

STATEMENT ON INVESTIGATION

Published pursuant to section 26(3) of *Ombudsman Act 1972*

17 January 2020

INVESTIGATION OF REIMBURSEMENTS PAID TO AN EMPLOYEE OF THE CITY OF ONKAPARINGA FOR MEAL EXPENSES AT INTERSTATE CONFERENCES

I have concluded an investigation of a matter that was referred to my Office by the Independent Commissioner Against Corruption (**the Commissioner**).

My investigation concerned reimbursements that were paid by the City of Onkaparinga (**the council**) to Ms Alison Hancock, Director Corporate and City Services at the council.

Ms Hancock submitted claims to be reimbursed for the purchase of food and alcohol while attending interstate conferences in Brisbane, Canberra and Hobart in 2016 and 2017.

The reimbursement claims were subsequently authorised by Mr Mark Dowd, former Chief Executive Officer at the council.

The Commissioner referred the following issues to my Office for investigation:

1. Potential issue of misconduct in public administration by Ms Hancock.
2. Potential issues of misconduct and maladministration in public administration by Mr Dowd.

I investigated issue one and issue two individually. The results of my investigation were comprised within a single confidential report which has not been authorised for publication.

Relevant information from the City of Onkaparinga's policies and procedures

Council employees (who have been approved to attend a conference) may claim reimbursement from the council for the cost of their meals while attending the conference. Council employees may claim reimbursement of up to \$30 for breakfast, up to \$30 for lunch, and up to \$50 for dinner. This information is contained within the council's Conference or Seminar Procedure.

For completeness, elected members of the council may also claim reimbursement from the council for the cost of their meals while attending a conference (up to \$22.50 for breakfast, up to \$22.50 for lunch, and up to \$41.40 for dinner).

Claims for reimbursement are submitted by council employees upon their return from the conference. The council employee is required to submit a Reimbursement Claim Form and attach relevant receipts. The employee is also required to sign a declaration stating:

In submitting this claim, I confirm the item(s) claimed for above have been incurred in accordance with relevant City of Onkaparinga procedure(s) or policy(s)

The claim is then submitted for authorisation by the employee's Team Leader, Manager or Director, who is required to sign a declaration stating:

In authorising below I confirm the item(s) claimed for above have been incurred in accordance with relevant City of Onkaparinga procedure(s) or policy(s)

Reimbursements that were investigated by me

I investigated claims for reimbursement for food and alcohol purchased at six restaurants located in Brisbane, Canberra and Hobart.

Ms Hancock and Mr Dowd were present at all six restaurants when the food and alcohol was purchased. On several occasions, an additional council employee and elected members of the council were also present at the restaurants when the food and alcohol was purchased.

Ms Hancock paid for the restaurant transactions and subsequently claimed reimbursement for the amount paid by her. During my investigation, Ms Hancock advised that this was standard practice, as many restaurants do not accept the splitting of bills.

Information about the six transactions is provided in the table below.

Transaction at Madam Wu, 18 October 2016 at 10:44pm
<p>1 x Glaetzer Bishop Shiraz, BI \$80.00 1 x GLS Laughing Mag Shrz \$13.00 1 x 1Lt Sparkling Antipodes \$9.00 1 x Asahi 400ml \$11.00 1 x Asahi 500ml \$14.00 3 x Scotch JW BI Nip \$27.00 1 x Malteser Espresso Martini \$17.00 1 x Bug Dump \$18.00 1 x Chicken Ribs \$12.00 1 x Kingfish Tartare \$20.00 1 x Beef Cheeks \$35.00 1 x Rice \$3.00</p> <ul style="list-style-type: none"> • 2 council employees were present • \$259.00 was claimed for reimbursement (\$129.50 per person) • \$162.00 was spent on alcohol <p>The time on the receipt suggested this was for a dinner meal. The amount claimed exceeded the daily meal limit for an individual employee and exceeded the combined meal limit applicable to two employees. A total of \$159.00 appeared to have been reimbursed in excess of the policy allowances.</p>
Transaction at Maldini Hobart, 22 May 2017 at 01:16pm
<p>1 x Milton Pinot Gris Bottle \$56.00 1 x Kelvedon Pinot Noir Bottle \$59.00 1 x Pappardelle lamb \$28.50 1 x Risotto Pescatore \$30.50 1 x Rocket Salad \$13.50</p> <ul style="list-style-type: none"> • 2 council employees were present • \$187.50 was claimed for reimbursement (\$93.75 per person) • \$115.00 was spent on alcohol <p>The time on the receipt suggested this was for a lunch meal. The amount claimed exceeded the daily meal limit for an individual employee and exceeded the combined meal limit applicable to two employees. A total of \$127.50 appeared to have been reimbursed in excess of the policy allowances.</p>
Transaction at Jamie's Italian Restaurant, 19 June 2017 at 01:22pm
<p>5 x Peroni \$47.50 2 x Apple T Pink \$19.00 1 x Crispy Squid \$15.00 1 x Spicy Fries \$7.50 1 x The Porkie \$24.00</p>

