263B—Outcome of Ombudsman investigation

- (1) The recommendations that may be made by the Ombudsman under the *Ombudsman Act 1972* on the completion of an investigation of the complaint include that the council—
 - (a) reprimand the member (including by means of a public statement); or

- (b) 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; or
 - (c) require the member to reimburse the council a specified amount; or
 - (d) ensure that a complaint is lodged against the member with SACAT.
- (2) If a member of a council fails to comply with a requirement of the council of a kind referred to in subsection (1) made in accordance with the recommendation of the Ombudsman, the member will be taken to have failed to comply with Chapter 5 Part 4 and the council is to ensure that a complaint is lodged against the member with SACAT.
- (3) A council is taken to have the power to act according to the Ombudsman's recommendations.

47. Part 3 of the Code of Conduct, provides, among other things, that:

Repeated or sustained breaches of Part 2

- 3.17 At the discretion of the Council to which the member is elected, repeated or sustained inappropriate behaviour, as listed in Part 2, may be escalated to an allegation of misconduct under this Part.
- 3.18 A failure to comply with a finding of inappropriate behaviour (by the Council, independent investigator or Ombudsman) under Part 2 is also grounds for a complaint under this Part.

Whether Mayor Knight failed to comply with a finding of inappropriate behaviour under Part 2 of the Code of Conduct for Council Members

48. The need to comply with council resolutions is unequivocal and central to a council member demonstrating their commitment to ensuring confidence from members of the public in them as individuals, representatives of their council, and in local government more broadly. Whether a council member refutes the findings of an investigation underpinning a council resolution, or how they feel about the resolution personally, is in my view irrelevant.
49. At its meeting on 24 March 2020, the council resolved by Resolution 388 for the council to take certain action in response to its finding that Mayor Knight breached Part 2 of the Code of Conduct following an incident in October 2019. It is well understood that Mayor Knight disputes the incident as alleged, as well as the consequent investigation and council's findings in relation to the matter.
50. Relevant to this investigation is the council's request that Mayor Knight issue a public apology within 5 business days 'in relation to his response to Council's resolution from 10 March 2020' (paragraph 4(a)) and that he attend sexual harassment in the workplace training within one month of the date of council's resolution (paragraph 4(d)). I have considered whether Mayor Knight engaged in misconduct contrary to Part 3 of the Code of Conduct, as per clause 3.18, by failing to comply with this resolution, specifically, the requests set out in paragraph 4(a) and 4(d).
51. Resolution 388 placed an onus on the council to undertake certain actions set out within the resolution, such as requesting Mayor Knight to make a public apology and requesting that he attend sexual harassment training. In accordance with clause 2.25 of the Code of Conduct, Mayor Knight was under equal obligation to comply with the

actions set out in the resolution, particularly where they stemmed from a finding that he had breached Part 2 of the Code of Conduct.

