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Investigation into use of corporate credit cards by the City
of Onkaparinga | November 2019



OmbudsmanSA

Investigation of a referral under the *Independent Commissioner Against Corruption Act 2012* concerning the City of Onkaparinga.

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ICAC ref: 2018/000043; 2018/000176

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SENSITIVE: *Ombudsman Act 1972* and *ICAC Act 2012*
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Introduction

In September 2017 the Independent Commissioner Against Corruption (**the Commissioner**) referred to me a matter relating to the corporate credit card expenditure of the City of Onkaparinga (**the council**).

Having regard to the community interest in the corporate credit card expenditure of the council, as evidenced by media reports, I considered it was in the public interest to issue a media statement confirming my investigation on 22 May 2018.

The referral arose from two complaints¹ that were made to the Office for Public Integrity. Councillor Martin Bray,² Mr John Houlahan³ and Ms Yvonne Wenham⁴ (collectively referred to as ‘the complainants’ in this report) have consented to be identified in this report. The complaints were based on detailed information provided by the council to Mr Houlahan pursuant to the *Freedom of Information Act 1991*.

While Mr Houlahan set out in a spreadsheet over 6000 transactions that he wanted me to investigate, I chose to focus on the particular transactions brought to my attention by the Commissioner. During the investigation, the complainants brought further transactions to my attention. While I considered those transactions, I determined that investigation of those further transactions was not necessary or justifiable. I did not consider that the further time and resources required to investigate those matters was an appropriate use of my limited resources.

I accept that some of the expenditure, when considered in isolation, may not in itself amount to maladministration. I am concerned, however, at the pervasiveness of the types of expenditure considered in this report. There appears to have been a culture of spending public money without proper consideration of its appropriateness and necessity.

In addition to considering the referral under the ICAC Act, I have also considered whether the council acted in a way that was unreasonable, unlawful or wrong within the meaning of section 25 of the *Ombudsman Act 1972*. In doing so I have utilised my powers to conduct an ‘own initiative’ investigation under section 13(2) of the Ombudsman Act.

It is to the council’s credit that during the course of my investigation, it comprehensively reviewed its credit card expenditure guidelines and produced new policy documents. As part of that process, the council consulted with its constituents and a Community Engagement Feedback Report was presented to the council at its meeting on 17 April 2018. I consider generally that the changes to the council’s processes are appropriate.

Ms Wenham has pointed out that the expenditure occurred despite previous reviews recommending that changes to Transaction and Fringe Benefit Tax descriptors be implemented and tested. I agree with Ms Wenham that that is a matter for concern. I have carefully considered whether it is necessary to recommend that the council implement measures to test its current processes. While I do not consider it necessary to make such a recommendation at this stage, I will continue to monitor any complaints about the council’s expenditure. In the event that I consider there appears to be evidence of further systemic issues, I will take action accordingly.

I am aware that the relevant expenditure was incurred during a period when the council’s internal procedures provided little guidance as to what constituted appropriate expenditure. It

¹ The first complaint was made by Councillor Bray. The second complaint was made by Mr Houlahan and Ms Wenham as co-complainants.

² Councillor Bray consented to be identified on 4 October 2017.

³ Mr Houlahan consented to be identified on 9 October 2017.

⁴ Ms Wenham consented to be identified on 9 April 2018.

is worth noting that I have not had cause in this investigation to consider further expenditure since the policies and procedures were amended. Despite the considerable improvements made by the council, given the nature and extent of the alleged inappropriate expenditure, and the community interest, I consider it has been in the public interest to pursue my investigation.

That said, I acknowledge that the investigative process, including delays, have been disconcerting for the parties involved.

Mr Mark Dowd was Chief Executive of the council during the time of the relevant expenditure and most of my investigation (i.e. up until my revised provisional report was issued). Mr Dowd ceased employment with the council on 23 October 2019. Mr Dowd provided information and responses on behalf of council administration (i.e. not on behalf of the elected members). The council's Mayor, Erin Thompson, has emphasised that she did not see or contribute to Mr Dowd's submissions, nor were those submissions put to the elected members. Mayor Thompson also noted the length of my investigation and the fact that there has been a local government election and change to the composition of the council in that time.

It was a matter for Mr Dowd to determine the extent to which the elected members should be apprised of, and involved in my investigation. It is important to emphasise that a reference to 'the council' in this report, is a reference to council administration, not the elected members, unless otherwise specified.⁵

Cr Bray has sought a clear statement that is appropriate for elected members to do case study audits of performance and expenditure when they become aware of concerns. Cr Bray considers:

A strong and chilling culture can exist in local government that says elected members should not take an interest in reviewing operational detail.

The extent to which detailed review of operational matters falls within the role of an elected member may be open to argument. In a general sense, however, I note that section 59 of the Local Government Act states that the role of an elected member includes:

- (ii) to keep the council's objectives and policies under review to ensure that they are appropriate and effective
- (iii) to keep the council's resource allocation, expenditure and activities and the efficiency and effectiveness of its service delivery, under review [.]

In my view, elected members should not be discouraged from undertaking those functions, and council administration should take all reasonable steps to assist elected members in doing so.

It is also necessary to emphasise that the focus of my investigation has not been on individual employees but the council administration's practices. Further, there has not been evidence that unauthorised expenditure has occurred.

While the responses provided by Mr Dowd indicated that the council (i.e. council administration) did not accept that the expenditure considered in this report amounted to maladministration for the purposes of the ICAC Act or was otherwise in error for the purposes of the Ombudsman Act, I do not agree with that view. In fact, I find that view somewhat surprising, given that the council acknowledged that its practices at the relevant time did not

⁵ Mr Houlahan and Ms Wenham submitted in response to my revised provisional report that Mr Dowd acted without authority in purporting to put a position on behalf of 'the council'. While I understand Mr Houlahan's and Ms Wenham's concerns, I do not consider that Mr Dowd did anything inappropriate in referring to 'the council' in his response. Mr Dowd was responding in his capacity as Chief Executive Officer of the council (administration) and it is not unusual for my office to receive responses in such terms. Mr Dowd never purported to speak on behalf of the elected members and it was always clear to me that he was putting forward a position on behalf of council administration, which he was entitled and requested to do.

meet community expectations and the extensive changes made since. Mr Dowd and council staff generally cooperated in providing information to my investigation. However, in my opinion, Mr Dowd at times took an unnecessarily defensive approach which has not been helpful.

Mr Dowd also raised concerns that my investigation was led or improperly influenced by the complainants. I do not accept that at all. It is not my role to advocate on behalf of complainants, and I have assessed all information impartially.

Since Mr Dowd left the council, Mr Kirk Richardson has been Acting Chief Executive Officer. Mr Richardson was not previously involved in responding to my investigation, but familiarised himself with the matter and provided a response to my provisional report in a relatively short timeframe. Mr Richardson also sought the views of the elected members on his response to my Office. I appreciate Mr Richardson's transparency and co-operation with my investigation. I also acknowledge his expressed commitment to working constructively with my Office to achieve the best outcome for the council's community.

Investigation

My investigation has involved:

- assessing the information provided by the complainants
- seeking a number of responses from the Chief Executive Officer, Mr Dowd
- seeking a number of responses from the former Mayor, Ms Lorraine Rosenberg
- interviewing Mr Dowd under affirmation
- making enquiries with [REDACTED]
- making enquiries with Adelaide Oval Management
- considering:
 - the *Code of Conduct for Council Employees (the Code of Conduct)*
 - the council's *Procurement Policy*
 - the council's *Use of Corporate Purchase Card Procedure 2014-2017 (Credit Card Procedure)*
 - the council's *Methods of Procurement Procedure*
 - the council's *Corporate Purchase Card Administrative Policy 2018 (the 2018 Purchase Card Policy)*
 - the council's *Purchase Card Use Administrative Procedure 2018 (the 2018 Purchase Card Procedure)*
 - the council's *Corporate Hospitality Purchasing Guideline 2018 (the 2018 Guideline)*
 - the *Community Engagement Feedback Report 17 April 2018 (the Community Feedback Report)*
 - the *Local Government Act 1999*
- preparing a provisional report and providing it to the parties for comment
- seeking a further response from the council in light of information provided in response to my provisional report
- preparing a revised provisional report and providing it to the parties for comment
- clarifying aspects of my revised provisional report and process with Mr Houlahan and Ms Wenham by telephone
- preparing this report.

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.⁶ It is best summed up in the decision as follows:

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

⁶ 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.

Responses to my provisional report and revised provisional report

I addressed responses to my provisional report in my revised provisional report. I do not consider it necessary to repeat that discussion in this report

I received responses to my revised provisional report from:

- Mayor Thompson
- Mr Richardson
- Cr Bray
- Mr Houlahan
- Ms Wenham
- Ms Rosenberg.

I have addressed those responses as necessary in this report.

I did not receive a response to my revised provisional report from Mr Dowd.

Background

1. It is alleged by the complainants that council staff, as well as former Mayor Rosenberg, misused their corporate credit cards during the period of 2014-2016. It is alleged that there has been prolific and substantial expenditure by council staff using credit cards which could amount to maladministration. It has also been alleged that the council has failed to maintain accurate records in respect of credit card expenditure records. I provide further details of specific expenditure in the body of this report.
2. The credit card data was sourced from two Freedom of Information (FOI) applications made to the council in 2016 and 2017 by Mr Houlahan. The information obtained through FOI was compiled into spreadsheets, which have been provided to my Office. The master spreadsheet produced by Mr Houlahan is referred to as 'Master Spreadsheet'.
3. During the process of my investigation, the council has reviewed its credit card expenditure guidelines and has produced new policy documents. Given the expenditure in question occurred in 2014-2016, I have considered the policy documents which were applicable during this time. However, during this report I also make reference to the specific changes that have been made by the council to its policies and procedures.⁷
4. Mr Dowd provided the following information as a general response to the allegation that corporate credit card purchases were being unreasonably incurred:

Council credit card transactions are accessed by staff through council's financial institutions expense and transaction management system (Smartdata). Access to this information electronically displayed electronically for review and approval which is conducted by staff in accordance with council's operating procedure.

Corporate purchase cards (staff credit cards) are used for payment of purchases as part of budgeted operations. Council has internal control measures in place to manage and monitor credit card use. Internal controls include:

- an application approval process for new credit card applications
- a credit card policy and procedure
- card user acknowledgement of the policy relating to credit card use
- credit card transaction limits and monthly expenditure limits
- restrictions (block codes) for certain types of expenditure
- the requirement for monthly reconciliations and provision of supporting documentation
- management review and approval of expenditure.

Corporate credit cards are subjected to internal audits through an approved audit plan. Past audits have not identified fraudulent purchases, however, to ensure continuous improvement of corporate activities and having regards to risk assessment and past audits we continue to identify opportunities that exist to implement further efficiency.⁸

⁷ Three new policy documents were adopted by the council at the council meeting on 17 April 2018.

⁸ Letter to my Office dated 11 December 2017.

Relevant law and policies

5. Section 5(4) of the ICAC Act provides:

(4) *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.

6. The council's Credit Card Procedure relevantly provided:

a. Purpose

The purpose of this procedure is to provide guidance to staff when using a corporate purchase card

...

6.1 Make a purchase

Corporate purchase cards must only be used to expend corporate funds in accordance with the Procurement Policy, the officer's financial delegation and the approved budget.

The corporate purchase card is not for private or personal use.

The total value of all purchases for each single use of the corporate purchase card must be within the card holder's single transaction limit. Purchase amounts must not be split to bring the value within this limit or any other financial limitations.

Cardholders must ensure that at the time of purchase they receive a tax invoice from the supplier.

7. The council's Procurement Policy relevantly provided:

a. Introduction

1.1 The contents of and the commitments that Council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the Council's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

1.2 In compliance with section 49 of the *Local Government Act 1999* (Act), Council should refer to this policy (Policy) when acquiring works, good and services.

...

b. Purpose

2.1 This policy seeks to:

2.1.1 define methods by which Council can acquire works, goods & services

- 2.1.2 demonstrate accountability and responsibility of Council to ratepayers
- 2.1.3 be fair and equitable to all parties involved
- 2.1.4 enable all processes to be monitored and recorded
- 2.1.5 ensure that best possible outcome is achieved for the Council

...

Policy Principles

...

3.1.4 Accountability and Transparency

In our decisions regarding procurement we will be:

- 3.1.4.1 responsible for decisions, actions and resulting outcomes
- 3.1.4.2 able to give and provide documented evidence of reasons for the decisions made.

...

5. Procurement Methods

- 5.1 Generally, open and fair competition is best achieved by undertaking an open tender process so that all interested parties have an opportunity to bid. However, there may be procurements in which a tender process will not necessarily deliver the most advantageous outcome for the Council. In such instances, other market approaches may be more appropriate.
- 5.2 The Council may, having regard to its Procurement Principles and any other factors considered relevant by the Council, in its absolute discretion determine to utilise one or more of the following procurement methods:
 - 5.2.1 Direct purchasing
 - 5.2.1.1 This is where Council purchases from a single source, without first obtaining competing bids.
 - 5.2.1.2 This method may be suitable for low value, low risk goods and services, and where the supplier already has a successful service history with the Council.

The council's Methods of Procurement Procedure relevantly provides:

Purpose

The purpose of this procedure is to provide guidance on the determination of an appropriate method of procurement.

...