- 3 council employees were present
- \$114.50 was claimed for reimbursement (\$38.05 per person)
- \$47.50 was spent on alcohol

The time on the receipt suggested this was for a lunch meal. The amount claimed exceeded the daily meal limit for an individual employee and exceeded the combined meal limit applicable to three employees. A total of **\$24.15** appeared to have been reimbursed in excess of the policy allowances.

Transaction at Courgette, 19 June 2017 at 09:35pm

1 x St Prefert Cotes Du Rhone \$79.00
 1 x Tiefenbrunner Pinot Grigio \$54.00
 3 x Niepoort Vintage 375ml \$45.00
 1 x Coffee \$5.00
 Food \$454.00 (description not clearly decipherable)

- 3 council employees and 3 elected members were present
- \$637.00 was claimed for reimbursement (\$106.17 per person)
- \$178.00 was spent on alcohol

The time on the receipt suggested this was for a dinner meal. The amount claimed exceeded the daily meal limit for an individual employee and exceeded the combined meal limit applicable to three council employees and three elected members. A total of **\$363.70** appeared to have been reimbursed in excess of the policy allowances.

Transaction at Canberra Charcoal Grill, 20 June 2017

The receipt did not itemise food and drinks, however it provided a breakdown of 'food', 'liquor' and 'other'.

- 3 council employees and 1 elected member were present
- \$568.00 was claimed for reimbursement (\$142.00 per person)
- \$200.00 was spent on alcohol

It was unclear whether this was a purchase for a lunch or dinner meal. Irrespective, the amount claimed exceeded the daily meal limit for an individual employee and exceeded the combined meal limit applicable to three council employees and one elected member. Assuming that the expenditure was subject to the more generous dinner allowance, a total of **\$376.90** appeared to have been reimbursed in excess of the policy allowances.

Transaction at Akiba, 20 June 2017 at 05:13pm

20 x Asahi Dry 400ml \$220.00
 1 x Hapuka Sashimi \$15.00
 1 x Corn Pancake \$9.00
 1 x Duck dumplings \$14.00
 1 x Teriyaki Kobe Beef \$33.00
 1 x Prawn Fried Rice \$21.00

- 3 council employees were present
- \$222.00 was claimed for reimbursement (\$74.00 per person)
- \$200.00 was spent on alcohol. Ms Hancock submitted that she and another employee contributed \$50.00 of their own money towards the purchase of alcohol
- The total transaction amount on the receipt was \$312.00. The receipt stated that \$90.00 was paid in cash and \$222.00 was paid on eftpos. This suggested that Ms Hancock claimed reimbursement of the amount paid by eftpos

It was unclear whether this was a purchase for a lunch or dinner meal. Irrespective, the amount claimed exceeded the daily meal limit for an individual employee and exceeded the combined meal limit applicable to three council employees. Assuming that the expenditure was subject to the more generous dinner allowance, a total of **\$72.00** appeared to have been reimbursed in excess of the policy allowances.