52. The council made a final determination that Mayor Knight engaged in conduct in breach of Part 2 of the Code of Conduct at paragraph 3 in the relevant resolution. That paragraph reflects that 'taking into account Mayor Knight's response to Council's preliminary findings and proposed actions, Council makes a final determination that Mayor Knight's conduct on 2 October 2019 was in breach of clauses 2.2, 2.3, and 2.11 of the Code of Conduct for Council Members'.
53. Paragraph 4 of the resolution requires that the council undertake a number of actions 'as a result of Mayor Knight's response and Council's final determination'.
54. Rather than issuing a resolution specific to Mayor Knight's conduct as investigated and based on council's final determination, the council appears to have issued a resolution requesting that Mayor Knight take certain action in response to both the findings against him *and* his response to the investigation, specifically comments made in response to the council's preliminary findings. The fact that the council's resolution does not distinguish between the two is significant.
55. At paragraph 4(a) of the resolution, the council requests that Mayor Knight 'make a public apology within five (5) business days in relation to his response to Council's resolution from 10 March 2020 in which Mayor Knight raised irrelevant and unsubstantiated matters'. Council's request is written specifically in relation to his response to a council resolution on 10 March 2020, and in response to the council's preliminary findings for the investigation of alleged Part 2 breaches. I do not consider it necessary to detail the comments made by Mayor Knight.
56. Mayor Knight has not issued a public apology for his response to the council's resolution from 10 March 2020 or for comments he made in response to the council's preliminary findings.
57. While clause 2.25.3 of the Code of Conduct allows for the council to request a written or verbal public apology where there is a finding that a council member has engaged in a breach of Part 2 of the Code of Conduct, it is not apparent that the council has the authority under this part to request a public apology for comments made by the council member in response to that process, particularly where the council is affording that person procedural fairness during an investigation. That is to say, it is my view that the request for Mayor Knight to make a public apology is not sufficiently or exclusively linked to the council's determination that he breached Part 2 of the Code of Conduct.
58. On this basis, I do not consider that Mayor Knight's decision not to issue an apology for comments made in response to the council's resolution on 10 March 2020 (as requested at paragraph 4(a) of Resolution 388), can be said to be a failure to comply with a finding under clause 2.25 of the Code of Conduct. I therefore cannot conclude that Mayor Knight's failure to issue an apology amounts to misconduct under Part 3 of the Code of Conduct.
59. That being said, noting clause 2.6 of the Code of Conduct, which provides that a council member must 'comply with all Council policies, codes and resolutions', it is my view that Mayor Knight's decision not to issue an apology as set out in paragraph 4(a) amounts to a breach of Part 2 of the Code of Conduct.

60. I acknowledge the submissions made by Mayor Knight's legal representative that Mayor Knight is not clear about the issues for which he is yet to apologise. Mayor Knight submits he is willing to apologise when those issues are made clear.
61. Had there been any confusion in Mayor Knight's mind about this in the 2 years following the council's meeting on 24 March 2020, I consider that Mayor Knight should have clarified this for himself, particularly having regard to the Code of Conduct which provides that 'it is the personal responsibility of Council members to ensure that they are familiar with, and comply with, the standards in the Code at all times'. In my view, Mayor Knight's failure to pursue this reflects a level of contempt for the council's determination and resolution.
62. In relation to the council's request that Mayor Knight attend sexual harassment in the workplace training within one month of the date of Resolution 388, there is a clear nexus between the council's finding that Mayor Knight breached Part 2 of the Code of Conduct, and its request pursuant to clause 2.25.4 of the Code of Conduct. I am satisfied that the Resolution is clear in its intent to address certain behaviour by Mayor Knight as determined by the council through its investigation.
63. It is not disputed that Mayor Knight did not comply with the request to undertake training within one month of Resolution 388. This was in part due to the council's delay in organising the training as well as the fact that Mayor Knight was on a leave of absence from his position for 4 weeks following council's resolution. I note that as of 20 April 2020 (within the relevant one month timeframe), the council had organised the training pending availability of Mayor Knight and Wallmans Lawyers. It was at this time that Mayor Knight verbally advised the council that he did not intend to undertake the training within the one month time frame, preferring to await the outcome of the council's additional investigations into his conduct.
64. Mayor Knight has maintained this reasoning for his non-compliance in response to this investigation. Ultimately, I am not persuaded by this argument. The Code of Conduct does not provide for exceptions or discretion to refuse to comply with a resolution made by council. It is also not clear how any additional investigation/s into Mayor Knight's conduct (whether related allegations or not) would be relevant to his compliance with the request to participate in training to address the specific concerns raised within the council's initial investigation.
65. In any case, I note that as of 17 March 2021, the investigations influencing Mayor Knight's decision to comply with Resolution 388 were finalised. In my view, there was nothing preventing Mayor Knight from complying with paragraph 4(d) of Resolution 388 and participating in the sexual harassment at the workplace training after this date.
66. I acknowledge Mayor Knight's contact with the council in June 2022, some 12 months after the council's investigations into his conduct were finalised, requesting that it organise the training. While it could be argued this is reflective of Mayor Knight's attempt to comply with the resolution in good faith, Mayor Knight appears to have pursued this training because 'it has become an issue for the Ombudsman'. This raises the question of whether Mayor Knight would have pursued participation in the training, and indeed compliance with Resolution 388 paragraph 4(d), had it not been a specific matter subject to my investigation.
67. In my provisional report I noted that when the council sought to establish Mayor Knight's availability to attend the training in early June 2022, he did not reply.

