



## Report

### Full investigation - *Ombudsman Act 1972*

Complainant	Ombudsman 'own initiative' investigation, section 13(2) <i>Ombudsman Act 1972</i>
Council	Northern Areas Council
Ombudsman reference	2022/01777
Date investigation commenced	9 June 2022
Issues	<ol style="list-style-type: none"><li>1. Whether the council's actions in response to an investigation of Mr Colin Byles' conduct amounted to an error</li><li>2. Whether the council's decision to offer Mr Byles an ongoing 5% pay increase constitutes maladministration under the Ombudsman Act</li><li>3. Whether there was an error in the process followed by the council for the reappointment of Mr Byles to the CEO position</li></ol>

### Jurisdiction

On 10 January 2022, my Office received a report from an informant for the purposes of the *Public Interest Disclosure Act 2018*, alleging that the council's then Chief Executive Officer, Mr Colin Byles, had fabricated and backdated a letter to a medical centre in order to deceive the Mayor into believing it had been sent. That report formed the basis of a previous investigation completed by my Office on 21 June 2022 in which a finding of misconduct in public administration was made against Mr Byles (Ombudsman reference: 2022/00162).

The 10 January 2022 report to my Office included a significant amount of information which was provided as the 'necessary background' to the report about Mr Byles' conduct. That information related to a previous investigation which made findings of misconduct against Mr Byles, and the council's subsequent decision to extend Mr Byles' contract by six months with a 5% pay increase.

In the course of my enquiries into the report, it became apparent that the council had taken no action in response to the previous finding of misconduct made against Mr Byles, other than to readvertise his position 'to test the market'. Upon discovering in March 2022 that Mr Byles had been reappointed to the Chief Executive Officer position for a further two years, I

determined that it was proper to exercise my discretion to commence an investigation of my own initiative pursuant to section 13(2) of the Ombudsman Act 1972.

As stated in my previous investigation, the original report to my Office attracted the protections of the *Public Interest Disclosure Act 2018*. I remain of the view that it is not necessary to identify the reporter.

### **Investigation**

My investigation has involved:

- assessing the information provided by the original reporter
- seeking further information and clarifying information from the original reporter
- seeking a number of responses from each of the council members
- seeking information from Ms Belinda Richards
- seeking information from Mr Steve Nolis
- considering the Ombudsman Act, the *Local Government Act 1999*, and the following council policies:
  - Public Interest Disclosure Policy
  - Employee Conduct Policy
  - Grievance Resolution Policy
  - Complaints Policy
- providing Mr Byles and the council with my provisional report for comment, and considering their responses
- preparing this report.

In conducting my investigation, I have sought responses from each of the council members. This is not my usual practice, however, following my initial enquiries with the former Mayor and the former Deputy Mayor, it became evident that several of the council members hold conflicting views in relation to these matters. The former Mayor in particular raised concerns with my Office that his views of the matter differed significantly from those of other council members. For these reasons, I considered it was appropriate to make enquiries with each council member individually.

### **Standard of proof**

The standard of proof I have applied in my investigation and report is on the balance of probabilities. However, in determining whether that standard has been met, in accordance with the High Court's decision in *Briginshaw v Briginshaw* (1938) 60 CLR 336, I have considered the nature of the assertions made and the consequences if they were to be upheld. That decision recognises that greater care is needed in considering the evidence in some cases.<sup>1</sup> It is best summed up in the decision as follows:

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

### **Procedural fairness**

A copy of the provisional report was provided to each of the council members, the council's current Acting Chief Executive Officer, and Mr Byles for comment.

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

<sup>2</sup> *Briginshaw v Briginshaw* at pp361-362, per Dixon J.

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I have received responses to my provisional report from the former Mayor, another council member, and the current Acting Chief Executive Officer.

I have considered the former Mayor's response and have addressed his submissions where necessary in the body of this report. Ultimately, the former Mayor's response did not persuade me to alter my conclusions.

The responses provided to my Office by the other council member and the Acting Chief Executive Officer each related solely to my recommendations. I have referred to those comments within the body of my report.

The views set out in this report are substantially the same as those outlined in my provisional report, with some minor amendments made to reflect changes in the council's membership following the recent election.

### Background

1. In 2019, as part of the council's annual CEO Performance Review process, McArthur Talent Architects (**McArthur**) was engaged to undertake a Staff Culture Survey (**the survey**), made up of the following five questions:
  - 'What do you LIKE MOST about working for Northern Areas Council?'
  - 'What do you LIKE LEAST about working for Northern Areas Council?'
  - 'In what ways do you think Northern Areas Council could improve the way it attracts and recruits new staff?'
  - 'In what ways do you think Northern Areas Council could improve the way it retains its valuable people?'
  - 'Are there any other issues, suggestions or comments that you would like to make about Northern Areas Council or your work area?'
2. A copy of the complete answers to the survey, which was 9 pages in length, was provided to Mr Byles by McArthur on 2 September 2019. That document included a response to the final question, which stated 'Female staff are sometimes treated by the CEO in a disrespectful way. Sometimes inappropriate comments are made to female staff'.
3. A 7-page version of the survey answers was subsequently provided to the council by Mr Byles. This version of the document did not contain the final question or its answers and, as such, did not contain the comment regarding Mr Byles' treatment of female staff.
4. On 3 March 2021, the then Mayor contacted McArthur to request a copy of the responses to the survey. By return email, the Mayor was provided with a copy of the complete answers.
5. On 9 March 2021, the Mayor received an email from the Australian Services Union (**ASU**) on behalf of several council employees raising allegations of bullying, sexist behaviour and sexual harassment by Mr Byles.
6. On 10 March 2021, the council resolved to engage Norman Waterhouse to conduct an investigation into:
  - the survey answers received by the council which appeared to have been altered
  - the allegations raised in the email from the ASU.