General Considerations

I considered that:

- all six transactions exceeded the meal limits imposed by the relevant council policies
- a total of \$1,123.25 appeared to have been reimbursed to Ms Hancock in excess of the council's policy allowances.

In relation to the purchases of alcohol, I considered that:

- a significant portion of the restaurant transactions were for the purchase of alcohol
- the council's policies (at the time that the restaurant purchases were made) were silent on whether council employees were permitted to be reimbursed for the purchase of alcohol in connection with attendance at a conference or seminar
- it would nevertheless be expected that any consumption of alcohol with a meal whilst attending an interstate conference or seminar would be moderate
- by way of comment, the amount that had been spent on alcohol was more than would be justifiable or appropriate, in such circumstances.

I also noted that:

- the council's policies had implied that it was the responsibility of individual council officers to seek reimbursement for their expenditure, and did not appear to contemplate a request for reimbursement of expenditure incurred on behalf of others
- it was not possible to distinguish items purchased for Ms Hancock's own consumption, and those purchased on behalf of other council officers
- the approach adopted by Ms Hancock and Mr Dowd appeared to have resulted in Mr Dowd reviewing requests for reimbursements in relation to the purchases of food and alcohol for his own consumption. That arrangement was very problematic.

Whether Ms Alison Hancock committed misconduct in public administration by submitting claims for reimbursement for expenditure that was contrary to the council's Conference or Seminar Procedure

Consideration of alleged conduct by Ms Hancock

I considered that:

- Ms Hancock requested reimbursement for expenditure in excess of the amounts permitted by the council's Conference or Seminar Procedure
- Ms Hancock did not document her rationale for exceeding the amount permitted in the council's policy.

I also considered that:

- in submitting the claims for reimbursement, Ms Hancock had declared that the items claimed were in accordance with the relevant policies and procedures of the council
- however, the reimbursements claimed by Ms Hancock contravened the Conference or Seminar Procedure as they exceeded the meal allowances provided within that policy.

Summary of responses to my investigation from Ms Hancock

In responding to my investigation, Ms Hancock stated that she had claimed the reimbursements pursuant to the provisions within her contract of employment.

I reviewed the conditions of Ms Hancock's employment contracts (that were in force when she submitted the claims). I did not consider that the conditions within Ms Hancock's employment contracts authorised her to seek reimbursement for expenditure in excess of the daily meal allowances within the council's policies.

Ms Hancock also submitted that the claims were made with the approval of Mr Dowd. I did not consider that subsequent authorisation of the reimbursements by Mr Dowd precluded Ms Hancock from ensuring that the reimbursements she had claimed were in accordance with the council's policies and procedures.

In responding to my provisional report, Ms Hancock asserted that:

- she had been persuaded by Mr Dowd that certain provisions within her contract of employment allowed her to circumvent the limits that could be claimed for reimbursement with the council's policy
- she was at all times acting on the advice, direction and instruction by Mr Dowd to pay for the abovementioned transactions, and to later submit the claims for reimbursement.

I was of the view that it was incumbent of someone in Ms Hancock's position (as a senior member of the council's executive management) to be acutely aware of the responsibilities imposed upon her (and other employees) by the council's policies and procedures. I did not accept that the advice, direction or instructions from Mr Dowd would diminish that responsibility.

Ms Hancock also stated that at all times she was of the view that Mr Dowd's perspective on what was a legitimate work-related expense prevailed, and existed as part of an implied contract condition when she submitted her first claim for reimbursement. I had difficulty accepting that argument.

Ms Hancock also submitted that:

- she was not aware at the time that she sought reimbursement for the amounts claimed that they were in excess of the prescribed amount, and that this was not brought to her attention at any stage by any of the people signing off and/or authorising the claims
- at no time did the Team Leader, Financial Accounting at the council raise any concerns with her directly relating to the requests for reimbursement.

I did not accept those arguments. I considered that it was Ms Hancock's responsibility to ensure that in submitting the claims for reimbursements, she was doing so in accordance with the council's policies and procedures.