68. In response to my provisional report, Mayor Knight's legal representative submitted Mayor Knight had not participated in the training due to matters remaining under investigation by my Office.
69. I do not accept this argument and strongly dispute Mayor Knight's apparent view that a council member is precluded from complying with a council resolution because the subject matter relevant to the resolution might also be subject to an assessment or investigation by my Office. As reflected above, compliance with a resolution by the council is not discretionary.
70. Mayor Knight's legal representative submitted that 'as a show of good faith and having regard to the substantial delays in this matter, Mayor Knight proactively approached the Council on 6 June 2022 asking them to arrange the training, notwithstanding that these matters remained under investigation'. Mayor Knight's legal representative stated that my Office's 'reliance on the fact that Mayor Knight failed to reply to an email from Council staff dated 9 June 2022 as evincing a refusal to undertake the training overlooks this fact... '.
71. While I acknowledge Mayor Knight's contact with the council on 6 June about the relevant training, I note that he did not respond to the Manager Governance and Policy's attempts to find an appropriate day and time to complete the training; I find the Manager Governance and Policy's statement 'I am unclear why you assumed I would arrange training without knowing your schedule' pointed but compelling. In my view, Mayor Knight's interactions with the council in June and August 2022 must be considered in the context of it taking him well over 2 years to participate in the requisite training despite the council's efforts to support his attendance.
72. I do not accept Mayor Knight's characterisation of his most recent approach to the council as being 'a show of good faith' but rather, overdue compliance with council's resolution.
73. I consider that, as at the time of council's complaint to this Office, Mayor Knight's failure to participate in sexual harassment in the workplace training as requested by way of Resolution 388 amounts to misconduct under Part 3 of the Code of Conduct.
74. I have amended my provisional recommendation to the council with respect to this issue, in recognition of the fact that Mayor Knight has now engaged in the requisite training.

Opinion

In light of the above, my view is that, at the time of council's complaint to this Office:

- Mayor Knight's decision to not issue an apology as set out in paragraph 4(a) of Resolution 388 of the council's meeting of 24 March 2020 does not amount to misconduct under Part 3 of the Code of Conduct; however, it does amount to a breach of Part 2.6 of the Code of Conduct
- Mayor Knight's failure to attend sexual harassment in the workplace training as set out in paragraph 4(d) of Resolution 388 of the council's meeting of 24 March 2020 amounts to misconduct under Part 3 of the Code of Conduct.

In doing so, Mayor Knight has breached the provisions of section 63 of the Local Government Act.

While it is not usual practice for my Office to make findings in relation to a council member's breach of Part 2 of the Code of Conduct, in this case, I do not consider there to be any utility

in referring Mayor Knight's failure to issue an apology in accordance with resolution 388 back to the council to re-investigate. This is particularly having regard to the resources already expended in considering the matter.