7. In response to the Norman Waterhouse investigation into the altered survey answers, Mr Byles admitted to altering the report prior to sending it to the council ‘to protect [himself] from any reputational damage that was not substantiated by any fact’.
8. The Norman Waterhouse investigation report was delivered on 17 May 2021, finding ‘that the CEO’s conduct may be in breach of Section 109(1) of the [Local Government] Act, which requires employees to act with honesty in the performance of their official duties at all times’. Norman Waterhouse considered that Mr Byles’ conduct ‘may be considered “misconduct” as then defined pursuant to Section 5 of the *Independent Commissioner Against Corruption Act 2012* (SA) given that his conduct has contravened a Code of Conduct’.
9. The council received the Norman Waterhouse report at its meeting on 18 May 2021 and resolved to refer the matter to the Office for Public Integrity (OPI).
10. At the same meeting, the council also resolved to extend Mr Byles’ contract by six months with a 5% pay increase.
11. I am advised by the former Mayor that Norman Waterhouse ultimately engaged Ms Belinda Richards of InSyncHR to investigate the allegations raised in the email from the ASU. Ms Richards’ investigation commenced on or around 10 May 2021.
12. The original reporter told my Office that, because of the contract extension and salary increase that had recently been provided to Mr Byles, council staff members had no confidence that the council would take any action if they provided evidence to Ms Richards’ investigation. The reporter also alleged that staff members were concerned that Mr Byles would target them for providing such information.
13. On 30 June 2021, the Mayor received a response from the Independent Commissioner Against Corruption:

It appears that Norman Waterhouse has finalised its investigation into an allegation that Mr Byles altered a report relating to his performance as Chief Executive Officer. Norman Waterhouse found on the balance of probabilities this allegation was substantiated. It is for the elected members to consider whether to impose a disciplinary sanction against Mr Byles.
14. On 10 August 2021, Ms Richards’ investigation was finalised, and on or around 27 August 2021, the Mayor advised council staff that ‘there was insufficient evidence and information received throughout the investigation that could justify any further action being taken by the council’.
15. On 23 August 2021, the Mayor received a further response from the Independent Commissioner Against Corruption, confirming her view that she would not take any action as the matter had already been investigated.
16. On 8 October 2021, the council received advice from Norman Waterhouse regarding what action should be taken in response to the finding of misconduct. That advice included the following three options:
  - Option 1: Terminate Mr Byles’ employment with the council, noting that termination may provoke questions from the public about how and why the termination of Mr Byles’ employment occurred, in light of his recent contract extension and pay rise
  - Option 2: Issue Mr Byles with a Final Warning

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- Option 3: Take no disciplinary action against Mr Byles, noting that should the findings of the investigation be released to the public, the council may face public criticism, community distrust and reputational harm.
17. At the 25 October 2021 council meeting, the council resolved to readvertise Mr Byles' position 'to test the market'.
18. Mr Byles was encouraged by the council to reapply for the position, and in March 2022, he was reappointed for a further two years.<sup>3</sup>

**Relevant law/policies**

19. Section 4(2) of the Ombudsman Act provides:

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

20. Section 98(4a) of the Local Government Act provides:

- (4a) The council must ensure that either or both of the following applies to the process for appointing a chief executive officer under this section:
- (a) the council appoints at least 1 person who is not a member or employee of the council to the selection panel;
  - (b) before making the appointment to the office of chief executive officer, the council obtains and considers the advice of a qualified independent person on the assessment of applications and recommendations on the appointment under subsection (4) (and that advice may include recommendations to the council on the appointment).
21. For the purposes of section 98(4a)(b), 'qualified independent person' is defined within section 98(7) of the Local Government Act as follows:

(7) In this section -

***qualified independent person*** means a person who is -

- (a) not a member or employee of the council; and
- (b) determined by the council to have appropriate qualifications or experience in human resource management.

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<sup>3</sup> Statement provided on behalf of the council in The Plains Producer on 8 December 2021.

**General issues and points raised in the council members' responses**

22. While I will address many of the individual responses provided by the council members throughout my report, I have noted several points that were consistently raised by many of the council members in their responses to my enquiries. I consider it appropriate to address my views on those matters at the outset of my report.

*The seriousness of Mr Byles' conduct*

23. It appears that several council members considered that Mr Byles' conduct in altering the survey results was not particularly serious. This view appears to have influenced the council's decisions to:
- offer Mr Byles a six month contract extension immediately after receiving the Norman Waterhouse report
  - offer Mr Byles a 5% pay increase immediately after receiving the Norman Waterhouse report
  - take no disciplinary action against Mr Byles, apart from readvertising the Chief Executive Officer position
  - reappoint Mr Byles for a further two years.
24. It should be made clear at this point that the purpose of my report is not to investigate Mr Byles' conduct in relation to the survey results. I do not consider that it would be in the public interest for me to do so, as that issue has already been thoroughly investigated by Norman Waterhouse as well as considered by the OPI, and Mr Byles is no longer employed by the council. As such, I have not made any findings in relation to Mr Byles' conduct in this report.
25. However, the apparent seriousness of Mr Byles' conduct is certainly a relevant factor in my investigation of the council's decisions after the conduct was investigated. As such, I have given consideration to whether, on its face, the conduct described in the Norman Waterhouse report, which was admitted to by Mr Byles, impacted on the appropriateness of the following:
- offering a six month contract extension to Mr Byles
  - offering a 5% pay increase to Mr Byles
  - the council's failure to take further disciplinary action
  - the decision to reappoint Mr Byles for a further two years.
26. I have already addressed similar behaviour by Mr Byles in my previous investigation into his conduct.<sup>4</sup> In that matter, Mr Byles fabricated a letter. In my report, I made the following statements:

I consider that the requirement for employees to act honestly is fundamental to the proper functioning of councils. I note that, in addition to its inclusion within the council's Employee Conduct Policy, the requirement for council employees to act honestly in the performance of official duties is included as a 'general duty' within section 109(1) of the Local Government Act.

It is undeniable that an intentional and deliberate decision to fabricate a document in order to deceive an elected member of a council is a serious breach of the requirement to act honestly in the performance of official duties. It is especially so when such conduct is carried out by a person in Mr Byles' position of Chief

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<sup>4</sup> Ombudsman SA - Investigation concerning misconduct by Mr Colin Byles, Chief Executive Officer of the Northern Areas Council, June 2022, at paragraphs 24-25 <<https://www.ombudsman.sa.gov.au/publication-documents/investigation-reports/2022/2022-00162-Northern-Areas-Council.pdf>>.

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Executive Officer. Such conduct undermines trust in the council, sets a poor example for staff and raises questions about his fitness for the role.

27. I consider that this reasoning is also directly applicable to this matter. In this case, Mr Byles has admitted to altering a document with the intention of withholding information from the council. As such, I consider that Mr Byles' conduct in altering the survey results was serious.
28. In reaching this conclusion, I have also had regard to the potential impacts Mr Byles' actions may have had on the council. In particular, I note the following comments made within the Norman Waterhouse report:

We accept that the Comment contained allegations that had not been investigated and therefore were unsubstantiated. However, had the Council's elected body not become aware that the Comment had been removed from the Complete Answers, the allegations raised in the Comment would have gone unnoticed. The Council, like any other organisation, has an obligation to ensure that it maintains a safe working environment pursuant to the *Work Health and Safety Act 2012* (SA).