Outcome of investigation

I concluded that:

- By requesting reimbursement from the council for expenditure that was in excess of the limits provided within the Conference or Seminar Procedure, Ms Hancock acted in contravention of the Conference or Seminar Procedure and in doing so, contravened clause 2.7 of the Code of Conduct for Council Employees.
- In failing to document her rationale for exceeding the meal limits provided, and in declaring that the reimbursements requested were incurred in accordance with the relevant policies or procedures of the council, Ms Hancock failed to act with reasonable care and diligence in the performance of official duties, in contravention of clause 2.2 of the Code of Conduct for Council Employees.
- By contravening the Code of Conduct for Council Employees, Ms Hancock committed misconduct in public administration for the purposes of section 5(3)(a) of the *Independent Commissioner Against Corruption Act 2012*.

I also concluded that:

- By failing to act with reasonable care and diligence in the performance of official duties, Ms Hancock contravened section 109(2) of the *Local Government Act 1999*.

- By failing to observe the Code of Conduct for Council Employees, Ms Hancock's actions were contrary to the requirements of section 110(4) of the *Local Government Act 1999*.
- As such, Ms Hancock's conduct appears contrary to law for the purposes of section 25(1)(a) of the *Ombudsman Act 1972*.

I made a recommendation under section 25(2) of the *Ombudsman Act 1972* that the council's Chief Executive Officer issue a formal reprimand to Ms Hancock for her misconduct in public administration.

During my investigation, I was made aware that Ms Hancock partially repaid to the council money reimbursed to her for the purchase of alcohol at the six restaurants. I did not consider it necessary to recommend further repayment to the council in respect of those reimbursements.

I also noted that the council has more recently made a number of changes to its policy framework. As such, I did not consider it necessary to make a recommendation in respect of the council's policies concerning the purchase of alcohol.

Whether Mr Mark Dowd:

- ***committed misconduct in public administration by authorising reimbursement for expenditure that was contrary to the council's Conference or Seminar Procedure***
- ***committed maladministration in public administration by authorising reimbursement for expenditure that was contrary to the council's Conference or Seminar Procedure***

Consideration of alleged conduct by Mr Dowd (misconduct)

I considered that:

- clause 2.2 of the Code of Conduct for Council Employees required council employees to act with reasonable care and diligence in the performance of official duties
- in this case, the requirement to act with reasonable care and diligence included a requirement to carefully consider each claim for reimbursement against the limitations for meal allowances, to confirm that such expenditure had been incurred in accordance with the Conference or Seminar Procedure.

I considered that in circumstances where:

- the reimbursements that were authorised by Mr Dowd contravened the Conference or Seminar Procedure because they exceeded the meal allowances specified within that procedure
- there appeared to be a lack of documentation setting out why Mr Dowd was satisfied in the circumstances that those reimbursements should otherwise be made
- in authorising the reimbursements, Mr Dowd declared that the items claimed were incurred in accordance with the relevant policies or procedures of the council

Mr Dowd's conduct (in authorising the reimbursements) contravened the requirement to act with reasonable care and diligence in the performance of his official duties.

Consideration of alleged conduct by Mr Dowd (maladministration)

I considered that:

- the reimbursements claimed by Ms Hancock were in apparent contravention of the Conference or Seminar Procedure

- Mr Dowd's responsibilities in reviewing the claims submitted by Ms Hancock required him to consider the expenditure at issue and confirm that it had been incurred in accordance with the Conference or Seminar Procedure
- it was also Mr Dowd's responsibility to decline to authorise reimbursement for any expenditure incurred in excess of the allowances identified in the procedure.

Further, I considered that Mr Dowd's conduct in authorising the reimbursements paid to Ms Hancock resulted in the substantial mismanagement of public resources because:

- the conduct resulted in Ms Hancock being reimbursed for expenditure that exceeded the allowances identified in the Conference or Seminar Procedure
- I did not consider that the expenditure was appropriate, nor that the expenditure was necessary for the carrying out of the council's functions
- to the extent that Mr Dowd may have believed that some of the expenditure was authorised by the terms of his or Ms Hancock's employment contract, this consideration was not documented sufficiently or at all
- the conduct saw Mr Dowd consider and authorise expenditure incurred for his own benefit
- the authorisation provided by Mr Dowd effectively caused council funds to be used for the purchase of significant quantities of alcohol, absent proper justification
- I did not consider such expenditure would meet the public's expectations of government agencies.