Whether Mayor Knight engaged in repeated or sustained inappropriate behaviour, as listed in Part 2 of the Code of Conduct for Council Members

75. The breadth of allegations raised and investigated in relation to Mayor Knight's conduct which have formed the basis of the council's referral to my Office is significant. The council's investigations have resulted in multiple motions of no confidence in Mayor Knight, which, to date, have been met with refusal by the Mayor to resign despite repeated requests by the elected body that he do so.
76. The council submitted a range of additional matters it considered relevant to an assessment of Mayor Knight's conduct, which I understand have had a significant impact on the working relationship between elected members, council staff and Mayor Knight. Nevertheless, I am required to confine my consideration of whether Mayor Knight engaged in misconduct under Part 3 of the Code of Conduct by engaging in *repeated or sustained inappropriate behaviour*, based on incidents that have been substantiated and resolved by the council as amounting to a breach of Part 2 of the Code of Conduct by Mayor Knight. These incidents of 'inappropriate behaviour', as determined by council, span from November 2018 to October 2020.
77. The term 'repeated or sustained' is not defined within the Code of Conduct or Local Government Act. Therefore, I have had regard to the relevant definitions within the Macquarie dictionary.
78. The definition of 'repeat' includes:
- to say again (something already spoken by oneself to another)
 - to do, make, perform, etc., again: to repeat an action; to repeat a passage of music
 - to do or say something again
 - the act of repeating
 - something repeated.
79. The definition of 'sustain' includes 'to keep up or keep going an action or process: to sustain a conversation'.
80. I have had particular regard to the number of incidents resulting in allegations made against Mayor Knight, as investigated and substantiated between 2019 and 2020, and observe that in the relevant period, Mayor Knight has been found to have breached:
- clause 2.2 of the Code of Conduct on 10 occasions
 - clause 2.3 of the Code of Conduct on 10 occasions
 - clause 2.10 of the Code of Conduct on 3 occasions
 - clause 2.11 of the Code of Conduct on 2 occasions
 - clause 2.14 of the Code of Conduct on 2 occasions.
81. In my view, the extent of these findings is sufficient to justify a finding that Mayor Knight has engaged in repeated inappropriate behaviour.
82. I have also had regard to the type of behaviour that led to these findings.
83. In October 2019, Mayor Knight was involved in an incident determined by the council to amount to sexual harassment. I note that the investigator of the incident observed that

while clause 2.11 of the Code of Conduct does not separately define sexual harassment, it was this type of harassment that was especially applicable to the incident, and such harassment is prohibited in clause 2.11 of the Code of Conduct.

84. In February 2021, Mayor Knight was found to have made multiple inappropriate comments towards an elected member in late 2018 and early 2019, resolved by the council to amount to harassment and a breach of 2.10 of the Code of Conduct. While the specific conduct that formed the basis of this finding is not identical in nature as that which occurred in October 2019, the conduct was considered to amount to sexual harassment, although not separately defined or provided for by the Code of Conduct. By definition, as a form of conduct that has occurred 'again', this conduct can be said to be 'repeated'.
85. Following these incidents, Mayor Knight has been found to have engaged in inappropriate behaviour that has included:
 - blaming management for the way an employee dresses
 - referring to an employee as dressing like a '\$2 tramp'
 - sticking his middle fingers up in an obscene gesture to council staff stating 'well you can all get'
 - commenting in various forms to several elected members and council staff that the CEO 'needs to go' and his employment discontinued, specifically because of the CEO's involvement in managing and progressing a complaint against Mayor Knight
 - commenting in various forms to several council staff that the employment of certain council staff should be discontinued, specifically because of Mayor Knight's perception that they were involved in a complaint and investigation into his conduct.
86. Regarding the latter incidents relating to Mayor Knight's comments seeking the employment of the CEO to be discontinued and that of various other council staff, I consider it relevant that Mayor Knight was determined by an investigator to have made these comments on at least 12 different occasions between December 2019 and October 2020. The comments were not made at a single point in time, but over an extended period and with intent by the Mayor to improperly influence the employment of certain individuals.
87. During this time, Mayor Knight was aware of other matters being dealt with by the council in relation to his conduct. Indeed, it was due to these other matters, and Mayor Knight's perception that certain individuals were involved in progressing these matters, that Mayor Knight was deemed to have made such comments. In my view, Mayor Knight's conduct by continuing to make such comments was deliberate in nature, and a wilful disregard for his obligations to act appropriately under the Code of Conduct.
88. I have noted that across the various investigations into his conduct, Mayor Knight's conduct has been directed towards, and witnessed by, multiple individuals on not just one occasion, but many. On each occasion, the council has determined the conduct to amount to conduct that is inconsistent with the Code of Conduct, which requires that council members behave in a manner that generates community trust and confidence in the council, is reasonable, just, respectful and non-discriminatory.
89. I acknowledge the submissions made by Mayor Knight and his legal representative at the commencement and recommencement of this investigation. I note that Mayor Knight continues to deny any wrongdoing and indeed disputes the findings of the council's investigations into his conduct, which are relevant to this investigation.