The removal of the Comment demonstrates a failure by the CEO to be open and transparent with the Council. Further, to ensure that the Council meets its standards to ensure a safe working environment, it is the Council's discretion whether the Comment needs to be investigated.

The Survey formed part of the CEO's KPIs which assessed his performance and conduct over the preceding year. If issues were raised about his performance and conduct in the Survey, these were matters [sic] should have been before the [CEO Performance Management Panel]. It was not the CEO's discretion to provide the Altered Answers to the CPMP.

29. I note that Mr Byles' alterations to the survey were not identified until March 2021, over a year and a half after the survey results were initially received in September 2019. As the survey formed part of Mr Byles' performance review process, his subsequent performance review would have been based on incomplete information. I also note that a comment raising significant work, health and safety concerns was not brought to the council's attention until over a year and a half after it was first made.

*The impact of the Mayor's relationship with Mr Byles*

30. Several council members have also raised concerns about the fraught relationship between the former Mayor and Mr Byles, citing it as a relevant factor in the council's decisions to:
  - offer Mr Byles a six month contract extension immediately after receiving the Norman Waterhouse report
  - take no disciplinary action against Mr Byles, apart from readvertising the Chief Executive Officer position
  - reappoint Mr Byles for a further two years.
31. It appears that these council members consider that Mr Byles' difficult relationship with the former Mayor may have justified and/or lessened the seriousness of his conduct.
32. I do not accept that assertion. Troubled relationships between council members and council staff are not an uncommon occurrence, and it is concerning to me that any council employee might respond to such difficulties by altering documents. I do not consider that it would have been appropriate in any circumstances for Mr Byles to have engaged in the conduct described.

33. In his response to my provisional report, the former Mayor noted that he was not the Mayor of the council when Mr Byles altered the survey report. In any case, I do not consider that Mr Byles' difficult relationship with the former Mayor prior to or following his appointment as Mayor would have justified or lessened the seriousness of his conduct.

*Mr Byles' performance in the Chief Executive Officer role*

34. Several council members advised my Office in their responses to my enquiries that Mr Byles had 'served council very well for many years', citing his positive performance as a relevant factor in the council's decisions to:
- offer Mr Byles a six month contract extension immediately after receiving the Norman Waterhouse report
  - offer Mr Byles a 5% pay increase immediately after receiving the Norman Waterhouse report
  - take no disciplinary action against Mr Byles, apart from readvertising the Chief Executive Officer position
  - reappoint Mr Byles for a further two years.
35. At the outset, I wish to state that I do not necessarily consider that Mr Byles' job performance should have been a relevant consideration in the council's response to his conduct.
36. Nevertheless, I have asked those council members who raised this as a relevant consideration to provide me with evidence of Mr Byles' positive job performance. The majority of those council members have only been able to provide me with broad statements of their own opinion. I have, however, been able to obtain copies of documents from Mr Byles' performance reviews in 2019, 2020 and 2021. In each of those performance reviews, Mr Byles' performance was consistently rated between 'Below Required Performance' and 'Competent' or 'Satisfactory'.
37. I have also been provided with a list of comments made by respondents to the 2020 Performance Review and note with concern the following statements:

In the past when Council request not achieved CEO tends to make up a 'not honest' story, rather than just say he didn't have time to do it.

...

Colin tends to keep as much information from Council as he can. Accurate and timely advice/reporting is not happening.

38. Several respondents also raised concerns that:
- staff were not being treated equally and were afraid to speak up 'for fear of becoming a target'
  - staff had been 'bullied and unnecessarily performance managed' by Mr Byles
  - the level of information being reported to the council by Mr Byles was inadequate
  - Mr Byles' leadership had seen significant overspending, with \$380,000 having been spent in excess of the council's allocated budget
  - staff felt that not all of their comments in the survey had been provided to the council
  - no action had been taken to address the concerns raised within the survey.

39. In addition, survey participants in Mr Byles' 2021 Performance Review were 'asked to provide brief comments relating to any immediate actions Colin could start, stop or continue, in order to positively impact his performance'. I note with concern the following comments:
  - Start:
    - 'Thinking seriously about resigning'
    - 'Providing all information accurately and in a timely fashion'
    - 'Owning mistakes'
    - 'Reporting to Council when asked to do so'
    - 'Being open and transparent to Council. The largest department were seemingly able to do as they pleased without concern. Once elected members identified the failures, then things were reported'
    - 'Be honest and upfront to Council, even when there is bad news'
  - Stop:
    - 'Being less than honest with the Council'
    - 'Allowing abusive staff to harass other employees'
    - 'Blaming others for failings. The buck has to stop somewhere'.
40. In light of the above, I do not consider that Mr Byles' performance in the Chief Executive Officer role should have been a relevant, let alone determinative, consideration in the council's response to his misconduct.
41. I also note that several council members have stated the conduct in question was 'out of character' for Mr Byles. I find this assertion difficult to reconcile with the comments I have quoted above, many of which indicate that Mr Byles had a habit of being less than truthful with the council in order to avoid criticism. In any case, I do not consider that this factor would be of enough significance to outweigh the seriousness of Mr Byles' conduct.

**Whether the council's actions in response to an investigation of Mr Colin Byles' conduct amounted to an error**

*Disciplinary action*

42. In undertaking my investigation, it has been difficult to obtain a clear answer from the council members as to whether the council took any action in response to Mr Byles' conduct. While the council resolved on 25 October 2021 to readvertise the Chief Executive Officer position, whether this decision was intended to be 'disciplinary action' appears to be a point of disagreement among the council members.
43. The differing responses I have received from the council members can be summarised as follows:
  - one council member claimed that Mr Byles was issued a warning at some point prior to 25 October 2021
  - two council members claimed that no disciplinary action was taken against Mr Byles, and the readvertisement of the Chief Executive Officer position was simply 'an attempt to see what was available in the marketplace'
  - the remainder of the council members appear to be of the view that the decision to readvertise the Chief Executive Officer position was the disciplinary action taken against Mr Byles in response to the conduct.
44. I have not been provided with any evidence of a warning issued to Mr Byles at any point. In response to further enquiries by my Office, the council member that made this assertion responded that they were unable to 'speak to a formal warning being given in

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May 2021'. As no other council members have mentioned a warning given to Mr Byles at any point, I am satisfied that this did not occur. I do, however, note with concern that this council member does not appear to have been fully informed in relation to actions taken in response to Mr Byles' misconduct and, as a result, has provided incorrect information to my Office.