Background information

Section 49(a1) of the *Local Government Act 1999* requires council to obtain value in the expenditure of public money.

...

5.2 Determine Method of Procurement

The appropriate method of procurement will be determined primarily by the value of purchase as per the following table.

Value of Purchase (excl GST)	Method of Procurement	Purchase Method
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Up to \$20,000	Any of these options may be used: Option 1 - Direct Purchase Option 2 - Request for Quotation (RFQ), with a minimum of 1 written quotation. If work is available under Panel Contract then should seek quotation from a panel contractor.	Reimbursement of expenditure up to \$80 via Petty Cash (use Petty Cash Voucher) Reimbursement of Expenditure over \$80 through accounts (use Employee Reimbursement Claim form) Corporate Card (within individual Card limits) Purchase Order (use Request for Purchase Order form) Panel Contract (use Authority to Work form)
\$20,000 up to \$200,000	Any of these options may be used: Option 1 - Request for Quotation (RFQ), with a minimum of 3 written quotations. If work is available under panel contracts then should seek quotations from panel contractors. Option 2 - Request for Expression of Interest (REOI), Request for Proposal (RFP) or Request for Tender (RFT) In either option, at least one supplier must be located within City of Onkaparinga council area (if known).	Purchase Order (use Request for Purchase Order form) Panel Contract (use Authority to Work form) Contract (use Request for Contract form)
Over \$200,000	Request for Expression of Interest (REOI), Request for Proposal (RFP) or Request for Tender (RFT) which must be publicly advertised i.e. an open process.	Contract (use Request for Contract form)

Whether the council committed maladministration in public administration by systemic misuse of corporate credit cards

The council's policies

8. At the outset I comment that the council's policies as they existed in 2014-2016 were, in my view, inadequate.
9. The council's Credit Card Procedure provided little to no guidance on whether transactions were appropriate, merely stipulating that the corporate credit card could not be used for 'personal use'.
10. The council's Procurement Policy indicates that there will be situations where direct purchasing is an appropriate method of procurement. I note that a purchase with a corporate credit card would ordinarily be a direct purchase.
11. The council's Methods of Procurement Procedure provides that any purchase under the amount of \$20,000 may be via direct purchase and may be paid for by corporate credit card, as long as the individual cardholder's limit is complied with.
12. Therefore it would appear that the only limitations on credit card use were that the cardholder must comply with their individual limit (or in any event, not spend over \$20,000 in one transaction on their corporate credit card) and that the card could not be used for personal use.
13. I note that on 17 April 2018 the council approved new policy documents relating to credit card usage. These documents were the 2018 Purchase Card Policy, the 2018 Purchase Card Procedure and the 2018 Guideline.
14. The Community Engagement Feedback Report was also presented to the council at the meeting on 17 April 2018. I consider that the Community Feedback Report is a useful indicator of community expectations regarding the expenditure of public money by a local council.
15. In the Corporate Purchase Card Review report by Mr Dowd which was considered by the council at the meeting on 17 April 2018, Mr Dowd stated:

Corporate Governance undertook a process compliance review following the release of the FOI documents. The review found that many descriptions used to describe transactions were inadequate and did not provide an appropriate level of context to the purchase. In addition the review found the use of purchase cards were mainly for service support, hardware items, library stock (DVDs, books), costs of conferences and training, catering to support community programs/events, external and internal meetings, approved travel and accommodation, staff recognition of service events as flowers and gifts. These transactions were in accordance with relevant procedures at the time. The review also found almost 70 percent of purchases were from businesses located in the council area.
16. In response to my provisional report, Mr Houlahan provided detailed comments on specific expenditure as addressed in the Community Engagement Feedback Report. I address those comments as necessary in the body of this report.
17. Mr Houlahan provided detailed comments raising concerns with the information and questions provided in the Community Engagement Feedback survey. Mr Houlahan considers that some of the background information provided was misleading. While I have reconsidered the Community Engagement Feedback Report in light of Mr

Houlahan's comments, that process itself is outside the scope of this investigation and I do not consider that the issues raised by Mr Houlahan otherwise warrant investigation.

18. In introducing the new policies to the elected body for its consideration, Mr Dowd made the following statements:

At its meeting held on 20 February 2018 Council resolved that -

'the CEO provides a public report to Council by 17 April 2018 with draft policy changes to credit card use to ensure that all future transactions align with community standards and expectations for frugal use of ratepayer funds.'

Corporate purchase cards are an effective and efficient part of doing business which will continue to be utilised and we will continue to implement a range of measures regarding the ways cards are used...

Many of the issues highlighted by the recent media coverage were already being scrutinised and improvements identified. The most disappointing aspect of the television report and ensuing publicity were the personal attack on administrative staff who were simply doing their job.

It is important to note that reviews are constantly occurring within the organisation[.] [T]he steps outlined below represent further measures being taken, in addition to changes already made.

A public report was reviewed by Council's Audit Risk Value and Efficiency Committee (ARVEC) in July 2017, advising members of the release of an 1196 page Freedom of Information (FOI) document about corporate purchase card information for an application received in May 2017. The report identified a number of process improvement opportunities and the continuous improvement actions already in progress by procurement and finance staff.

An update report was provided to the ARVEC in December 2017 with further analysis of the purchase card expenditure by the Business Process Improvement team.

The purchase card transactions covered the three year period from January 2014 to December 2016 with a total value of just over \$3.5 million, and represent less than 1% of council's total annual budget which is around \$180 million.

52% of the spend was for operational requirements: service support/hardware (community projects/infrastructure/assets)/library materials.

19. During his interview on affirmation, Mr Dowd provided the following information regarding the new policies:

...Once we received a number of inquiries and commentary on credit card spend through the FOI that was received, I undertook a process to review our hospitality guidelines, our credit card policies and procedures. In my opinion, it was extremely thorough, that review. So I conducted that with my Resident E Panel, so 400 on our E Panel. We went out publicly and put out a survey asking all of our residents to give us their opinion on what was and wasn't appropriate, based on flowers, bereavement spends, meals; you name it, it covered most things, and we went out to all staff.

So somewhat slightly unusual, I think most people create their own policies and rely on information received from others, so I think we went above and beyond. That policy was adopted. The changes were adopted as written. I did engage Onkaparinga Council Watch and some of the people that we are aware of, and they declined to participate. They said they were happy with the guidelines as they were, it was more about how they were being managed, which was a bit strange.

So, essentially, we made some amendments to existing parts of the purchase cards. We removed some components and where there was subjecture we couldn't get - I couldn't

get a consistent approach from residents and staff alike. For example, flowers and bereavements. For example, meals. So where I couldn't do that, we largely relied on the ATO guidelines for some of that.

On top of that, the ongoing conversation is happening at a Local Government Association level. There is a credit card working group that is meeting next Friday to make sure there is consistency across all councils.

So that is adopted and in place. The publishing of credit card statements is something we will move to as well. That has not yet been adopted. I have an IT platform challenge that I'm working through, but we hope by next month, or the month after, we will be able to publish our statements online so we are fully transparent.

There has been a review also, not just on the guidelines, but the adoption and claiming of credit cards. So we have reduced numbers significantly as it stands. That is a combination of people handing them back saying "I don't want one", and just through a more tighter review, and I guess the other component of that is how we report. So we have tightened up all the codes, the cost centres, the actual descriptors because, I think, one of the learnings we found from looking through how people are claiming them back, there was a little bit of inconsistency so they have all been redone and adopted as well. That is done and we are operating under the new policies.

20. In response to my provisional report, Mr Houlahan raised the following points in relation to Mr Dowd's comments. Mr Houlahan:

- disputed Mr Dowd's assertion that the review process was 'extremely thorough'
- noted that Onkaparinga Council Watch, a community group, provided multiple examples of non-compliance with the council's guidelines as they were
- raised concern that the council intended to publish statements in the audit committee agenda and minutes rather than as a more easily accessible monthly credit card transaction record on the council's website.

21. As discussed earlier in this report, I do not consider that the council's review process warrants investigation. My view remains that, subject to one issue discussed below, the council has appropriately responded to concerns raised about its policies and procedures.

22. Whilst I commend the council for proactively addressing deficiencies in the Credit Card Procedure, I note that the preamble for the 2018 Purchase Card Policy states:

The contents of and the commitments that council makes in this policy are not intended to be and should not be interpreted to be any more than a statement of the City of Onkaparinga's general position in relation to those matters, and to facilitate its aspirations wherever it is reasonable to do so.

23. In my view, this is an inappropriate caveat to place upon the council's policy and raises questions about the enforceability of the policy. The preamble is also inconsistent with clause 2 of the policy which reads:

Policy Purpose

The purpose of this policy is to provide clear direction regarding expenditure using council Corporate Purchase Cards.

24. The inclusion of the preamble appears to run counter to the council's intention to bring about a cultural shift regarding the use of credit cards, and to enforce the guidelines it has set for its employees to follow in order to rebuild community trust and meet the community's expectations.

25. In response to this assessment Mr Dowd has responded that:

With respect, the Preamble simply reaffirms that the Council has taken a specific policy position in relation to the use of credit cards, with the intention to facilitate the objectives of the Council, to the extent possible. Otherwise, the Policy Purpose is clear, being to 'provide clear direction regarding expenditure using council Corporate Purchase cards.

That is, consistent with principles that otherwise apply in statutory interpretation, subject to any statement to the contrary, the Policy is to be read in its entirety and not simply diminished to its Preamble.⁹

Nevertheless, the Council takes no issue with amending the Preamble to read as follows:

The contents of and the commitments that Council makes in this Policy are a positive statement of the City of Onkaparinga's position in relation to those matters, to facilitate its objectives as appropriate.

26. I take no issue with the council's proposed amendment of the preamble.

Access to other employee's credit cards

27. It has been alleged by the complainants that Mr Dowd appears to have access to the corporate credit cards of other staff members and that such access was inappropriate.

28. The basis for this allegation appears to be the fact that expenditure which appears to benefit Mr Dowd has been paid for using the corporate credit card of ██████████, Executive Assistant to the CEO, instead of a credit card in the name of Mr Dowd.

29. Enquiries have been made with Mr Dowd about this issue. Mr Dowd told my investigation:

I do not have a corporate credit card...█████████ is my Executive Assistant. It is part of her role to manage my diary appointments and this include bookings and payment (where required) of and for my appointments that are undertaken as part of my official duties.¹⁰

30. My investigation has not found any evidence to substantiate the allegation that Mr Dowd has had access to the physical credit cards of other employees. In my view, it is usual practice within an agency for an individual's executive assistant to organise appointments and payments.

31. Mr Houlahan responded to my provisional report expressing doubt about Mr Dowd's credibility as to whether ██████████ managed all of the relevant bookings and payments and asking that more enquiries be made in that regard.¹¹ Cr Bray raised similar concerns and expressed the view that 'directors should hold cards to take accountability directly for transactions'.

32. In my view, given that the focus of my investigation is on the council's practices rather than those of individuals, I consider little turns on whether or not ██████████ managed all of the relevant bookings and payments and I do not consider it necessary to explore that issue further.

⁹ Letter to my Office dated 1 March 2019.

¹⁰ Letter to my Office dated 11 December 2017.

¹¹ Letter to my Office dated 1 March 2019.

My consideration of maladministration

33. In order for the council to have committed maladministration in public administration, the credit card expenditure must have been incurred in accordance with a practice of the council that results in either:
- irregular and unauthorised use of public money; or
 - the substantial mismanagement of public resources.
34. I note that there is no evidence before me that any of the credit card expenditure was unauthorised. Rather, as I have outlined above, there was an absence of effective limitations in the Credit Card Procedure which applied at the relevant time. I am therefore unable to conclude that any of the expenditure was not authorised under the Credit Card Procedure.
35. Mr Houlahan's response to my provisional report expressed concern that in his view the credit card procedures were approved by officers who were responsible for a significant amount of inappropriate expenditure, and queried the appropriateness of more junior officers approving expenditure of more senior officers. While I note Mr Houlahan's comments, without evidence that such an arrangement is in breach of policy or financial management standards, I am not prepared to express a view about that.
36. Throughout this report, I have considered various categories of expenditure which the complainants allege to be inappropriate expenditure. I have sought and considered responses from the council on each category of expenditure. I have then considered whether the expenditure constitutes the substantial mismanagement of public resources, and thus constitutes maladministration in public administration.
37. There is no specific test in the ICAC Act as to what is considered substantial mismanagement under the ICAC Act. Therefore I have based my conclusion on a number of considerations, including:
- the benefit (real or perceived) gained by the public from the expenditure
 - the public's expectations of government agencies
 - the appropriateness of the amount of the expenditure
 - whether the expenditure was reasonably necessary for the carrying out of the council's functions.
38. Mr Dowd responded to my provisional report disputing that the expenditure amounted to maladministration or that it amounted to an error for the purposes of the Ombudsman Act. Mr Dowd's submissions included the following points:
- consideration of substantial mismanagement of public resources cannot be reduced to numbers, but needs to take into account context in which expenditure occurred
 - in making decisions, the council is required to consider issues such as:
 - productivity
 - culture
 - stability in the workplace
 - work, health and safety issues
 - community confidence
 - achieving best possible outcomes for the community
 - as a corporate entity, councils must take not only a 'whole of government' approach but also have a State and National focus
 - the council has delivered savings in excess of \$1 million per annum over the past two years and the lowest rate increases over the past two years.¹²

¹² Mr Houlahan disputes this assertion. I have not considered it necessary to verify it, as nothing turns on Mr Dowd's assertion for the purposes of my conclusions.