90. Mayor Knight has argued that I am unable to conclude he has engaged in repeated or sustained inappropriate behaviour without first investigating the Part 2 breaches. I have responded to this argument on pages 18-19. Mayor Knight has not provided any persuasive argument that his behaviour, as resolved by the council to amount to Part 2 breaches, has not been repeated or sustained, which would otherwise change my views about his conduct.
91. On the basis of the information before me, I am of the view that Mayor Knight's inappropriate behaviour, in various forms, has been *repeated*; the first notable incident occurring in November 2018 and occurring on at least 16 different occasions thereafter.
92. I am also of the view that Mayor Knight's inappropriate behaviour was *sustained* over the course of almost 2 years, with Mayor Knight continuing to engage in inappropriate conduct despite being put on notice throughout the course of 2019 and 2020 through various means including notices of complaint, requests to respond to investigation reports, and motions of no confidence by elected members as a result of alleged inappropriate behaviour.
93. When taken together, I consider that Mayor Knight has engaged in repeated or sustained inappropriate behaviour, as listed in Part 2 of the Code of Conduct, amounting to misconduct under Part 3 of the Code of Conduct.

Opinion

In light of the above, my view is that Mayor Knight has engaged in repeated or sustained inappropriate behaviour, as listed in Part 2 of the Code of Conduct, amounting to misconduct under Part 3 of the Code of Conduct.

In doing so, Mayor Knight has breached the provisions of section 63 of the Local Government Act.

Summary and Recommendation

In summary, my view is that at the time of council's complaint to my Office:

- Mayor Knight's decision to not issue an apology as set out in paragraph 4(a) of Resolution 388 of the council's meeting of 24 March 2020 does not amount to misconduct under Part 3 of the Code of Conduct; however, it does amount to a breach of Part 2.6 of the Code of Conduct
- Mayor Knight's failure to attend sexual harassment in the workplace training as set out in paragraph 4(d) of Resolution 388 of the council's meeting of 24 March 2020 amounts to misconduct under Part 3 of the Code of Conduct
- Mayor Knight has engaged in repeated or sustained inappropriate behaviour, as listed in Part 2 of the Code of Conduct, amounting to misconduct under Part 3 of the Code of Conduct.

In doing so, Mayor Knight has breached section 63(2) of the Local Government Act.

To remedy these errors, I recommend pursuant to section 25(2) of the Ombudsman Act and section 263B(1)(d) of the Local Government Act that the council:

1. Ensure that a complaint is lodged against Mayor Knight with the South Australian Civil and Administrative Tribunal (**SACAT**) for:

- a. failure to issue an apology as set out in paragraph 4(a) of Resolution 388 of the council's meeting of 24 March 2020, a breach of Part 2.6 of the Code of Conduct
- b. engagement in repeated and sustained inappropriate behaviour as listed in Part 2 of the Code of Conduct which amounts to misconduct under Part 3 of the Code of Conduct for Council Members.

Final comment

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

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me within three months on what steps have been taken to give effect to my recommendation/s above; including:

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

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

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



Wayne Lines
SA OMBUDSMAN

24 October 2022