45. As part of my enquiries, I asked the council members to provide me with their own views regarding whether any further disciplinary action should have been taken against Mr Byles. In general, it appears that the majority of the council members believed no further action was necessary because the conduct in question was not particularly serious, was 'out of character', and Mr Byles 'had demonstrated good performance over numerous performance reviews over a long period'.
46. For the reasons detailed earlier in my report at paragraphs 23-40, I am of the view that:
  - Mr Byles' actions were serious enough to warrant disciplinary action
  - Mr Byles' performance should not have been a relevant consideration in the council's response to his misconduct
  - it does not appear that this behaviour was out of character for Mr Byles, and I am not of the view that this is a relevant consideration.
47. I do not consider that the council's decision to readvertise Mr Byles' position was a proportionate disciplinary response to his actions in altering the survey responses. In reaching this conclusion, I have had regard to the legal advice received by the council in relation to this decision, as well as the fact that Mr Byles was encouraged by at least some council members to reapply for the position.
48. In its advice provided to the council on 8 October 2021, Norman Waterhouse outlined three options available to the council: to terminate Mr Byles' employment, to issue Mr Byles with a Final Warning, or to take no disciplinary action against Mr Byles.
49. In relation to the option of termination, Norman Waterhouse noted that 'summary termination may not be available anymore as, if Mr Byles' conduct was serious and wilful (to the extent that warrants summary termination), the Council has not acted in a timely manner to take disciplinary action against Mr Byles for such conduct'. The advice goes on to state that termination with notice would still be an option available to the council, however noted:

While we understand that the Council may be inclined to take disciplinary action against Mr Byles for his misconduct, we trust it is cognisant of the community's views on the termination of Mr Byles' employment noting he recently received an extension of the term of his Employment Contract and a pay rise. To this end, the Council will need to be prepared for media inquisitions and public questioning about how and why the termination of Mr Byles' employment occurred given his recent extension of employment.

50. I do not consider that this advice suggests termination was not an appropriate option available for the council to take in response to Mr Byles' conduct. Rather, I am of the view that the advice reflects public concern given the irreconcilable nature of the contract extension and pay increase afforded to Mr Byles when considered alongside his conduct. I do not consider that potential scrutiny from the public should have been a relevant consideration in the council's decision regarding what action to take in response to Mr Byles' conduct.

51. In relation to the second option of a Final Warning, Norman Waterhouse advised that:

Should the Council adopt this approach, it must ensure that the Final Warning explicitly states that if Mr Byles engages in misconduct again (whether of a similar nature or not), his employment with the Council may be terminated...

Council may also wish to say that Mr Byles [sic] Employment Contract would not be extended beyond the Expiry Date, as an additional measure.

52. Several council members suggested to my Office that the decision to readvertise Mr Byles' position was intended to serve as the 'Final Warning' suggested by Norman Waterhouse. I do not accept that the readvertisement serves the same function as the type of warning that is specifically described within the advice. In particular, I note that there was no explicit statement made to Mr Byles that his employment may be terminated if he engaged in misconduct again. Additionally, I note that a decision not to extend Mr Byles' contract was only suggested as 'an additional measure' to the Final Warning within the Norman Waterhouse advice.
53. I also note that, as stated by the council in a statement provided to the *Plains Producer* on 8 December 2021, 'The sentiment of the majority of the chamber, although not in the motion, was to encourage Colin to re-apply for the position'. I do not consider that a decision to readvertise the Chief Executive Officer role can realistically be viewed as disciplinary action, proportionate to the seriousness of Mr Byles' conduct, where he was publicly encouraged to reapply for the position.
54. In relation to the final option available to the council of taking no action, Norman Waterhouse advised as follows:

The Council may choose to take no disciplinary action against Mr Byles.

Should the Council choose to do so, there is a risk that the findings of the investigation, and the fact that the Council did not reprimand Mr Byles in light of those findings, is leaked to the public. While this is only a hypothetical, the Council should nonetheless be aware that this could ultimately result in public criticism, community distrust and reputational harm to the Council.

55. The advice provided by Norman Waterhouse clearly warns of a risk of 'public criticism, community distrust and reputational harm to the Council' should the council choose not to take any disciplinary action and the findings of the investigation be leaked.
56. It appears to me that the council received clear legal advice prior to its decision that, at the very least, Mr Byles' conduct warranted a Final Warning from the council.
57. I note that Mr Byles was, in fact, reappointed following the readvertisement of the Chief Executive Officer position. The reasons generally provided by the council members for the reappointment are as follows:
- he was considered to be 'the best candidate', demonstrating skill sets that the other candidates lacked
  - the council elections were approaching, and the council members believed that the reappointment of Mr Byles would offer some stability to the council.
58. I do not consider that it is the purpose of this investigation to determine who was the best candidate for the position of Chief Executive Officer with the council; rather, I have considered whether the decision to readvertise the position constituted an appropriate response to the findings of misconduct made against Mr Byles.

59. Nonetheless, in considering the council's response to the finding of misconduct made against Mr Byles, I considered it appropriate to seek further information about the recruitment process. I have thus considered the resumes and cover letters of each of the shortlisted candidates. Additionally, Mr Steve Nolis, who acted as the lead recruitment consultant on behalf of McArthur in the recruitment process, advised my Office that, had he been given the opportunity to express his opinion about the candidates, he would have recommended that an alternative candidate be appointed to the role rather than Mr Byles. Further, I do consider it appropriate that the recruitment panel give consideration to the finding of misconduct made against Mr Byles, Mr Byles' relatively lack lustre performance reviews, and the concerns raised in the course of those reviews, in reaching its decision. It is unclear to me whether the panel did so consider these issues about Mr Byles in reaching its decision.
60. While I note the above, I reiterate that the issue I am considering here is whether the council's actions in response to an investigation of Mr Colin Byles' conduct amounted to an error. In answering this question, I am of the view that the public generally expects public officers to be held to account after findings of misconduct are made against them, that disciplinary action be undertaken where appropriate, and that such action be clearly identified as disciplinary action. I am of the view that the council failed to meet these expectations.
61. In light of the above, including:
  - the council's statement that the readvertisement of the Chief Executive Officer position was 'to test the market', and its failure to clearly identify the readvertisement as a disciplinary measure, and
  - the council's encouragement that Mr Byles apply for the position

I do not accept that the council's decision to readvertise Mr Byles' position was commensurate to a Final Warning, as has been suggested by some council members.