39. I have carefully considered all of Mr Dowd's submissions. I acknowledge that the council is a large organisation operating in a corporate environment and has an interest in being an 'employer of choice'. That said, the fact remains that the council is responsible and accountable to its constituents for the expenditure of public funds and in that sense is no different to any other government agency. My view remains that the tests I have applied are appropriate.
40. I have had regard to the fact that the relevant expenditure is a small proportion of the council's overall budget. My view remains that it is not necessary for the value of expenditure to be substantial for there to be substantial mismanagement of public resources. That said, I will always consider any allegation of maladministration on its particular facts.

Directors Group Meetings

41. The complainants allege that there has been systemic misuse of corporate credit cards by the Directors Group. Examples of expenditure include hire cars to attend Directors Group offsite meetings, the hiring of venues for offsite meetings, and restaurant meals which did not appear to be official functions of the council. The complainants provided the following examples:
- a Directors Group lunchtime meeting at Press Food and Wine on 22 December 2015 to the value of \$675.50
 - a CEO and elected member meeting at Press Food and Wine on 16 May 2016 to the value of \$198
 - the Directors Group and Managers Christmas lunch on 9 December 2016 amounting to \$1,268
 - three expenses were incurred on 27 and 31 October 2016, described as 'travel home' from winemakers lunches and Christmas functions, amounting to \$201.40, \$201.40 and \$197.74 respectively.
42. In total, it is alleged that between 2014 and 2016, \$12,623.53 has been spent on Directors Group meetings, including meals at restaurants, venue hire for offsite meetings, hire cars and catering for in-house meetings. I note that it is not specifically alleged that every individual expense was inappropriate.
43. Mr Dowd provided the following response to my investigation:

I dispute this allegation.

I am the CEO of an organisation which has in excess of 700 employees. My leadership team is fundamental to the proper operation of the Council. The Directors Group that I operate is one of the leanest numbers of Directors/General Managers across Local Government. My management group is also operated extremely lean.

To ensure my leadership group have the right tools and the appropriate amount of time in which to operate the business effectively and efficiently I invest in them the time and space to ensure that concentration of their activities. To that end, the Directors Group has quarterly off site sessions which extend either over one or two days to strategically set the compass of the organisation.

The Press Food and Wine lunch was one such session, was a working lunch and was over a period in excess of five hours. It is therefore not only appropriate but an obligation to ensure that my staff are fed during their working hours if they are away from their ordinary environments.

The use of hire cars by the Directors Group is to ensure under Work Health Safety obligations there is a safe and reliable passage of travel home from work commitments.

The Directors Group and Managers lunch involved around 28 of my leadership group which equates to around \$45 per head. I consider this an appropriate gesture from the organisation given the excessive number of out of hours and weekend work that this group provides to the organisation annually.

I wish to also point out that there have been many occasions whereby the Directors Group (including myself) have had off site meetings, have worked throughout the whole day (and evening) and funded our nutrition requirements ourselves.

For an organisation of our size and operating budgets with the extensive delegated responsibilities that the Directors Group have, I consider that the organisation funding the occasional meal is appropriate.¹³

44. In his response to my provisional report, Mr Dowd's submissions included the following points:

- the council's Director's Group is one of the 'leanest' in the South Australian local government sector
- the fact that Director's Group meetings are held at restaurants does not necessarily mean that the Directors were not necessarily engaged in meaningful work at the time
- taking a leadership group off site for strategic planning sessions has benefits for 'free thinking' and 'brain storming' initiatives
- I had not taken into account the extra hours worked by Directors without additional remuneration, and in circumstances where they have had to pay for their own meals.

45. I provide the following table in which I outline the expenses which have been incurred in relation to Directors Group meetings:

Retailer from whom purchase was made	Date of purchase	Council description of purchase	Value of purchase
<i>Restaurant Meals</i>			
Melt CBD	25 August 2014	Director Group Business Meeting	\$429
The Marquis	25 August 2014 ¹⁴	Director Group Business Meeting	\$299.80
Oaks Embassy	9 March 2015	Director late meeting early working accommodation including breakfast [amount spent on breakfast unknown] ¹⁵	\$217.20
The Currant Shed	31 March 2015	Catering - DG Lunch	\$300
Press Food and Wine	22 December 2015	Catering - DG Lunch Meeting	\$675.50
Golden Boy	8 July 2016	Director Group - Business Dinner	\$475
Press Food and Wine	11 July 2016	Director Group Workshop	\$507.80

¹³ Letter to my Office dated 11 December 2017.

¹⁴ Mr Richardson clarified with my investigation that the transactions at Melt and The Marquis on 25 August 2014 were in relation to one off-site Director's Group meeting held on 21-22 August 2014.

¹⁵ Mr Richardson clarified with my investigation that while this may have included breakfast, the transaction was for approved accommodation for one of the council's directors.

Melt CBD	13 July 2016	Director Group Workshop ¹⁶	\$255
Star of Greece	29 August 2016	Director/Managers business meeting offsite	\$266.50
Salty Pork Fino Seppel	19 October 2016 NB Mr Houlahan states this actually occurred on 19 September	Directors Group - catering for DG offsite, lunch time meeting According to Mr Dowd, this was a meeting with the Barossa council for formal Council business attended by 9 persons (five of which were the Onkaparinga DG group, four from Barossa council).	\$687.50
Chapel Hill Winery	9 December 2016	Directors Group - DG and Managers Xmas Lunch ¹⁷	\$1268
The Belair Hotel	21 December 2016	Directors Group - DG Xmas lunch held offsite	\$428.70 plus \$197.74 car hire ¹⁸
<i>Venue hire</i>			
SANATFBall League	22 April 2014	Venue Hire - DG	\$100
AAMI Stadium	9 June 2014	Venue Hire - DG AAMI Stadium	\$125
St Francis Winery	14 November 2014	Director/managers workshop, room hire, conference menu beverages	\$1121.60
Molloy Dooker Wines	7 December 2015	Director managers team building session	\$1050
Peppers Waymouth Hotel	13 July 2016	Director Group Accommodation offsite workshop x5 rooms	\$826.20
<i>Hire car</i>			
SA Hire Cars	23 December 2015	DG - Hire car for travel home from function	\$148.79
SA Hire Cars	14 September 2016	Director Travel - car hire for [REDACTED]	\$160
SA Hire Cars	27 October 2016	Directors Group - Smart car hire for directors ([REDACTED]) travel home from winemakers	\$201.40
SA Hire Cars	31 October 2016	Directors Group - Smart car hire for directors ([REDACTED]) travelling home from winemakers	\$152.05
SA Hire Cars	19 December 2016	Directors Group - Travel home from DG Xmas function	\$150.05
SA Hire Cars	21 December 2016	Misc - Charge for extra drop off (original invoice \$150)	\$45.69

¹⁶ Mr Richardson clarified with my investigation that the transactions at Golden Boy, Press and Melt were in relation to a 2-day off-site Directors' Group meeting held on 7-8 July 2016.

¹⁷ According to Mr Richardson, this was an off-site Strategic Planning Day rather than a Christmas lunch.

¹⁸ This amount was incorrectly recorded as \$45.69 in my provisional report

SA Hire Cars	21 December 2016	Misc - Charge for wait time (original invoice \$150)	\$80
<i>Catering¹⁹</i>			
CP Catering D & HP	(undated)	Catering - DG	\$47.70
P & K Wessel	(undated)	Catering - DG Meeting	\$35
Woolworths	(undated)	Catering - DG Meeting	\$12.28
(unknown)	16 March 2014	Catering - Directors Business Function	\$47.40
Woolworths	19 March 2014	Catering - DG meeting CEO's office	\$31.60
Home Grain Bakery	13 May 2014	Catering - DG Meeting	\$12.50
Woolworths	9 June 2014	Catering - DG Meeting	\$34.23
Coles	13 June 2014	Catering - DG Meeting	\$31.83
Woolworths	24 July 2014	Catering - DG	\$23.96
R K Patel	12 August 2014	Catering - DG	\$4
Chianti Classico	25 August 2014	Catering - Director Group Business Meeting	\$135.90
Coles	5 September 2014	Catering - DG	\$42.77
The Cheesecake Shop	23 September 2014	Directors Group - DG 50 th Birthday celebration	\$16.95
R K Patel	11 December 2014	Catering - Director Group Coffee for meeting	\$28
Woolworths	25 February 2015	Catering - DG meeting on site with 6 staff	\$31.38
Coles	2 March 2015	Catering - Directors Group Meeting - Coffee	\$14.39
The Dunes at Links Lady Bay	17 March 2015	Catering - Director Group food and beverage	\$277
Beach Road Wines	8 June 2015	Catering - DG	\$75
Charlesworth Nuts	8 June 2015	Catering - DG Meeting held in CEO's Office	\$15.80
Woolworths	24 June 2015	Catering CEO	\$27.34
Woolworths	1 July 2015	Catering - DG	\$26.85
Dan Murphy's Liquor	8 July 2015	Catering - DG	\$17.99
Woolworths	9 July 2015	Catering Directors Group informal meeting	\$15.76
Producers McLaren Vale	10 August 2015	Director Group Catering all day According to Mr Dowd this cost includes Venue Hire inc. IT equipment, whiteboard and audio. Mr Richardson clarified that it included \$550 venue hire.	\$785.40 (\$235.40 on food)
Woolworths	26 August 2015	Catering - DG	\$25.78
TC Fruit & Veg	28 September 2015	Catering - DG	\$16.50

¹⁹ A transaction that appeared in the provisional reports entitled 'Nothing without Noodles' for \$78.50 has been removed from this table as Mr Richardson confirmed that it was for a seminar registration fee.

Coles	23 October 2015	Catering - DG	\$32.48
Coles	30 October 2015	Catering Director Community relations exp	\$3.50
Coles	5 November 2015	Catering - DG	\$30.44
Springfield Butchers	6 November 2015	Catering - Directors Group Team & Tongs Luncheon According to Mr Dowd, this was a whole of organisation sausage sizzle cooked by the Directors Group, not a Directors Group meeting per se. Mr Richardson confirmed that it was a whole of organisation activity	\$152.75
R K Patel	23 November 2015	Catering - DG	\$16
Coles	2 December 2015	Catering - DG	\$22
Hortas	2 December 2015	Catering - Directors recruitment meeting followed by 2 nd interviews	\$130.65
Orangeau	8 December 2015	Catering - Directors Group	\$17.60
Hortas	14 December 2015	Catering - Directors managers business meeting	\$109.60
Salty Lime Cafe	22 December 2015	Catering - Director Corporate & City Services managers breakfast meeting	\$114
St Bernard's Fruit	13 January 2016	Catering Director Community Relations exp	\$13.25
St Bernard's Fruit	1 February 2016	Catering - DG	\$25.40
Coles	12 February 2016	Catering - DG Meeting held in CEO's for 6 staff	\$22.45
Colonnades Tavern	22 March 2016	Catering - CEO's Office	\$44.99
David John Booth	22 April 2016	Catering - Directors Group - coffee for DG meeting held offsite	\$21.60
Coles	3 May 2016	Catering - Split - Directors Group	\$61.89
Orangeau	13 May 2016	Catering - Directors Group	\$17.60
P & K Wessel	19 May 2016	Catering - Directors Group	\$15
BTS Cafe	6 July 2016	Catering - Director Group	\$22.90
Funk Coffee & Food	6 July 2016	Catering - Director Group workshop	\$45
Viet Menu	5 October 2016	Catering - Directors Group - business meeting held onsite	\$7.50
Wilkus	5 October 2016	Catering - Directors Group - business meeting held onsite	\$23.65
Springfield Butchers	27 October 2016	Catering - Directors Group - meeting held offsite	\$45.70
Crown Plaza Hotels	27 October 2016	Catering - Director Catering during Gartner Symposium	\$12

46. I comment that I have differentiated between restaurant meals and catering. This differentiation is based on the supplier, the amount spent and the surrounding context (including date and description).
47. Mr Dowd's response to my provisional report included the following points about the issue of catering:
- the size of the council comparative to other councils is a relevant factor
 - it could not reasonably be said that the Directors Group, by procuring catering 1.4 times a month, with an average value of \$56 per occasion, could ever objectively and reasonably be said to be 'excessive'; of the 52 catering expenses, only six exceeded \$100 in value.
 - what has been alleged to have been 'catering' in the spreadsheet attached to the Provisional Report, on occasions, has also included venue hire and, where meetings and planning sessions have been held at restaurants, there was, and is, no associated venue hire fee.
48. I note at this point Mr Houlahan's suggestion that itemised receipts relating to expenditures in question be requested and examined by this Office. I do not consider that such an enquiry is necessary for the purposes of this investigation.
49. In response to my revised provisional report, Mr Richardson made the following points:
- general descriptions have been used for matters that are not necessarily catering or which involved the council providing catering to community groups
 - a large proportion of catering expenditure would have been derived from external funding sources supporting community development programs to provide nourishment for vulnerable and socially disadvantaged persons
 - there is evidence, however, of catering expenditure made by staff for internal staff meetings that would not be consistent with the council's new policies and procedures.