Summary of responses to my investigation from Mr Dowd

In responding to my investigation, Mr Dowd stated that the reimbursements that had been authorised by him were in accordance with the employment contracts of the relevant staff at the time that the expenses were incurred.

I reviewed the employment contracts of the employees who were present at each of the restaurants listed above. I was not persuaded by Mr Dowd's response.

In responding to my provisional report, Mr Dowd stated that:

- there have been significant improvements made to all of the policies and procedures within the council and clear guidelines set
- under the new procedures there is a process that exists whereby spends outside of any relevant guidelines can be incurred and reported if and when required and appropriate.

In addition, noting that the council's policies and guidelines had been significantly reviewed, Mr Dowd stated that he wished to provide information and examples where he considered the guidelines did not apply, which included as follows:

- the expenditure that had been incurred on food and alcohol in Canberra ranged from \$72 to \$142 per person, whilst the various dinners offered as part of the conference program, attended by Mayors and staff ranged from \$110.00 to \$140.00 per person
- a recent local government professionals seminar/conference (which included an address by the Ombudsman and Commissioner) was at a cost of \$285 per person for lunch and alcohol, which was attended by an excess of 20 Chief Executives.

Mr Dowd also stated that:

- he accepted that when all expenditure is scrutinised by members of the public there are infrequent spends that are outside of guidelines and therefore subject to question
- he believes that there are certain times when expenditure outside of "guidelines" is appropriate or of value

- he acknowledges that some of the expenditure would not sit well with some, but these are few and far between and as highlighted in the examples above, sometimes appropriate or relevant.

I acknowledged the changes to the council's policies and procedures. However I also noted that:

- the investigation concerned the actions of Mr Dowd in light of the policies and procedures that were in place at the time that Mr Dowd authorised the reimbursements claimed by Ms Hancock
- the investigation considered whether, in authorising the reimbursements, Mr Dowd's actions contravened the Code of Conduct for Council Employees
- the considerations included whether the reimbursements as claimed and subsequently authorised by Mr Dowd were contrary to the Conference or Seminar Procedure, rather than focusing on the overall appropriateness of the quantum of purchases made.

Outcome of investigation

I concluded that:

- by authorising reimbursement from the council for expenditure that was in excess of the limits provided within the Conference or Seminar Procedure,
- by failing to document his rationale for authorising reimbursements that exceeded the limits provided, and
- in declaring that the reimbursements that he authorised were incurred in accordance with the relevant policies or procedures of the council

Mr Dowd failed to act with reasonable care and diligence in the performance of official duties, in contravention of clause 2.2 of the Code of Conduct for Council Employees.

As such, I concluded that Mr Dowd committed misconduct in public administration for the purposes of section 5(3)(a) of the *Independent Commissioner Against Corruption Act 2012*.

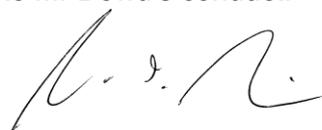
I also concluded that:

- By failing to act with reasonable care and diligence in the performance of official duties, Mr Dowd contravened section 109(2) of the *Local Government Act 1999*.
- By failing to observe the Code of Conduct for Council Employees, Mr Dowd's actions were contrary to the requirements of section 110(4) of the *Local Government Act 1999*.
- As such, Mr Dowd's conduct appears contrary to law for the purposes of section 25(1)(a) of the *Ombudsman Act 1972*.

In addition, I concluded that:

- In authorising the reimbursements claimed by Ms Hancock, Mr Dowd committed maladministration in public administration for the purposes of section 5(4)(a)(i) of the *Independent Commissioner Against Corruption Act 2012*.

As Mr Dowd is no longer an employee at the council, I have taken no further action in relation to Mr Dowd's conduct.



Wayne Lines
SA Ombudsman

17 January 2020