62. I therefore consider that the council did not take appropriate disciplinary action in response to Mr Byles' conduct.

*Pay increase*

63. In addition to the lack of disciplinary action taken in response to Mr Byles' conduct, I also do not consider that the council's decision to award Mr Byles with a 5% pay increase was appropriate.
64. In response to my enquiries, the former Mayor advised my Office that the pay increase awarded to Mr Byles amounted to \$8,830 per annum, including superannuation. The former Mayor also noted that the increase would 'have an impact on all [Mr Byles'] accrued entitlements to annual leave, long service leave and superannuation in the defined benefit scheme'.
65. I understand that Mr Byles continued to receive this pay increase until the council terminated his employment in July 2022.
66. I have made enquiries with each of the council members about this issue. A recurring theme in the responses I have received is that Mr Byles was primarily provided with a 5% pay increase because:
  - in addition to his Chief Executive Officer duties, he had been performing the role of the Manager, Operational Services, which had been vacant since December 2020

- he had taken on a significant amount of extra work in managing government stimulus projects and the expenditure of Commonwealth grants.
67. I wish to state at the outset that, in ordinary circumstances, many of the explanations provided by the council members may be valid reasons for the grant of a pay increase.
68. This is, however, an unusual matter in that an unfavourable report into Mr Byles' conduct was received by the council immediately before this decision was made. As such, I have considered this decision in the context of the Norman Waterhouse report and Mr Byles' conduct, which the council had resolved to refer to the OPI. It does not appear that there was any particularly pressing need to make a decision regarding Mr Byles' salary at the 18 May 2021 meeting.
69. While I accept that Mr Byles may have been undertaking the duties of the Manager, Operational Services while that position was vacant, I consider that:
- any pay increase provided for this reason should not have continued after the Manager, Operational Services position had been filled
  - in light of the serious concerns surrounding Mr Byles' conduct, the council should have requested and obtained sufficient evidence to satisfy itself that Mr Byles was taking reasonable steps and facing genuine difficulties in filling the Manager, Operational Services position.
70. I note that the council decided to grant Mr Byles the pay increase on 18 May 2021. On 21 May 2021, Mr Byles emailed the council members advising that the new Manager, Operational Services had been appointed. The new Manager, Operational Services commenced work with the council on 31 May 2021.
71. I asked those council members who raised this issue why Mr Byles continued to receive the pay increase after the new Manager, Operational Services was appointed only three days later. In general, their responses appear to reflect a view that the ongoing pay rise was intended to recognise Mr Byles' 'commitment' to the council by undertaking the additional duties over the previous six months.
72. While several councillors have expressed the view that Mr Byles 'was going above and beyond in his service', I note in the alternative that a fundamental part of the Chief Executive Officer role is to maintain the day-to-day functioning of the council.
73. While it may have been appropriate for the council to provide Mr Byles with some form of compensation for the additional work he had performed while the Manager, Operational Services position remained vacant, I do not consider that an ongoing salary increase provided on this basis was justifiable.
74. I have also asked the relevant council members whether there is any evidence available to support the assertion that Mr Byles had been attempting to fill the Manager, Operational Services position without success. No such evidence has been provided to my Office to date.
75. To the contrary, the former Mayor's response to my enquiries suggests that Mr Byles may not have been taking reasonable steps to fill the Manager, Operational Services position:

The Manager of Operational Services resigned in November 2020, the position wasn't advertised until well into the New Year, applications eventually closed after an extension to the closing date, the interviews were delayed for so long that all the shortlisted applicants withdrew their interest in the position except one. The position

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was readvertised, and we eventually appointed someone to the position starting on the 31 of May 2021. I raised with the CEO on more than one occasion the possibility of appointing someone on a short-term basis to the position, I even suggested he approach a man ... who lived locally and had been in a similar role with [a different council] before his retirement.

76. I note that I have not made enquiries with Mr Byles about the recruitment process for the Manager, Operational Services. I do not consider that it is necessary to do so as, for my current purposes, it is only relevant to consider the information that was available to the council at the time that it made its decision. Ultimately, it does not appear that sufficient evidence was sought by or available to the council for it to satisfy itself that Mr Byles was taking reasonable steps and facing genuine difficulties in filling the position, such that it was necessary for him to take on the role himself for a period of six months.
77. Similarly, it does not appear that any particular evidence is available to support the view that:
  - the additional workload taken on by Mr Byles in managing government stimulus projects and the expenditure of Commonwealth grants was so significant as to warrant an ongoing pay increase
  - this work could not have been delegated to another officer within the council
    - in this regard, I note that several comments within the survey as well as Mr Byles' performance reviews state that he needed to 'delegate more', and that he would often 'take tasks away' from 'capable staff'.

Further, in the former Mayor's response to my provisional report, he noted that:

The appointment of a Project Manager had been on the CEO's action list for more than 12 months before an appointment was made, an appointment was only made after I suggested a name at a Council Meeting.

78. In addition to explanations regarding Mr Byles' increased workload, one council member expressed their view that the pay increase was justified because Mr Byles' 'pay rise after his last performance review was less than the general staff increase'.
79. I asked this councillor to explain why Mr Byles' previous pay increase was less than the general staff increase. In response, the councillor advised me that 'His previous pay increase was based on evaluation of his performance review'. As such, it would appear that Mr Byles was not provided with the same increase as other staff because his performance review did not support an increase of the same amount.
80. I do not consider that the pay increase given to Mr Byles in May 2021 can be justified on the basis that he was offered a lower pay increase previously, particularly where that lower pay increase was offered on the basis of an evaluation of his performance.
81. Having reviewed the confidential minutes of the 18 May 2021 council meeting, which simply state 'That the Chief Executive Officer be granted a 5% salary increase to the base cash remuneration package which includes a CPI increase, backdated to the Chief Executive Officer's anniversary date', I am unable to identify a clear justification for the 5% pay increase awarded to Mr Byles after receipt of the Norman Waterhouse report into his conduct. I note with concern that council members have been unable to provide my Office with consistent reasoning for the provision of the pay increase in response to my investigation.