Restaurant Meals

50. I am willing to accept Mr Dowd's submissions on the benefits of holding quarterly offsite meetings for the Directors Group. I do not consider that this practice, of itself, constitutes maladministration.
51. I have considered the expenditure associated with restaurant meals both as individual transactions and as a whole.
52. In my view, on a number of individual occasions, the expenses incurred by the Directors Group were particularly excessive and inappropriate, even though it is conceivable that those meetings in themselves, as Mr Dowd has argued, constituted 'meaningful work.'²⁰
53. There are three expenses relating to 25 August 2014. These appear to relate to a restaurant meal (presumably lunch), catering, and another restaurant meal (presumably dinner). The meal at Melt totalled \$429. In addition, there is a catering expenditure of the same date, totalling \$135.90 at Chianti Classico. The Directors Group comprises five members, being four Directors and the CEO. It therefore appears that over the course of one day, each Director incurred expenditure of \$172.94 (a total of \$864.70). I consider this to be excessive.
54. I am unable to accept Mr Dowd's submission regarding the expenditure at Press Food and Wine on 22 December 2015, which totalled \$675.50. Even accounting for the fact that it was a meeting in excess of five hours, I consider this to be excessive. Noting the

²⁰ Letter to my Office dated 1 March 2019.

average pricing of meals at Press Food and Wine, it is difficult to understand how such a large expense could have been incurred without the purchase of alcohol. While I do not have sufficient evidence (which is of concern in itself²¹) to conclude that alcohol was definitely purchased, I take the view that the consumption of alcohol at a quarterly strategic Directors Group meeting would be inappropriate and contrary to the expectations of the community. Consumption of alcohol is associate with social and leisure activities, not work.

55. I similarly hold the view that the expenditure at Press Food and Wine on 11 July 2016, totalling \$507.80 was excessive. Mr Richardson stated in response to my provisional report that he, along with other current directors, acknowledge that the expenditure on restaurant meals on 8 July 2016, 11 July 2016 and 13 July 2016 should not have been at the ratepayers' expense. I also consider that the expenditure at Salty Pork Fino Seppel on 19 September 2016, totalling \$687.50 was excessive, noting Mr Dowd's submission that there were nine people in attendance (including four from the Barossa Council). I do not consider that an expense of approximately \$76 per head for a meeting with another council is appropriate expenditure.
56. In addition, I have considered whether the total amount spent on restaurant meals was excessive and could amount to maladministration when viewed as a whole. Over the course of some two and a half years, the Directors Group spent over \$4,000 on restaurant meals.²² I remain unconvinced that it is necessary to hold Directors Group meetings in restaurants. I note with concern that the restaurants were not inexpensive. I do not consider that there is any particular public value in such expenditure. While it may be reasonable to pay for catering where meetings extend over a meal period for the purposes of providing sustenance for those attending, I consider that internal meetings should never require meals of this type to be provided.
57. Therefore I consider that all of the restaurant meals, when viewed as a whole, amount to excessive expenditure. I also consider that there is little to no public benefit in such expenditure and it fails to meet community expectations. I have considered below whether this constitutes maladministration.

Venue Hire

58. I have considered the examples of venue hire which have been identified by the complainants. It appears that the incidents of venue hire were for a proper purpose, that the amount of expenditure incurred was not unreasonable and that the council and public received value in return for the expenditure. I do not consider the five incidents of venue hire to be excessive expenditure.

Hire Cars

59. I have considered whether the hire car expenses incurred by the Directors Group were excessive.²³
60. Mr Dowd's report to the council meeting on 27 April 2018 contained the following regarding hire cars:

The review also found that transport arrangements involving hire cars by the executive group occurred on six occasions for intrastate travel totalling \$937 and one instance

²¹ As Mr Houlahan pointed out in response to my provisional report, the lack of detail appears to have been contrary to the Credit Card Procedure.

²² I have excluded the Directors Group and Managers Christmas lunch in 2016. I comment if this expense was to be included, the total would exceed \$5300.

²³ While Mr Houlahan provided other examples of taxi use from 2014 to 2016, I have limited my enquiry to the use of South Australian Hire Cars as discussed in my provisional report.

for hire car travel with a net cost of \$140 for council. This interstate use was a hire car and not a limousine. The regular use of taxis is not included in these figures.

61. The complainants have submitted that each of the Directors has a fully funded vehicle paid for under their respective employment agreements.²⁴ The complainants allege that it is therefore inappropriate for the council to incur the expense of hiring a car for a Director to travel to or from a particular function, in circumstances where the Director already has a publicly funded vehicle.
62. It was also unclear whether these expenses related to taxis or hired vehicles. Further information was sought from the council in relation to this issue.
63. By letter dated 25 September 2018, Mr Dowd provided the following information:

South Aust Hire Cars is the merchant or business name that is auto-populated for each transaction by the financial institution (in this case the Commonwealth Bank) into council's purchase card management system (Smartdata).

An ASIC search reveals that the business name South Australian Hire Cars, including a number of other companies, is held by R & F Investments Pty Ltd.

These vehicles were a taxi service with a paid driver (similar to any other taxi service or Uber)...These vehicles were hired as a taxi service (being a point to point transfer) and no insurance expenses were applicable.

[In response to an enquiry about whether an assessment was done on each occasion which concluded that South Australian Hire Cars was cheaper than a taxi fare:]

The mode of transport had a couple of key considerations. The ability to source a taxi for the point to point travel is not consistently available and reliable for travel in these outer metropolitan and rural areas.

On each occasion, the employee did not drive the car.

64. I note that over the period of approximately 12 months, services of South Australian Hire Cars were utilised on five occasions, although three charges arose from the occasion on 19 December 2016.
65. Noting that each of the Directors has a fully funded vehicle, it is difficult to see why public moneys should be spent on transport for any of the Directors, excepting perhaps an instance of extreme and sudden illness or other genuine emergency.
66. Mr Dowd has submitted that the hire cars were utilised to ensure 'there is a safe and reliable passage of travel home from work commitments'. I consider that a Director driving their own car would meet any Work, Health and Safety obligations an employer might have to ensure their employee gets home safely, unless there are exceptional circumstances. The council has not persuaded me of any exceptional circumstances which are applicable in this case.
67. I comment that if hire cars were arranged in order that the Directors might be free to exceed the legal blood alcohol limit at an event, I do not consider it appropriate that the ratepayers be responsible for the cost of the hire cars. In those circumstances, Directors should organise transport at their own expense.
68. Mr Dowd responded to this that:

²⁴ Mr Houlahan noted in response to my provisional report that Mr Dowd and directors are also provided with fuel cards for private as well as work use.

Contrary to the assertions set out at paragraph [above] of your Provisional report, this is not so that Directors 'might be free to exceed the blood alcohol limit' but, because even one modest glass of alcohol over the course of a meeting that transverses several hours, coupled with fatigue and stress, operates to affect the concentration and reaction times of a driver, just as much as exceeding the blood alcohol limit does.²⁵

69. I accept that the council has work, health and safety obligations towards its employees. That said, I do not consider that public officers should be consuming alcohol while working save for in exceptional circumstances. Further, the fact that the consumption of even a small amount of alcohol during after hours meetings may necessitate the council having to fund hire cars on top of funding a vehicle for a Director, is another reason why alcohol should not be consumed in that context. If the council considers that long, unpaid out of hours meetings are impacting on its employees' wellbeing, the most appropriate course would be to review the practice of holding such meetings.
70. It is my view that the cost of the hire cars, which totals \$938, was excessive and inappropriate, does not provide any public benefit and fails to meet community expectations.

Catering

71. I have considered whether the catering expenses incurred by the Directors Group were excessive. I comment at the outset that it is a usual and accepted practice that a small budget for catering be in place for a government or publicly funded agency, to be used for the occasional staff event, meeting or planning session.
72. On average over the three year period under consideration, the Directors Group procured catering 1.4 times a month with an average value of \$56 per occasion. This equates to \$11.20 per person.
73. I note that of the 52 catering expenses, only six had a value of over \$100. These six expenses were respectively \$135.90, \$277.00, \$785.40, \$152.75, \$130.65 and \$109.60.
74. I have no reason to doubt that, as submitted by Mr Dowd in response to my provisional report, the expense of \$152.75 was an event for all staff held by the Directors Group.
75. The expense of \$785.40 was incurred on 10 August 2015 and described as 'Director Group Catering all day'.
76. Mr Dowd's response to my Provisional Report stated that the cost included:
- venue hire, which included IT equipment, whiteboard and audio equipment for \$550
 - only \$235.40 of that total amount was for catering across the whole day, being morning tea, lunch and afternoon tea.²⁷
77. While I have had regard to that clarification of facts, I consider no reason to distinguish the following expenditure in relation to Directors' Group catering from the expenditure on restaurant meals discussed earlier in this report:
- \$135.90 at Chianti Classico on 25 August 2014
 - \$277 at The Dunes at Links Lady Bay on 17 March 2015
 - \$235.40 at Producers McLaren Vale on 10 August 2015
 - \$130.65 at Hortas on 2 December 2015

²⁵ Letter to my Office dated 1 March 2019.

²⁷ Letter to my Office dated 1 March 2019.

- \$109.60 at Hortas on 14 December 2015.

78. While I note that generally the expenditure on catering is on average lower than the restaurant expenditure, I do not consider that it accords with public expectations, that it was reasonably necessary or that there was any real or perceived benefit to the public. I would be less concerned about this if the catering occurred a couple of times per year rather than more than once a month.

Does the expenditure amount to maladministration?

79. In my view, the following expenditure incurred by the Directors Group was excessive:
- restaurant meals
 - hire cars
 - catering.
80. I have therefore considered whether the excessive Directors Group expenditure constitutes the substantial mismanagement of public resources, and thus constitutes maladministration.
81. I am unable to see the intrinsic benefit provided to the council by the Directors Group spending an excessive amount on restaurant meals, hire cars or catering and it would appear that such expenses were not reasonable or necessary for conducting the business of the council.
82. I have considered Mr Dowd's submission that the total amount spent on corporate credit cards was less than 1% of the council's total budget.²⁸ In the context of the council's budget of \$180 million, I understand the submission as applicable to the Directors Group expenses to be that the total amount of expenditure is such a small proportion of the council's total budget as to be trivial or insignificant.
83. I do not agree. I comment that it is not necessary for the *value of the expenditure* to be substantial, in order to constitute maladministration. The test under the ICAC Act is whether the *mismanagement of public resources* was substantial.
84. Nevertheless I am of the opinion that spending between \$507 and \$864 on a given day on meals and catering, for a group that totals five people, is substantial. I do not consider that the public would consider these amounts to be insubstantial, particularly in the context of whether it provides any wider benefit to them. I also do not consider the amount spent on catering, either in total or per head, to be insubstantial.
85. I note that the council considers that, to some extent, it must operate in a commercial environment. Nevertheless it is also a government agency that is spending public money and is accountable to the public for its use of its resources. I also note that these meetings were limited to council staff and were not in any sense 'official hospitality'.
86. While the public may be seen to derive an indirect benefit from the Directors Group meeting off-site on occasion, for the purposes of regrouping and forming strategic priorities, I do not consider that the excessive amounts which have been spent on restaurant meals, hire cars and catering allow the public to derive any additional benefit than they would otherwise derive if the Directors Group met in-house on the majority of occasions, and limited catering to light refreshments from an inexpensive source where meetings are held for a significant period of time.

²⁸ Ms Wenham also pointed out in response to my revised provisional report that this only reflects expenditure by credit card and there is presumably expenditure on catering etc by other means. While I accept that as a possibility, my investigation is limited to use of Corporate Credit Cards and I make no comment in relation to other types of expenditure.

87. Therefore in light of my views above, I consider that the practices of the council have amounted to substantial mismanagement of public resources and thus constitute maladministration in relation to the expenditure of the Directors Group associated with restaurant meals, hire cars and catering.

Expenditure associated with China visits

88. By way of background, the council has over recent years made efforts to build and strengthen its relationship with China, in order to promote trade and local businesses. To this end, there have been a number of delegations which travelled either to or from Shandong, Shanghai and Guangzhou in China.
89. As a result of the China investment, in 2016 the council signed a Friendly Cooperative City Agreement with the Deputy Mayor of Jinan, the capital city of the Shandong province. The council reports that as a result of the China investment, more than \$816,000 in trade contracts have been entered into between local businesses and partners from China.²⁹
90. It has been alleged that there are examples of inappropriate expenditure associated with the China investment. The complainants provided the following examples:
- there was a lunchtime meeting at Woodstock Winery with the winery owner and others on 12 August 2015 to discuss the China investment. The total expenditure was \$685.50
 - on 14 May 2015 there was a purchase from Strandbags to the value of \$198 for bags for a visit to China and a further \$52 was spent on 25 August 2014 on suitcase locks and travel adapters. The complainants alleged that it was unclear whether these items remained the property of the council
 - there are numerous expenses which are recorded as gifts for China with no further specific details, for example:
 - 14 August 2014 - Everything Australia - \$729.30
 - 22 August 2014 - Willunga Leadlights - \$380
 - 25 August 2014 - Off the Slate Gallery - \$728
 - 26 August 2014 - McLaren Valew & Fleurieu [sic] - \$144
 - 27 August 2014 - Atkins technicolor - \$826
 - 28 August 2014 - Quality Flags - \$154
 - 30 October 2014 - Hyde Leather SA - \$206.95
 - 8 May 2015 - King of Gifts - \$168
 - 11 May 2015 - South Australian MUS [sic] - \$198.50
 - 14 May 2015 - Jurlique - \$490
 - 6 September 2015 - McLaren Vale & Fleur - \$237
 - 7 September 2016 - The Almond Train - \$140
 - 7 September 2016 - McLaren Vale & Fleur - \$46.75
 - 15 September 2015 - Lloyd Brothers Compa[sic] - \$539.10
 - 27 October 2015 - Lloyd Brothers Wine - \$419.30
 - 28 October 2015 - McLaren Vale & Fleur - \$25.46
 - 29 October 2015 - McLaren Vale Premium W [sic] - \$65
 - 29 October 2015 - Myer Colonnades - \$59.
91. Mr Houlahan listed further examples of China-related expenditure in his response to my provisional report. On the face of it, that expenditure appears to have been consistent with official hospitality. I have determined that it is unnecessary to investigate that expenditure further.
92. Mr Dowd provided the following response to my investigation:

²⁹ See council's website: <http://www.onkaparingacity.com/ongrowingbusiness/delegations.html>, last accessed 12 November 2018.