82. I also note with concern that this decision may have suggested to council employees that any complaints raised about Mr Byles' conduct would not be taken seriously by the council.

*Contract extension*

83. In addition to the 5% pay increase provided to Mr Byles at the 18 May 2021 council meeting, I note that the council also resolved to offer Mr Byles a six-month contract extension.
84. The council members provided my Office with a range of responses regarding the contract extension including:
- 'the findings against Mr Byles did not in anyway effect [sic] the operation of Council'
  - 'The cost to council of the document alterations was nil'
  - 'Councillors wanted to keep Mr Byles as they saw it as a minor issue and to extend his contract to maintain a stable council'
  - 'staffing was significantly depleted at the time and the CEO had best knowledge of the workings of the range of roles vacant at the time'
  - 'The CEO at the time was filling two senior roles and pretty well holding the operation together'
  - 'The extension of six months, I felt, was warranted to help clear the backlog'
  - '[the council] also has a number of Projects on a tight timeframe which the CEO was managing in the absence of a Project Manager'
  - 'I was of the understanding that the CEO could alter the survey report to protect third parties. This is the reason Colin had given for altering the document very early after it was noted the document had been altered from a 9 page to a 7 page document. I believed this'
  - 'Given the circumstances of the error of judgement but more importantly the need to keep the operational side moving I supported keeping him in place'
  - 'He is a good man who was working under extreme pressures'
  - 'Colin had admirably led council through Covid as well as managing staff shortages which included one manager's role which he covered. All the while coping with a high level of targeted disrespect'
  - 'he had made a misjudgement which was out of character and as he had served council very well for many years, I was prepared to accept his continuing in the role'

I am of the view that these reasons provide insufficient justification for the council's decision.

85. I have already addressed in paragraphs 23-29 of this report why I am of the view that Mr Byles' conduct was serious. I have also addressed in paragraphs 33-40 why I do not accept that Mr Byles' performance in the Chief Executive Officer position should have been a relevant consideration in determining the council's response to his misconduct, or that this behaviour was 'out of character' for Mr Byles.
86. While I note the concerns raised by several council members regarding staffing shortages and an increased workload, I do not accept that such issues would be significant enough to outweigh a finding of misconduct so as to justify a six-month contract extension. In particular, I note that it remained an option for individuals to be appointed to these positions on an acting basis while recruitment processes took place. It does not appear that this option was considered at any point.

87. It is somewhat surprising to me that some council members have claimed that, at the time of voting to provide Mr Byles with a contract extension, they believed that he had altered the survey answers in order to 'protect' the employee that had made the comment. I note that the Norman Waterhouse report, received by the council members prior to making this decision, quotes Mr Byles as stating:

This comment in my opinion had the potential to cause reputational damage to myself if this comment was released to either elected members or the public as there wasn't any substantiated fact being put forward

I then removed pages 8 and 9 from the report which were the comments to the last question ... before the report was sent to Council to protect myself from any reputational damage that was not substantiated by any fact

...

I was concerned that this comment would be released/leaked from Council and would do damage to my reputation without the correct processes being used to lodge a complaint

...

When asked whether all comments were provided to Council, I answered that they were, based on the information I have supplied above, Comment 6 on page 8 was of concern to me due to reputational damage that could occur and as such maintained my answer that Council did have all the comments  
(my emphasis)

88. Based on the responses provided by Mr Byles to the Norman Waterhouse investigation, I consider it appears that Mr Byles' intentions in altering the document were solely to protect his own interests.
89. However, and in spite of the above, one council member did provide compelling submissions to my Office in relation to this issue. Those submissions are as follows:

This was a timing issue, as the matter that Mr Byles was being investigated for was had [sic] not been fully resolved and a decision had to be on [sic] renewal of the CEO contract, which was pending, I believe it was to before [sic] the end of the month. It was acknowledged that this issue would not be resolved in time. So the decision was made not to offer a 2-year extension, but just a six-month extension. In the belief that this matter would be resolved and decisions would be made in that 6-month time period.

90. The council member notes that the Norman Waterhouse report does not appear to make any definitive findings, stating only:

We find that the CEO's conduct may be in breach of Section 109(1) of the Act which requires employees to act with honesty in the performance of their official duties at all times (my emphasis).

and

We consider the CEO's conduct may be considered 'misconduct' as defined pursuant to Section 5 of the *Independent Commissioner Against Corruption Act 2012* (SA) given that his conduct has contravened the Code of Conduct. As such, the Council has an obligation to report such matters to the Office of Public Integrity or the Independent Commissioner Against Corruption (my emphasis).

91. In response to my provisional report, the former Mayor submitted as follows:

At the Council Meeting on the 18<sup>th</sup> of May 2021 when the six-month contract extension was given, the CEO still had six months remaining on his existing contract, in my view more than enough time to receive a reply from the OPI. His contract was to finish in November 2021. If no reply had been received from the OPI, a decision could have been made then whether to give an extension or appoint an acting CEO.

92. I have reviewed Mr Byles' contract with the council and note that clause 5.4 provided that 'The Council must advise the CEO by no later than 1 May 2021 whether it intends to offer the CEO a further employment agreement'. Accordingly, I am satisfied that a decision regarding whether to renew Mr Byles' contract was already overdue at the time of the 18 May 2021 council meeting.

93. Noting that:

- there is a degree of uncertainty in the language used in the findings of the Norman Waterhouse report
- the council resolved to report Mr Byles' conduct to OPI at the same meeting
- a decision was required to be made regarding whether to renew Mr Byles' contract

I am of the view that it would have been reasonably open to the council to consider that it was necessary to extend Mr Byles' contract while the ICAC considered the matter.

94. I do, however, note that, similar to the council's decision to issue Mr Byles with a 5% pay increase, the council's decision to extend Mr Byles' contract following receipt of the Norman Waterhouse report may have suggested to council employees that complaints about Mr Byles' conduct would not be taken seriously. As such, I wish to comment that it may have been appropriate for the council to have suspended Mr Byles with pay while his conduct was being investigated.

*Investigation of the survey comment*

95. Upon commencing my investigation, I noted with concern that it was unclear whether the council had taken any action to address the comment made within the survey which Mr Byles had attempted to withhold from the council.

96. In undertaking my investigation, I considered it appropriate to conduct enquiries with Ms Belinda Richards, the HR Consultant who undertook an investigation into allegations of bullying and sexual harassment made against Mr Byles, to help me consider whether her investigation was intended to address this issue. I asked Ms Richards to explain:

- the purpose of her investigation
- the process followed for her investigation
- what information she had received in the course of her investigation
- whether any employees expressed concern to her that they could not provide information to the investigation for any reason
- whether the investigation process was guided by any particular council policies.

97. In response to my enquiries, Ms Richards advised that she was 'engaged to undertake an investigation of concerns raised about the conduct of Mr Colin Byles', and that the investigation was commenced following receipt of the email from the ASU to the council on 9 March 2021.

98. A letter from the Mayor was distributed to all employees of the council on or around 19 May 2021 inviting them to contact Ms Richards confidentially ‘to advise of any complaints of bullying behaviours, sexual harassment or improper adherence to processes by Council officers’.
99. I understand that three current employees raised concerns with Ms Richards about a ‘historical culture of bullying and inappropriate behaviours at the Council primarily the CEO’.
100. All of the employees who contacted Ms Richards ‘were concerned about the repercussions of the CEO becoming aware of their identity in the process and the treatment that may follow’. Ms Richards advises me that she ‘received emails, phone calls and met in person with one witness at [her] office in North Adelaide to provide as much confidentiality as possible’.
101. Ms Richards advised that all of the concerns raised were ‘historical, and recounted conduct they had been informed about from various employees who had since left the Council’. She also noted that ‘none of those who provided information could speak to direct observation, or current behaviour of this type’.
102. I understand that a former employee of the council did approach Ms Richards in relation to their own experience of working with Mr Byles, however was unable to provide any evidence in support of their claims.
103. Upon consideration of the information received in her investigation, Ms Richards concluded that, while the matters raised were concerning, there was insufficient evidence or detail at that time to continue with the investigation.
104. Ms Richards advises me that she considered the provisions of the Grievance Resolution Policy in conducting her investigation. It does appear that Ms Richards’ investigation was in compliance with that policy.
105. While it does not appear that the council took any specific action in response to the comment made within the survey, I consider that the terms of Ms Richards’ investigation, which was being undertaken at the same time, were broad enough to encompass the concerns raised. As such, I do not consider that the council failed to take any action to investigate the comment made in the survey regarding the treatment of female staff by Mr Byles. I also do not consider that the council has failed to meet its Work, Health and Safety obligations.

*Policies*

106. In the course of my investigation, the council has provided me with the following:
  - Public Interest Disclosure Policy
  - Employee Conduct Policy
  - Grievance Resolution Policy
  - Complaints Policy.
107. Having reviewed these documents, I consider that it is appropriate for me to comment on some issues I have identified with regard to the council’s suite of complaint handling policies and its ability to receive and consider complaints of bullying and/or sexual harassment. It is possible that these issues may have contributed to the errors in the council’s response that I have identified above.

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108. Primarily, I note with concern that the council does not have a specific policy regarding complaints of sexual harassment made by council employees.
109. I note that on 17 November 2022, section 63 of the *Statutes Amendment (Local Government Review) Act 2021* amended section 107(2) of the Local Government Act to include the following new provision:

that employees are protected from sexual harassment by members of the council or other employees **and that appropriate processes exist for dealing with complaints of employees relating to sexual harassment...** (my emphasis)

110. I consider that this recent amendment is an indication that the nature of sexual harassment complaints inherently requires a separate complaint handling process altogether. At present, such a policy does not exist within the council.
111. I also note with concern the lack of detail contained within the council's Grievance Resolution Policy. The policy is approximately one and a half pages long, consisting of broad statements regarding the 'Purpose' and 'Objective' of the policy, and the following 'Statement':

Employees of Council have a right to investigate a decision which affects them where they consider the decision taken, or the decision making process to be unfair. Such complaints will be known as a personal grievance.

All grievances will be taken seriously, responded to promptly and dealt with in a confidential manner. Resolution of a grievance will have regard to natural justice, fairness and equity.

Training of Managers and Supervisors is an integral part in the prompt investigation and fair resolution of personal grievances.

Council should endeavour to achieve resolution of a personal grievance within seven (7) days of the grievance first being raised.

112. The Grievance Resolution Policy does not contain any instructions as to how a 'personal grievance' may be lodged, and does not provide any specific details of the procedures to be followed for such grievances. There do not appear to be any other documents associated with the policy that might provide such guidance.

### **Opinion**

In summary, I consider that:

- the council did not take appropriate disciplinary action in response to Mr Byles' conduct
- the council's decision to provide Mr Byles with a 5% pay increase after findings of misconduct were made against him was not justifiable or appropriate
- the council's decision to extend Mr Byles' contract while the ICAC considered the findings of misconduct was reasonably open to it to make. However, it may have been more appropriate for the council to have suspended Mr Byles with pay while his conduct was investigated
- the council did not fail to take any action to investigate the comment made in the survey regarding the treatment of female staff by Mr Byles
- the council did not fail to meet its Work, Health and Safety obligations
- the issues I have identified in the council's suite of complaint handling policies may have contributed to the errors in the council's response that I have identified above.

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In light of the above, I consider that the council's actions in response to the investigation of Mr Byles' conduct amounted to an error under the Ombudsman Act.

**Whether the council's decision to offer Mr Byles an ongoing 5% pay increase constitutes maladministration under the Ombudsman Act**

113. As I have noted above, although it appears that the council's primary justification for providing Mr Byles with a 5% pay increase was that he had been performing the role of the Manager, Operational Services in addition to his Chief Executive Officer duties, the Manager Operational Services role was filled on 21 May 2021, only three days after the pay rise was awarded. In spite of this, Mr Byles continued to receive the pay increase until the council terminated his employment in July 2022. In light of this, I have considered whether the council's decision to issue the 5% pay increase on an ongoing basis constitutes maladministration under the Ombudsman Act.
114. I do not consider that the pay increase offered to Mr Byles would amount to an irregular and unauthorized use of public money. Rather, I am of the view that the more relevant consideration is whether the decision amounts to a practice of a public authority that has resulted in 'substantial mismanagement of public resources'.
115. While there is no specific test as to what is considered substantial mismanagement, I have based my conclusion on a number of considerations (in accordance with previous investigation reports),<sup>5</sup> including:
  - the appropriateness of the amount of the expenditure
  - the benefit (real or perceived) gained by the public from the expenditure
  - the public's expectations of government agencies
  - whether the expenditure was reasonably necessary for the carrying out of the council's functions.
116. I have already explained above why I am of the view that the council's decision to issue the ongoing 5% pay increase to Mr Byles was not appropriate. It follows that I also do not consider the amount of the expenditure to have been appropriate.
117. I also do not consider that the public appears to have gained any particular benefit from the expenditure. Given that a new Manager, Operational Services commenced work with the council 13 days after this decision was made, I do not consider that the public would have gained any benefit from the salary increase being provided to Mr Byles on an ongoing basis.
118. I consider that the public would expect that payment offered to a public officer for the performance of additional duties would cease to be provided once the performance of those additional duties has ended.
119. Finally, I do not consider that the ongoing expenditure was reasonably necessary for the carrying out of the council's functions, noting that Mr Byles was no longer performing the duties for which the pay increase was awarded.
120. I therefore consider that by providing Mr Byles with an ongoing 5% pay increase, including after he had ceased performing the duties of the Manager, Operational Services, the council committed maladministration by substantially mismanaging public resources.