Lunchtime meeting - Woodstock Winery

This was a lunchtime meeting with the 6 winery owners and two staff to discuss the China engagement and investment in accordance with Council's strategic objectives for advancement of economic development.

[Travelling equipment]

The suitcases were purchased to take documents, marketing collateral and some gifts to China. The suitcases and travel adapters remain the property of the City of Onkaparinga and have been used on other occasions.³⁰

93. Mr Dowd provided a separate document detailing the nature of the 'gifts for China', the values of those gifts and the recipients of the gifts. I am satisfied that the council has provided sufficient evidence that the expenditure described as 'gifts for China' does relate to gifts which were purchased for members of the Chinese delegation. It does not appear that this expenditure was inappropriate.
94. I have considered the allegation regarding the meeting at Woodstock Winery and the response provided by Mr Dowd. Mr Dowd has not explained why this meeting had to be held at a winery. The expenditure totalled \$685.50 and was attended by six winery owners and two council staff members, equating to \$85.69 per person. However, I am satisfied that the council has provided adequate submissions regarding the indirect benefit to the public and the community which resulted from this lunchtime meeting. It has not been alleged that the council held numerous lunchtime meetings to discuss the China investment.
95. In the circumstances I do not consider that the expenditure of \$685.50 constitutes the substantial mismanagement of public resources.
96. I am willing to accept the council's explanation relating to the purchase and ongoing use of the suitcases and accessories from Strandbags. I note that these items remain the property of the council. I do not consider this to be an inappropriate expenditure.
97. On the available evidence, it does not appear that the council has committed maladministration in relation to the expenditure associated with the visits to or from the Chinese delegations.

Flowers

98. The complainants allege that an unreasonable amount has been spent on flowers, alleging that between 2014-2016 a total of \$12,631.41 was spent on flowers by the council. Mr Dowd clarified in response to my provisional report that approximately \$5,688.25 of this expenditure was for decorations for events and functions.
99. Mr Dowd provided the following response to this allegation:

I believe this allegation about expenditure for flowers relates to an FOI application that was lodged in 2017 seeking all credit card transactions for the period January 2014 to 2016. To satisfy the request, transactional data was extracted from our financial institution's expense and transaction management system Smartdata. Transactional information was provided for each officer in date order, and, in my view, satisfied the criteria of separate, detailed and monthly in regards to expenditure. The data was provided without redaction to the applicant.

I do not consider the amount spent on flowers over a three year period to be excessive when the number of staff, volunteers and events held are taken into account. All the payments were properly authorised and accounted for within the relevant section's

³⁰ Letter to my Office dated 11 December 2017.

approved budget. In my view it is not unreasonable for an organisation that values its staff and community volunteers to send flowers as a show of appreciation or as a sign of support in times of illness or bereavement or as recognition for exceptional service.

Our analysis of the data using a search [for] the term 'flowers' indicates ~ \$17,680 was spent in the three year period 2014 to 2016 covered by the FOI application made by Mr Houlahan. This is an average of \$5,895 per annum across 700+ staff, 600+ volunteers and numerous events. Our analysis shows the following breakdown of payments:³¹

	Decorations	Illness/ bereavement	Volunteers	Staff
Number of expenses	28	61	39	65
Total value of expenses	\$5688.25	\$4984.33	\$2017.88	\$4967.20

100. Mr Dowd provided the following additional information:

All expenditure on flowers was within our current practices which have been adopted historically by Onkaparinga for many years. It should be noted that the Council (elected body) **formally adopted** the Elected Member Allowance, Benefits and Support procedure and its meeting of 9 December 2014, and which includes the provision of items such as what you have questioned. The Procedure specifically states that purchase cards can be used in this way and further states:

4.6.2 Expenditure

The types of expenditure covered by the civic events and expenses account will include:

- *Purchase of tributes (eg floral arrangements, condolence or celebratory cards etc) on behalf of City of Onkaparinga for organisations and individuals affiliated with the city.*

4.7.1 Expenditure

The corporate purchase card may be used to purchase:

- *civic gifts deemed appropriate by the Mayor*
- *tributes (eg floral arrangements, condolence or celebratory cards etc)*

7.4 Tributes for illness, accident or bereavement

The Mayor is authorised to acknowledge elected members or their immediate family in the event of illness, accident or bereavement. This type of acknowledgement will be in the most appropriate form of either a card, donation to charity, flowers, gift baskets etc.

There is no reciprocal written guidance on the historical practice of giving flowers to staff which we are addressing as set out below.

I can categorially (sic) state that we are listening to the community and enhancing controls to ensure spending in several categories which includes flowers and gifts is better aligned to community expectations (where possible). We are currently in the process of engaging with a range of stakeholders and staff to determine what the appropriate levels of expenditure should be across these categories in future (if any exist). The outcomes of the engagement exercise will assist to inform our new Corporate Guidelines document for the future management of this spending. This document will specifically relate to expenditure by staff.

Corporate purchase cards are a part of doing business and we will continue to use them. The Corporate hospitality procedure has been drafted and is currently out for internal consultation with Directors and Managers and feedback from staff across the organisation is also being sought. The finalised procedure is intended to be tabled with Council for

³¹ Letter to my Office dated 11 December 2017.

discussion in April 2018 along with the range of internal review outcomes that are underway into this expenditure.

It should be noted that the spreadsheet³² contains flowers for staff, elected members, community members and to support our events and guest speakers. All of these people contribute to Onkaparinga and its success and we are currently working on procedures for acknowledgement of all these different classes of persons that we interact with across the spectrum of our service delivery.³³

101. Enquiries were also made about the descriptions used to describe the individual flower-related expenses. The descriptions included: the passing of a family member/bereavement; staff member resignation; injury/hospital stay; staff member wedding; the birth of a baby; staff member birthdays; get well flowers; gifts to staff; sympathy flowers.
102. It was noted that the amounts spent on flowers (for individual transactions) ranged from \$20 to \$400. A response was sought from Mr Dowd on whether he considered each of the above categories/descriptions to be an appropriate expenditure of public funds. Mr Dowd was also invited to review the spreadsheet and provide further information, such as the name of the recipient of the flowers, where that information was not already recorded as part of the description for the transaction.
103. Mr Dowd responded:

In reference to your specific question regarding flowers, I wish for you to note that I have only reviewed transactions for the latter half of 2016 only, as highlighted in yellow. To review some 155 transactions would not, in my view, provide a materially different reason or warrant an allocation of resources to determine each reason. I am satisfied that the purchases were authorised appropriately and in accordance with the current practices. I am also satisfied that where descriptions identified flowers given to staff those transactions were bona fide and genuine. An updated spreadsheet is attached.

I acknowledge the 'outlying' transaction for \$400 for flowers. It should be noted (as it has been identified on the attached spreadsheet) that this was for an event supporting Australian Regional Tourism Network who is the peak national body for regional tourism. This event/meeting was held at our Visitor Information Centre. Expenditure of this value is not the norm for individuals as is evidenced on the attached spreadsheet.

I consider that as part of being an employer of choice that there is an element of the employer showing care for its employees at times of need and an acknowledgement of significant life events. I understand there are community members who may have a different view. I am responsible under the Local Government Act as the employer of over 700 staff, and I have led a tailored culture program within the organisation to create an empowered and impassioned workforce who are willing to question the status quo and review their own work practices to improve productivity. There are a range of supporting programs and practices that exist to support the culture that provides a number of tangible and intangible outcomes. Notable outcomes include savings that have been delivered in excess of \$1 million dollars (sic) per annum to ratepayers over the past two years accompanied with delivering the lowest rate increase over the past two years since the amalgamation of Onkaparinga in 1997. It is in this context that the expenditure of flowers as a gesture of care and wellbeing to my staff should be viewed...

You have requested a response about whether it was appropriate for recipients of flowers that are valued at over \$100 to be reasonable. The only response I can provide is that this needs to be viewed on each individual basis dependent on the person ordering the flowers at the time, the distance between a florist and the recipient and other various factors. There is no correlation between a staff member's seniority and the value of flowers received, there is also no trend that can be observed that link (sic) specific life

³² Compiled by the complainants and provided to this Office, which subsequently provided the spreadsheet to the council for comment.

³³ Letter to my Office dated 13 March 2018.

events or illnesses to a particular range of flowers. Therefore it is difficult to respond to your question. As I have already identified, the Corporate Guidelines that we are drafting will provide this consistency of application across the organisation, should the giving of flowers continue.³⁴

104. One particular transaction identified by the complainants was described as 'Flowers - for CEOs wife in hospital' in the amount of \$65. In relation to this transaction, Mr Dowd has stated:

I am on the public record as saying that the flowers that were sent to my wife should not have occurred, however it was consistent with all other purchases during times of illness or bereavement. This is my own personal judgement; however different views have been expressed by others who consider that it is appropriate.

It should be noted that I did not request or authorise for these flowers to be sent, as I was with my wife during her serious illness.³⁵

105. Mr Houlahan has observed that the flowers were purchased on Mr Dowd's Executive Assistant's credit card.
106. Mr Dowd's response to my provisional report included the following points:
- approximately \$5,688.25 of the council's expenditure on flowers between 2014 to 2016 (i.e. almost half) was for 'decorations', that is, for events and functions
 - the figures include delivery costs
 - the expenditure needs to be considered in light of a workforce of over 700 employees but also 600 volunteers
 - the expenditure for flowers for civic events, as well as for tributes in certain circumstances, was specifically provided for under the Council's Elected Member Allowance, Benefits and Support Procedure (at that time), adopted by the Council at its meeting of December 2014
 - all other expenditure on flowers by business units of the Council was appropriately authorised and accounted for in existing budgets.
107. I accept that as a general proposition, expenditure on flowers as decorations for formal council events and functions will not necessarily amount to maladministration.
108. Further, I have not suggested that the expenditure was unauthorised. Instead, the focus of my consideration has been whether the expenditure amounted to substantial mismanagement of public resources.
109. Mr Dowd stated:

As to the concerns expressed that the Council has been unable to provide a reason for the purchase of 55 out of the 155 transactions, it is to be noted that the complainants are 'trawling' through historical information.

As there is no evidence to suggest that the flowers were not purchased for employees or volunteers, or other Council events and there is no evidence that these purchases were not 'approved' in accordance with the policies and procedures in place at the time, to now individually review 155 flower transactions over a three (3) year period, commencing some five (5) years ago, does not warrant the allocation of resources in the circumstances.

It is to be recalled that the Council **does hold** hardcopy receipts relating to all corporate credit card transactions, including those in relation to the purchase of flowers.

³⁴ Letter to my Office dated 13 March 2018.

³⁵ Letter to my Office dated 13 March 2019.

It is also relevant to note, that, as set out at paragraph 87 of the Provisional Report, on a number of occasions employees contributed their own funds to send flowers to colleagues.

It is an accepted, modern workplace practice to send flowers for bereavements, illness, as a show of support, as well as a 'thank you' at times to employees and volunteers. The Council prides itself as an employer of choice and attributes its stable work force to practices such as these, all of which are a minimal cost.

Notwithstanding and recognising the difficulties in dealing with and addressing 'perceptions' (no matter how unreasonable and unfounded), the Council confirms that it has amended its policies and procedures so that the purchase of flowers is permitted for employee bereavement only and capped at \$50 plus delivery. Flower purchases will not be funded by the organisation in any other circumstances. This, as well as the circumstances under which the Mayor may provide a gift, including flowers, is incorporated in the 2018 Guidelines.

It is, therefore, not clear how it can, reasonably, be said that the purchase of flowers, including for events and functions, over the relevant period, can justifiably be considered to be disproportionate to any benefit to the public. Indeed, the effect on employee morale over the now amended policy position should not be underestimated in this regard and is already noticeable in relation to what can only be considered to be a severe retrograde measure in a modern workplace.

110. I note that in the spreadsheet as expanded upon by Mr Dowd, for numerous transactions the recipient of the flowers is listed as 'N/K - Not Known'. Many of these contain the generic description 'flowers - for staff member'. I consider that it is now impossible to verify that the recipient of the flowers was indeed a staff member.
111. The total amount of flowers for unknown recipients is \$3,712.79. Therefore regardless of whether it is legitimate for the council to fund purchases of flowers for employees, it appears that the council is presently unable to prove that the recipients of these flowers were employees.
112. The council has also been unable to provide a reason for purchase for 55 of the 155 transactions. Many of the descriptions are simply listed as 'flowers'. I am greatly concerned that approximately one third of the purchases of flowers have no reason for the purchase listed. I do not consider it possible for the council to now demonstrate that all of these purchases were not for personal use.
113. In response to my provisional report, Mr Richardson acknowledged the insufficient record keeping but stated:

I genuinely do not believe that the purchases were for personal use by staff however I accept the difficulty I have in being able to support my belief in light of a lack of an adequate description captured as part of the original expense transaction.
114. I comment that insufficient record keeping has created a situation whereby the council may be unable to transparently be held accountable for the expenditure of public monies relating to all of its flower purchases and I emphasise the importance of adequate and detailed descriptions of the reason for purchases and, where relevant, the recipient.
115. The Community Feedback Report relevantly states:

Our analysis of the data provided as part of the FOI has determined that approximately \$18,000 in total was spent on flowers over the three year period. Of this \$8,200 was spent on flowers for staff, \$4,126 for community members, \$5,741 for events/programs and \$212 for elected members during the three year period.

As an organisation we provided flowers to staff for a number of reasons related to bereavement, sympathy, illness and other significant life events. We did this as an employer to show our support for our staff. In a majority of cases, the staff contributed their own funds to send flowers to their colleagues.

Generally survey respondents supported the purchase of flowers to thank/recognise volunteers and in the instance of staff bereavement; however there was also a large number of respondents that indicated that the purchase of flowers was not acceptable under any circumstances.

Recommendations

The purchase of flowers:

- From the organisation to volunteers will continue to occur.
- For staff bereavement is permitted in line with our 'Employee leave' administrative procedure (capped at \$50 + delivery)

Flower purchases will not be funded by the organisation in any other circumstance

116. In response to my provisional report, Mr Houlahan stated:

The background statement "*In a majority of cases, the staff contribute their own funds to send flowers to their colleagues*" is not supported by any evidence. The available evidence demonstrates the exact opposite and the statement appears to be little more than an attempt to misleadingly divert attention from the multiple examples of inappropriate expenditure on flowers.

117. While I understand that Mr Houlahan has used this as an example of his concerns with Mr Dowd's credibility, I do not consider that much turns on this statement and do not consider that it is evidence of the council being deliberately misleading.

118. The 2018 Guideline relevantly provides:

5.2 Gifts (including flowers)

5.2.1 Mayor to community member/volunteer

The '*Elected member allowance, benefits and support*' procedure allows for a gift on behalf of the City of Onkaparinga to be given to community members or volunteers at the discretion of the Mayor.

This may be in the form of a thank you card or other form of recognition for a significant milestone such as a wedding anniversary or birthday.

5.2.2 Mayor to elected member

The '*Elected member allowance, benefits and support*' procedure allows for the Mayor to acknowledge elected members or their immediate family in the event of illness, accident or bereavement. This type of acknowledgement is usually in the form of either a card, donation to charity, flowers, gift basket.

5.2.3 Organisation to guest speaker

A gift may be given to thank an unpaid guest speaker, such as flowers or other appropriate item to a value of less than \$50.

5.2.4 Prizes to support community outcomes

A prize may be given where it is approved as part of a defined program such as Youth Skate Competition, King of Canvas competition.

5.2.5 Organisation to employee

Flowers may be given to an employee or employee's family (other than a casual employee) on the death of or in the event of a life threatening injury or illness as defined in council's *Employee leave procedure* (up to \$50 plus delivery)

When purchasing flowers, consideration should be given to using a local supplier or alternatively using the supplier nearest to the intended recipient.

119. I have taken into account Mr Dowd's submissions regarding the improved productivity of his workforce which he attributes to various cultural changes within the council. However, I am not persuaded that the practice of the council giving flowers to employees, purchased on corporate credit cards, is integral to ensure that employees feel valued and thus have increased motivation to improve their productivity.
120. I am prepared to accept that in instances of bereavement, it may be appropriate for the council to fund a purchase of flowers for an employee. This is consistent with the findings of the Community Feedback Report. I also note that in response to my provisional report, Mr Dowd highlighted that approximately \$5688.25 of the total \$12,631.41 was spent on decorations for events and functions. Expenditure on decorations for events and functions is not the focus of my consideration.
121. Having regard to the submissions made in response to my provisional report, my view remains that it is not appropriate for the council, using public monies, to fund a purchase of flowers for an employee resignation; illness; injury; or life event such as a birthday, wedding or the birth of a baby. I accept that in some of these cases it is a common social practice for flowers to be given. However in my view, in the context of the council being a public agency, if an individual team within the council wishes to donate their personal funds in order to buy flowers for a colleague, they are free to do so. I consider that a staff collection for the purpose of buying flowers is commonplace within both the public sector and local government. I do not consider that the purchase of flowers using a corporate credit card involving the expenditure of public funds is commonplace within public agencies. I also do not consider that this type of expenditure meets the expectations of the public or was reasonably necessary for the carrying out of the council's functions.
122. I also do not accept that the purchases of flowers which were described either as 'gifts for staff' or simply 'flowers' constituted expenditure that was properly incurred. It follows that, in my view, a large proportion of the flower-related expenditure was inappropriate.
123. I have therefore considered whether the excessive flower-related expenditure constitutes the substantial mismanagement of public resources and is therefore maladministration.
124. I am unable to see the public benefit, real or perceived, in staff members purchasing flowers for each other, using their corporate credit cards. I do not consider that this practice was consistent with the public's expectations of government agencies. Whilst some individual purchases were of a low value, the practice of the council has resulted in a considerable cumulative amount being spent on flowers.
125. I consider that the practice of staff members purchasing flowers for each other (excepting the above-mentioned instance of bereavement) constituted mismanagement of public resources. Due to the prevalence of the practice, the failure to keep accurate records and the failure to provide any benefit to the wider community, I consider that the mismanagement was substantial.
126. Therefore in light of my views above, I consider that the practices of the council have amounted to substantial mismanagement of public resources and thus constitute maladministration.

Catering

127. I have considered above the catering expenses incurred by the Directors Group. However, there have been a substantial number of transactions which comprise catering for council employees as a whole.
128. The complainants allege that an excessive amount was spent on catering expenses, stating:

Catering is provided for morning and afternoon teas for no particular reason and also for the purpose of welcoming new staff, farewells for staff and contractors, in house standard meetings, cake for 50th birthday, alcohol etc.

129. Mr Dowd provided the following response to my investigation:

Council's credit card procedure does not explicitly deal with when it is acceptable to procure catering expenses. While I consider the credit card expenditure to be reasonable in the circumstances further analysis into the nature and extent of this type of expenditure is being undertaken as part of an overall review of procurement processes.³⁶

130. The Community Feedback Report relevantly states:

The review has found that there is a greater need of clarity on when and how funds should be applied for food and non-alcoholic beverages. During the three year period, approximately \$256,868 was spent on food and catering. A large proportion, namely \$98,483 was spent on supermarkets during the period to support our community development programs or localised team meetings. External funding for these types of expenditures is provided as part of our community development programs, therefore is not directly ratepayer funded.

The issue of city based restaurants being used by the executive and management team has been raised. We accept that this has highlighted the need for restraint and ensuring that the purpose of these meetings needs greater transparency and explanation. The furthering of business relationships and key stakeholder meetings is vital to Onkaparinga's success and these meetings are held in a number of locations both within and external to the [council's] boundary. Around \$4,000 was contained in the transactions for the three year period related to executive meetings.

In acknowledgement of the need for transparency as to why these occur, the proposed new guidelines will provide guidance on the treatment of these occasions.

With the exception of work meetings there was broad support from council employees for the purchase of food and non-alcohol beverages in all other circumstances.

The community and Resident E Panel respondents indicated that food and non-alcohol beverage purchases were appropriate for strategic relationship building, employees working away from home and civic events, with less support for the purchase of food and non-alcoholic beverages for other circumstances. In particular the community and Resident E Panel respondents deemed it inappropriate to purchase food and drink for work meetings, team buildings activities/team planning sessions and public consultation activities [sic].

Recommendations

Purchasing food and non-alcoholic beverages is appropriate for some official functions, and is permitted within set limits.

- Hospitality expenditure limits will apply unless prior approval is given by the CEO or the Director Group.

³⁶ Letter to my Office dated 11 December 2017.

- Exceptions to hospitality expenditure limits will be reported in a regular report to Council through the ARVEC.

The purchase of food and beverages for staff only team/section meetings, 1:1 staff meetings is not permitted.

131. A small number of expenses related to alcohol have also been incurred on corporate credit card. These questions were put to Mr Dowd during his interview on affirmation. I set out the relevant transcript below:³⁷

Q: So we might look at a couple of individual credit card expenses. I'll just give you those two.³⁸ So there's a couple around alcohol which you usually put at Dan Murphy's. One I think I have highlighted is called "wine for after council debrief meeting".

A: Yes.

Q: What might that be?

A: So after council meetings, it's not every but after some council meetings, depending on the agenda and people still around, we put on a couple of wines. Again, that is limited to selected members participating in that as well. It's very limited and you'll see by the numbers there, the \$39 out of 200 million, but that's the way it is. Depending on after council meetings, and we have processes in place as well where we do little 10-minute grabs at the end of a council meeting so someone can raise an agenda item or you could go as far as if there are extenuating outcomes from council reports that means we have to act, sometimes we sit back for a couple of hours and work through those. On occasion there has been a glass of wine had.

Q: How often are the council meetings?

A: One a month.

Q: Yeah okay. All right. So there's another one "wine for directors group meeting held offsite during and after business hours"; is that the same sort of event, you think?

A: Yeah, offsites are a little bit different. So offsites are generally scheduled one or two-day sessions, where I take the team away from their office, their family for a number of days. I know there are a number of questions here on that. That is either forward planning on strategies or looking at specific issues that are contentious and need to be resolved, so we put some time aside to work on those.

Q: And how often would you guess you do those offsites?

A: I think we have done three and they have all been here. My intent is to do them quarterly. However, I'm reviewing that at the moment because it seems that they are causing problems for people. It's like you do them as you need to. I mean I realistically under the current situation should be taking all my leadership team offsite and focusing them back on their job and making sure they are there. They are as required and they vary in scale and size, you know if it's - I've had an offsite in the Barossa at Beckwith Park with Tarac Technologies, which was both a site visit and also an offsite because they were purchasing the Accolade Wines site and wanted to show us the opportunities that could exist in winemaking. So they have varied purposes. The easiest way to explain it is it is just business related.

Q: I think you have touched on this already, but can you perhaps elaborate a little bit on the value, as you perceive it, in the council purchasing wine after a council meeting. What value does that present to the council?

³⁷ For clarity, Q denotes the questions asked by the Interviewer and A denotes the answers provided by Mr Dowd.
³⁸ At this time during the interview, two documents were handed to Mr Dowd.

A: I think the presentation of wine, as with food, as with anything, it just - we move from a formal council environment into a more relaxed, open environment. I think it's widely accepted under social circumstances where we are choosing to still be at work and discuss work, that alcohol sometimes forms part of these more relaxed situations.

Q: So it's almost catering, in a sense?

A: It would fit under the catering banner.

Q: With the exception of these sort of monthly meetings, is there any consumption of alcohol by employees at other meetings, like team meetings or anything smaller to your knowledge?

A: No, not to my knowledge. I think most staff are onsite in the office, so the offsite alcohol consumption pieces, unless I have taken people out, I don't know of anything else.

132. Based on the information before me, and excluding catering for the Directors Group which has been separately considered, it appears that the council spent approximately \$253,956 on catering during the three year period under consideration.
133. I am prepared to exclude catering which related to stakeholder meetings, noting that the amount of \$4,000 is comparatively small and I am prepared to accept that stakeholder meetings have direct and indirect benefits for both the council and the broader community.
134. Therefore it appears the council spent \$249,956 on other catering.
135. The council has indicated that \$98,483 was spent on 'community development programs or localised team meetings'. While it is unclear why team meetings would be grouped with community development programs, I am prepared to accept that the council received external funding for these expenses,³⁹ and I have not further considered them on the basis that these expenses were not ultimately met by the council's ratepayers.
136. Therefore it appears the council spent \$151,473 on catering for staff members, which equates to \$50,491 on catering per year. Noting that the council has over 700 employees, this equates to \$72.13 per employee per year. In response to my provisional report, the council suggested that 600 volunteers should be included in the overall figure of 'employee' catering, thus reducing the average figure to \$38.83 per year.
137. I do not consider it is possible for the council to now give specific details regarding the precise reason for a particular catering transaction and the number of persons in attendance. Further, I do not consider it would be a justifiable use of either this Office's resources or the council's resources to determine such details, noting the time that has passed since this expenditure was incurred.
138. However, based on the figures alone, some conclusions can be drawn.
139. I consider that a mindful public authority could host a morning or afternoon tea with expenditure of around \$1 per person. If the council hosted a morning tea for all of its employees once per month, I may conclude that \$700 per month (or \$1300 including volunteers) or \$8400 per year (or \$15,600 including volunteers), could be considered to be a reasonable expenditure.⁴¹

³⁹ As outlined in the Community Feedback Report.

⁴¹ I am making this point for comparison only. I am not suggesting that a public authority should hold a monthly morning tea for all its staff.