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<sup>5</sup> Ombudsman SA - Investigation into use of corporate credit cards by the City of Onkaparinga, November 2019, at paragraph 37 <<https://www.ombudsman.sa.gov.au/publication-documents/investigation-reports/2019/City-of-Onkaparinga-Use-of-Corporate-Credit-Cards.pdf>>.

## Opinion

In light of the above, I consider that the council's decision to offer Mr Byles an ongoing 5% pay increase constituted maladministration under the Ombudsman Act.

### Whether there was an error in the process followed by the council for the reappointment of Mr Byles to the CEO position

121. I considered it appropriate in this matter to conduct enquiries with Mr Nolis in order to obtain his perspective on the recruitment process. In response to those enquiries, Mr Nolis advised that:
  - he undertook a recruitment workshop with the council members 'to be fully briefed in relation to the operations of Council, their financial position, major projects, community expectations, salary package to be offered and the preferred profile of the CEO'
  - he advertised the role online on 14 January 2022, and in print media on 15 January 2022, with applications closing on 31 January 2022
  - 18 applications were received from across Australia for the Chief Executive Officer position, and 'the quality of the field was considered good'
  - he conducted one on one interviews with eight short-listed candidates, and then presented the council with a recommended short-list of five candidates
  - the five short-listed candidates were invited to attend a panel interview with the Mayor and council members, at which Mr Nolis was also in attendance
  - at this point, Mr Nolis was advised that he would be 'acting as a facilitator for the remainder of the process and would not be included in any further decision making'
  - following the second round of interviews, three candidates were invited by the council to a third interview at which they were invited to prepare and deliver a 20-minute presentation followed by a Q&A session with the panel
  - one of the three invited candidates withdrew from the process prior to the final interview
  - after the third round of interviews, the council was unable to reach a resolution on the preferred candidate. The panel agreed to take a lunch break during which the council members would consider their position
  - when the panel returned from the break, a vote was taken and Mr Byles was recommended for appointment with a split vote
  - given that there had been a split vote, Mr Nolis asked the council whether they would like him to offer his opinion, however some councillors stated that his opinion 'should not be sought at this point of the process' and, as such, he 'was not invited to speak on the merits of either candidate or make any recommendations to Council'.
122. It is concerning to me, in light of section 98(4a) of the Local Government Act, that Mr Nolis was not permitted to provide advice to the council regarding the appointment. As Mr Nolis was not appointed to the selection panel or permitted to provide advice to the council, it appears that the council has failed to comply with this legislative requirement. As such, I consider that the recruitment process followed by the council was in breach of the Local Government Act.

## **Opinion**

In light of the above, I consider that the process followed by the council for the reappointment of Mr Byles to the Chief Executive Officer position was in breach of the Local Government Act, and therefore amounted to an error under the Ombudsman Act.

## **Summary and Recommendations**

In light of the above, my final view is that:

1. the council's actions in response to the investigation of Mr Byles' conduct amounted to an error under the Ombudsman Act
2. the council's decision to offer Mr Byles an ongoing 5% pay increase constituted maladministration under the Ombudsman Act
3. the process followed by the council for the reappointment of Mr Byles to the Chief Executive Officer position was in breach of the Local Government Act, and therefore amounted to an error under the Ombudsman Act.

To remedy these errors, I recommend under section 25(2) of the Ombudsman Act that:

1. the council members and the council's new Chief Executive Officer, once appointed, undertake training regarding misconduct and maladministration, and how such issues should be addressed by the council in future
2. the council develop and implement a policy establishing an appropriate process for dealing with complaints of employees relating to sexual harassment
3. the council review and update its Grievance Resolution Policy to ensure that it is fit for purpose.

Following receipt of my provisional report, the council's current Acting Chief Executive Officer provided the following comments in relation to the above recommendations:

A training session for the new Council and new CEO will be scheduled soon after the new Council is assembled. I will provide instructions for the facilitator to specifically address the topic of Council misconduct and maladministration. These session(s) will include Senior Management of the Council, who will relay this information to all employees of Council.

...

[The new policy establishing an appropriate process for dealing with complaints of employees relating to sexual harassment] will be prepared and presented to the new Council for adoption within the next few months.

...

Council has a Grievance Resolution Policy, which, as you pointed out, is deficient. Until October 2017, that policy contained guidelines outlining the procedure for lodgement of grievances, and the subsequent action required of Managers and the CEO.

At a Council meeting on 17 October 2017, a report from the then-CEO recommended that the Grievance Resolution Policy be amended and the guidelines removed from the policy, on the basis that they were "a procedure". I cannot locate formal guidelines for the grievance process, nor any subsequent review of the policy by Council. There are drafts of the procedure.

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The procedure will be re-incorporated into the policy and presented to Council for review and adoption. This is expected at the December 2022 meeting of Council.

The council member that responded to my provisional report also commented that 'Steps have already been taken for training due to [the recent] election process', and that 'The acting CEO has already identified additional areas where the Council's policy [sic] are lacking and could be improved'. This council member noted that the current council members 'hope and expect to build on the Council's strengths and improve [its] weaknesses to help ensure similar issues will not happen in the future'.

I am pleased to hear of the progress already made in implementing my recommendations. I look forward to receiving further updates in due course.

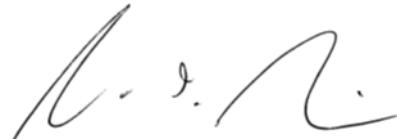
**Final comment**

In accordance with section 25(4) of the Ombudsman Act, I request that the council report to me by **25 February 2023** on what steps have been taken to give effect to my recommendations above; including:

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

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**

25 November 2022