140. However, the council has spent over \$50,000 on catering per year for the three years under consideration. My view remains that it is difficult to imagine how such an expense could have been incurred.

141. I simply note that in considering maladministration, I do not apply a strict mathematical formula but instead consider all of the circumstances. The averages included in this report are intended as a guide only. While I am willing to give the council the benefit of the doubt by including volunteers in my overall calculations (without any detail being provided as to the extent to which catering for volunteers is paid for by the council) my view remains that \$50,000 per year is excessive.

142. Mr Dowd responded to my provisional report:

With regards to catering, the Council reiterates that the aggregate amount of \$151,473 for catering, over a three (3) year period, across an organisation of 700 employees and 600 volunteers, could never, reasonably taking into account the relative size of the Council, ever[sic] be considered to be excessive and/or disproportionate.

Whilst the figure has been extrapolated to equate to \$72.13 per employee per year, taking into account the volunteer workforce, it actually equates to \$38.83 per year.

While it has been said in the Provisional Report that *'it is difficult to imagine how such an expense could be incurred'*, the Council submits that this is because the proportionality of the size of the workforce has not been taken into account and the finding has been based on a bare, simplistic and uninformed reading of the figures set out in the spreadsheet.

It is also to be noted that this expenditure was authorised, was within existing budget lines and was not contrary to any policy or procedure.

Accordingly, the Council disagrees that expenditure on catering for Council employees was excessive over the period 2014-2016.

143. I have considered the expenses recorded in the complainant's spreadsheet, produced based on the information contained in the FOI documents. I note that there are approximately 3,000⁴² individual transactions which are catering-related expenses. However, noting that many transactions are duplicated (eg split payments), I consider it likely that there were approximately 1500 separate catered events for employees.

144. This equates to 500 catered events per year, or 9.6 catered events per week. On average, the council has spent \$50 per catered event.

145. In my view, both the number of catered events, and the aggregate amount of \$151,473 which has been spent on catered events solely for employees (and/or volunteers), are excessive.

146. I have therefore considered whether the excessive catering expenditure constitutes the substantial mismanagement of public resources and is therefore maladministration.

147. I do not consider that the occasional or infrequent hosting of a morning tea is contrary to the public's expectations of a public authority. However, I consider that the frequent and repeated instances of catering provided by the council were contrary to the public's expectations. The aggregate amount spent on catering was, in my view, excessive and inappropriate. I do not consider that there is a public benefit in a local council providing this level of catering and I do not consider that this level of catering was reasonably necessary for the carrying out of the council's functions.

⁴² There were approximately 520 additional entries; however it appears that these entries related to community development programs or other classes of catering which I have indicated I am not considering in this report.

148. Therefore in light of my views above, I consider that the practices of the council have amounted to substantial mismanagement of public resources and thus constitute maladministration.

Gifts

149. A number of transactions appear to relate to gifts for staff members. It has been alleged that a Christmas gift of alcohol to staff was an inappropriate expenditure. This was an expenditure from Dan Murphy's in the amount of \$320.74 and was described as 'Gift - Xmas gift CEO to staff'.

150. Mr Dowd provided the following information in relation to this transaction:

The use of council funds for the giving of Christmas gifts between staff members [is] generally regarded as not appropriate and we are reviewing our guidance to staff to ensure that these transactions do not continue to occur. I have stated this on the public record. This specifically relates to the transaction that you identify...for Dan Murphy's dated 18 December 2015 for the amount of \$320.74. There are certain periods where staff are required to work well above what is generally expected of them, during major events, overseas delegations etc. Many staff do not receive TOIL or overtime and extremely infrequently these types of transactions have occurred as a gesture or sentiment of thanks for going above and beyond. As stated above this has been identified as being inappropriate and our new guidelines will reflect this clearly.⁴³

151. It has also been alleged that the purchase of gift baskets for directors was an inappropriate expenditure. This was an expenditure for Colonnades Florist in the amount of \$120.90 and was described as 'Gift - Gift basket x2 Director Corporate and City Services'.

152. It has also been alleged that the purchase of gift baskets for directors was an inappropriate expenditure. This was an expenditure for Colonnades Florist in the amount of \$120.90 and was described as 'Gift - Gift basket x2 Director Corporate and City Services'.

153. Mr Dowd provided the following information in relation to this transaction:

The transaction that you have identified entitled 'Gift - Gift basket x2 Director Corporate and City Services' in the amount of \$120.90 was not actually for the Director as alleged by the Report, but was for two Managers within the Corporate and City Services Department, namely:

- flowers for the then [REDACTED] upon the death of [REDACTED], and
- basket for the then [REDACTED] upon hospitalisation [REDACTED]

Therefore, the reporter has their facts incorrect for this transaction as it was not a gift/s for a Director/s.

I strongly dispute the allegation that my staff are somehow actively seeking out gifts and benefits for themselves. This is simply not the case and improperly casts aspersions onto my staff that are not true.

We have a formal staff recognition program in place for employees who have in excess of 10 years of service with the organisation (and its related Council's prior to amalgamation). It has been the practice historically that these employees receive a certificate of service, an Onkaparinga service badge and a gift card to varying values depending on the length of service. This formal acknowledgment sits along side a range of other formal recognition programs across the organisation for our staff who demonstrate leading practice and exceptional demonstration of our values. I wish to advise that the organisation was

⁴³ Letter to my Office dated 13 March 2018.

already in the process of reviewing staff recognition programs as part of our Service Review program [sic].

154. I agree with Mr Dowd's comment that the purchase of a Christmas gift of alcohol to staff was inappropriate. In an investigation report regarding HomeStart, published on the Ombudsman SA website in April 2017,⁴⁴ I included detailed commentary on the inappropriateness of gifts for staff, including alcohol, being used to reward staff for working overtime or outside their usual hours. Given Mr Dowd has acknowledged the inappropriateness of the practice, I do not see the need to repeat my commentary in this report.
155. In light of the above, I consider that the purchases of gifts for staff members constitute the substantial mismanagement of public resources, and therefore amount to maladministration in public administration.
156. I am prepared to accept Mr Dowd's submissions that the purchase of two gift baskets was made by the Director Corporate City Services, not for herself but for two of her managers.
157. In relation to the gift for the then [REDACTED], as indicated above in this report, while each situation will depend on the facts, as a starting point, I do not generally consider it appropriate to use public moneys to purchase flowers in the event of employee illness or injury. It follows that I do not consider it appropriate to use public monies to purchase a gift basket (other than flowers) in the event of employee illness or injury. The purchase of the gift basket was therefore the mismanagement of public resources.
158. It appears this expenditure was approximately \$60. I do not consider that the amount of the expenditure is particularly excessive. Rather, it is the nature of the expenditure which is inappropriate. I am not satisfied that there is any particular public value in this type of expenditure. I do not consider that the purchase of a gift basket in the case of illness or injury meets public expectations, particularly noting the findings of the Community Feedback Report.
159. That said, on balance, I am not satisfied that this particular purchase meets the threshold of a *substantial* mismanagement of public resources and on that basis, do not consider that it amounted to maladministration.
160. In relation to the gift for the then [REDACTED], I do not consider the purchase of a gift basket of flowers due to a recent bereavement to be inappropriate.

Pedometers

161. A transaction was identified dated 19 May 2014 in the amount of \$2432.52 and described as pedometers, purchased from Walk With Attitude.
162. Mr Dowd was questioned about this expense during his interview on affirmation. I set out the relevant transcript below:

Q: All right. Then just on that same page there's \$2400 for pedometers.

A: Yes.

- Q: Can you tell me what that one is about?

A: No, not specifically. Not with any level of 100% accuracy anyway. I'm pretty sure this was a program done through the OPAL programs, so there may have been

⁴⁴ <http://www.ombudsman.sa.gov.au/publications/investigation-reports/>

funding associated with the cost, as in a reimbursement of that, but I can check that for you, if you like.

Q: Yeah, I'm happy for you to get back to me and clarify that.

A: There are actually a number of allegations made on corporate expenditure that was reimbursed, including flowers, from federal government funding and other programs, so this, I believe, would be one of those. But I'll come back to you.

163. On 28 June 2018 by way of email, Mr Dowd clarified that he had verified that the pedometers were used for a wellbeing program as part of OPAL.
164. The Obesity Prevention and Lifestyle (**OPAL**) program was implemented in South Australia with the aim of improving eating and physical activity patterns of South Australian children, through families and communities. The program was implemented across five years in partnership with local councils.⁴⁵
165. According to Mr Houlahan:
- The OPAL program was correctly described in Para 131. It had nothing to do with Council staff's Walk with Attitude program. The majority, if not all, pedometers were given to staff. As there were no children involved, Mr Dowd's claim that the purchase was associated with the OPAL program is factually incorrect. If there was funding from the Government for the purchase of the pedometers, it seems likely that money was misappropriated.⁴⁶
166. My investigation sought further clarification from Mr Dowd on this issue.
167. Mr Dowd's response included:
- OPAL was implemented in South Australia with the aim of improving eating and physical activity patterns of South Australian children through families and communities
 - councils participated in the program in different ways and the program did not require the council to co-fund programs solely aimed at children
 - as part of the Funding Agreement between the State Government and the council, staff of the Department of Health and Ageing facilitated the program and attended at the council to provide training and information sessions
 - the council contributed to project costs, which equated to approximately 50% of the total project cost.
168. Mr Dowd referred me to SA Health's website, noting that it indicates that not all programs were directed at children. Having regard to that information, I accept that, generally, the OPAL program has a broader community focus and is not limited to children. While I consider that the link between OPAL and provision of pedometers to staff could be perceived as somewhat tenuous, I also accept that the purchase of the pedometers was one part of the council's participation in the program over a three year period.
169. Mr Dowd has also noted that the council was required to report to staff at the Department of Health, not only on the program implementation but also on outcomes. According to Mr Dowd, at no stage did the facilitators of the OPAL program raise any issue with the council's proposal. The council stated:

⁴⁵ SA Health website. Accessed 21 August 2018.
<<http://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/healthy+living/healthy+communities/local+community/opal/opal>>.

⁴⁶ Letter to my Office dated 1 March 2019.

Therefore, there was nothing preventing the Council from implementing a staff-based wellness program as part of OPAL.

170. Based on the information before me, it is my view that this expenditure was not inappropriate and does not constitute the mismanagement of public resources. I do not consider, therefore, that the expenditure on pedometers constituted maladministration.

Conference in New Zealand

171. It was alleged that Mr Dowd incurred unreasonable expenditure associated with a business trip to New Zealand. It was alleged that between 17 and 19 February 2017, Mr Dowd attended a Chief Officers Group Conference in New Zealand.
172. The allegation is that Mr Dowd flew from Australia to Whakatane, attended a conference in Whakatane, drove from Whakatane to Auckland, incurring \$1,394 in hire car fees, and then flew back to Australia.
173. It has taken some time and effort to establish the precise details of this trip.
174. Mr Dowd provided the following response to this allegation:

I dispute this allegation and I consider it to be misleading and defamatory. You have an incorrect date, the LGCOG conference was February 2016. The conference was held in Whakatane. Once again, your Reporter has their facts incorrect and has deliberately misled your agency.

I took the most direct route of travel.

The hire car was shared between three South Australian CEO's.
I consider this allegation to be 'thrown in' to achieve an objective of forming up a story that is just simply not there.⁴⁷

175. In response to Mr Dowd's allegations that the report was misleading, Cr Bray disputed any intention to mislead on his or the other complainant's behalf.⁴⁸ I accept Cr Bray's submission.
176. Mr Dowd's first response did not sufficiently clarify his travel arrangements, except to clarify that the conference took place in Whakatane rather than Auckland. Consequently, a further enquiry was made. Mr Dowd responded:

Yes I drove to Auckland.

I drove to Auckland with 2 other CEO's and we shared the cost of the hire vehicle. Travelling by car saved both time and money as the minimal cost of the hire vehicle as opposed to flights was borne by the 3 councils and therefore represented ratepayer value.

The actual purpose for driving was to visit a number of key tourism focal points that were designed by world renowned international artists, were presented and discussed at the conference and bring thousands of tourists every year. The whole purpose of conferences and travelling is to have new experiences, learn about various strategies in and (sic) attempt to bring better knowledge and wealth to our cities.⁴⁹

177. Mr Dowd was questioned further about the conference and his travel arrangements during his interview under affirmation. I set out the relevant transcript below:

⁴⁷ Letter to my Office dated 11 December 2017.

⁴⁸ Letter to my Office dated 15 February 2019.

⁴⁹ Letter to my Office dated 13 March 2018.

Q: I have to ask you again about the conference in New Zealand.

A: Great.

Q: Sorry. You clarified that the conference took place in February 2016, and that the conference was held in Whakatane?

A: Whakatane.

Q: Is that how you pronounce it?

A: Yes.

Q: Can you just talk me through the travel arrangements, because I'm sorry I don't understand. You flew from Australia to Whakatane?

A: No. You can't fly from Australia to Whakatane.

Q: Okay. Yep.

A: So I guess this is one of these bizarre allegations how anyone would understand this, but - so we flew to Auckland, and then we drove to Whakatane, because there was no flight to Whakatane that day, and then we flew home from Whakatane via Auckland to Adelaide.

Q: Okay.

A: The conference was held in Whakatane.

Q: So you needed the hire car to get to this, you couldn't actually fly in?

A: We couldn't fly to Whakatane on that day. And the flight from Whakatane back to Auckland was on 1971 DC-3, I think I put my life at risk being on that flight but we took it.

178. Based on the information available, I accept that a number of the details of the allegation as made by the complainants were factually incorrect, including relevant dates and details of the precise travel arrangements. I also note that Mr Dowd's initial response to my investigation was brief and did not provide a full response. The precise details of Mr Dowd's travel arrangements, and the reasons for such travel arrangements, were not made clear to my investigation until Mr Dowd's interview on affirmation.
179. Whilst Mr Dowd has generally cooperated with my investigation, I comment that this particular issue could have been more easily resolved if Mr Dowd had indicated in his initial written response to my Office that he had needed a hire car because there was no available flight from Auckland to Whakatane.
180. Mr Houlahan acknowledged that his initial complaint to ICAC was 'not set out very well' and has since provided the following information to my Investigation:

The car hire for the journey from Auckland was for 7 days. It was picked up at Auckland airport on 14 February 2016 and dropped off at Whakatane airport on 20 February 2016. Participants were required to register for the conference between 5 and 8PM on 17 February and the Conference ended at 1245 PM on Friday 19 February.

It is not known if Mr Dowd was accompanied by a partner, but as you can see from the attached program partners were also fully catered for.⁵⁰

⁵⁰ Email to my Office dated 22 February 2019.

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181. As a result of issues raised by Mr Houlahan and Cr Bray in response to my provisional report, my investigation sought further clarification from Mr Dowd.
182. In response, Mr Dowd provided:
- that he flew to Auckland via Sydney on Sunday 14 February 2016 and arrived at 3.10pm
 - that he flew from Whakatane to Auckland on Saturday 20 February 2016 before connecting to a flight to Adelaide via Melbourne on the same day.
183. Mr Dowd has acknowledged that he arrived three days before the conference.
184. I have difficulty accepting Mr Dowd's submission that the hiring of the car necessarily saved time and money and therefore represented ratepayer value.
185. Despite my request, Mr Dowd has not provided my investigation with details of the other Chief Executives who he said shared the cost or any evidence that the council was reimbursed for those costs by those Chief Executives. In light of that, I cannot accept that submission.
186. Further, I have difficulty being satisfied as to the extent of council business conducted during that time.
187. When asked about that issue, Mr Dowd stated:

You have asked what Council business was conducted during this time prior to the commencement of the conference. As previously advised, in my role as CEO within a large local government setting, conferences provide opportunities for new work-related experiences and to learn about various strategies, projects and other developments at other local, State and National government levels, for example, in matters such as increasing tourism. This knowledge, and the experiences of thinking differently about how the business of Council might be conducted, based on the experiences of others, is then brought back for the benefit of the residents and ratepayers of the Council area. As part of this time prior to the commencement of the conference, I attended and explored a number of buildings, structures and art works, including those that had been designed by world-renowned international artists and architects. Some of these 'attractions' were also discussed at the conference and, in my view, it was important to make these visits, to gain a better appreciation and understanding of the project and to make the most out of the conference experience. It is commonplace for CEO's and other appropriate staff to embark on Study tours across Australia and overseas with many being led by the State Government. It is incumbent upon employees to broaden their knowledge and experience to better assist in delivering results.

The particular attractions that I observed included the Auckland Waterfront Project and the Hundertwasser Toilets, an internationally renowned work of art, that, incidentally and maybe even surprisingly, is a successful tourist attraction.

The Waterfront Auckland project was instrumental in assisting Council in delivering its international investment strategy, run in collaboration with DPTI and Vicinity Centres, in an attempt to revitalise the Noarlunga Regional Centre.

There is much we can learn in South Australia from other jurisdictions about progressive opportunities for civic building, sport and recreation facilities and many more of the significant facets of local authority responsibilities.

Accordingly, my attendance at the conference was in the context of the performance of my duties as CEO. It also presented me with the opportunity to network with other CEO's and senior executives and the opportunity to spend some time educating myself about infrastructure and tourism projects in New Zealand.

These experiences are, in my view, and accepted by council, of benefit to our Council area, which shares a number of common characteristics of New Zealand councils, such as access to beaches and coastline, holiday accommodation and winery tourism.

188. Mr Dowd also stated:

As my attendance was in the context of the performance of my duties as CEO, the Council paid for the additional four (4) nights accommodation and the petrol for the hire car.

189. I accept, as a general proposition, that there may be benefit in a Chief Executive Officer inspecting local sights of interest to the local government sector when travelling.

190. That said, I have not been provided with any documentation to show what benefit the three extra days in New Zealand had to the council. Mr Dowd has not, for example, provided my investigation with a copy of a contemporaneous report to the council on what he did during those extra days and its relevance to council business. In those circumstances, it is not surprising that a member of the public may reasonably perceive that there was questionable public value in that expenditure or that the expenditure was for Mr Dowd's personal benefit.

191. Ultimately, in the present case, due to the lack of documentation, I am unable to gauge with any certainty what benefit or otherwise Mr Dowd's extra three days in New Zealand may have had. That is unfortunate.

192. I have carefully considered whether, in light of Mr Dowd's response, I should express the view that the council's expenditure on the hire car and extra nights' accommodation for Mr Dowd constituted substantial mismanagement of public resources so as to amount to maladministration.

193. On balance, I consider that there is sufficient information before me on which to express such a view. In reaching that view, I have had regard to:

- the fact that the expenditure was authorised in the absence of clear or sufficient justification
- there was no supporting documentation to demonstrate the benefit to the council
- the expenditure appears to have been of limited public value and, on the information before me, was unlikely to meet public expectations.

194. I comment for future reference and in the interests of transparency that it would be prudent for the council to maintain more detailed records of its rationale for expenditure on 'unstructured' travel time and for persons incurring such expenditure to report back to council administration or the elected members as necessary on the council business that was conducted.

195. In all of the circumstances it is my view that the council's expenditure on the hire car and three extra nights' accommodation amounted to maladministration in public administration.

Apple Watch

196. It has been alleged that the purchase of an Apple watch on 30 November 2016 for \$879 was an inappropriate and unreasonable expense.

197. It appears that Mr Dowd personally made the decision to purchase an Apple watch for the council. Mr Dowd emailed [REDACTED] on 19 October 2016 asking her to make enquiries regarding whether she could arrange the purchase of a particular Apple Watch. [REDACTED] emailed Mr Dowd on 20 October 2016 indicating that she would make the relevant enquiries. The same day Mr Dowd emailed [REDACTED] stating:

Brilliant. Just for some context the tech one Ci anywhere product we are looking to trail (sic) and eventually implement sends approvals for reports, leave etc direct to your watch where you can approve.

198. Mr Dowd provided the following response to my investigation regarding the purchase of the Apple watch:

I am on the public record with a response to this allegation.

The watch is Council property. It is being tested as a business tool as part of a new software system to be deployed across the organisation. The watch is a new technology and its appropriateness as a tool in streamlining business processes is being tested in the same manner as laptops once were, smart phones, Ipads and so on. I question whether the same level of examination would have been applied had the equipment been tested by another employee such as an ICT officer...

The OneCouncil Technology One software product promotes the use of a range of smart devices to keep users connected to the office no matter where we are including the ability to approve escalated delegation matters via smartphone, tablet device, car touch screens, Apple watch or equivalent. The intent of embracing all new technology and equipment is to streamline council processes, improve decision-making processes, make approvals faster and ultimately reduce overheads and costs. Like all IT equipment purchased, it remains the property of the organisation. I also wish it to be noted that devices such as an Apple Watch are now part of the 'norm' for many leaders as part of their business resources.

It was in this context of the imminent purchase of the Technology One product and in response to feedback regarding my need to be accessible to a range of people at all times that the Apple Watch was purchased. If successful in achieving the goals identified it may become a common business tool for those with decision making authority...⁵¹

199. Further questions were put to Mr Dowd during his interview on affirmation. I set out the relevant parts of the transcript below:

Q: All right, let's move on to the Apple watch.

A: Yep.

Q: I understand you ordered it in approximately October 2016 and then received it a few months later; is that correct?

A: I think so.

Q: You stated in your letter dated 13 March that the council was pursuing its ICT reform project at the time you purchased the Apple watch, stating "It was in this context of the imminent purchase of the Technology One product and in response to feedback regarding my need to be accessible to a range of people at all times that the Apple Watch was purchased."

...At this point in time has TechnologyOne been formally engaged by the council?

A: No.

Q: ...So just thinking back to 2016 when you bought the Apple watch, why did you consider that the purchase of the TechnologyOne product would be imminent by the council?

⁵¹ Letter to my Office dated 13 March 2018.

A: Because we'd made all the investigations, we have got PriceWaterhouseCoopers reports on the efficiency and the use of the product and we have got prudential reports on the procurement. We have got....we had every single thing that we needed to do that. That, however, didn't stop the internal conjecture within my councillors delaying that process significantly, asking TechOne to come back and do another presentation...there are more than enough presentations and engagement with council that delayed all of those...

So TechnologyOne, we had seen the new products anyway, and I guess, as is any IT business tool, I mean this is obviously new and being considered as a business tool, like an iPad would have been once upon a time. In my view it will hold a range of functions. It wasn't purchased for me. I use it. So it is a council piece of equipment. It will go to whoever, at one point. If it sat on the wrist of an IT guy, I wonder whether the questions would even be asked of the watch.

However, the whole intent between the ERP and the whole intent about being accessible and being able to approve things, leads to the whole reason why we are buying a new ERP system. So it's efficiency and effectiveness. It can take - it can take two months by the time a report or request goes through the appropriate process to get to my office, and I'm back in my office to sign. This was intended to fix that; one of the tools to fix that. The Ci Anywhere product was to push approvals and leave balances and those sort of things out to -

Q: Can you tell me - is it called Ci Anywhere product?

A: Yes.

Q: Can you tell me how it works? Does it send something to the Apple watch?

A: It can send an approval for leave or you can add [REDACTED] as an Acting CO for the next four days, or you can approve the, I don't know, Sellicks bollard report, and you can do it from here and it links back into your system, updates the appropriate profiles.

Q: I understand for things like leave but I don't quite understand for things like reports. Would you not need to read the report and I think it's quite a small screen, so I couldn't quite -

A: Yes, it links the product and it also links to your vehicle, so the Ci Anywhere product takes your connectivity to a whole another level, but from a report perspective, I also have - I would have - I may have read the report, or not read the report, but not just approved it. It could be a straightforward approval. It's contact from my [Executive Assistant]. I mean it's just looking at this technology as another level of extension to an iPhone, an iPad.

Q: What benefits would the watch provide over a normal iPhone, for example?

A: It's just another tool. So what benefit does an iPad provide over an iPhone, or a laptop provide over a - I mean it's subjective, and that is why we are testing it. There is one in the organisation that is on my wrist. It was an executive product. It's an executive Toyota Ci Anywhere. It may be found that it doesn't become a relevant business tool.

Q: At the moment you are still in a test phase?

A: Yes, I think the real proof will come when we get your product purchased and in.

Q: An allegation has been made that the Apple watch is not compatible with the council's current IT systems. Can you explain whether it is?

A: Yes, it is.

Q: It is, so you haven't had any compatibility issues at all?

A: No. I think that is a fairly offensive allegation considering we all use Apple products every day.

Q: So you use a lot of them in the council already?

A: No, no. Apple products all run on the same IOS platform. Therefore, whether it's an iPhone, an iWatch, an iPad, it's the same software.

Q: ...You did say that the Apple watch is the property of the council?

A: Yes

Q: Does it go on any asset register?

A: It's on the asset register.

Q: Do you just have the one asset register or how does it work?

A: I don't think there is just one. For an item like this there probably is but then for my outdoor workforce for their gear there is a separate asset register, so - but for the intent and purposes of this infrastructure or equipment, yeah.

Q: Can you explain a little bit about how the asset register works? For example, all assets of a certain value or higher have to be put on the register?

A: Yes.

Q: Do you know what the cut-off is?

A: No.

Q: That's okay. I don't suppose you happen to know what date the Apple watch was put on to the asset register?

A: Late - no, I think there was a question about it not being on the asset register and it wasn't, so it is now on the asset register. I'm not sure of the date. I can find that out for you but I think there was a period where it wasn't on the asset register, and that's for no other reason than that happens from time to time.

Q: It was an oversight. I understand there was some discussion around [REDACTED] [REDACTED] also getting an Apple watch. Is that correct? There was some consideration?

A: If we got the Ci Anywhere and it worked, yes, but she doesn't have an Apple watch. We don't have the product and...we are struggling to test it.

Q: Okay. There has also been an allegation that the Apple watch needs to be within a certain range of your mobile phone in order for the Apple watch to alert you of things. Is that -

A: On networks, yes. Unless you buy the new Apple watch which has its own cellular device in it and then it doesn't need to be anywhere...

Q: From your experience of using the Apple watch so far, do you think it's likely that you think there's considerable benefits above a mobile phone, or do you think -

A: Look, I think there will be. I think there are - it will become a convenience issue, it will become a payment issue. I mean, Apple Pay and the watch is now technology used by all the banks, so depending on the environment you are in, it becomes a more effective tool. We take lots of payments and lots of things, so at some point this will become, I think, like an iPad or iPhone. Otherwise personally, having worked in that sector, I don't know why people would create these things if they don't grow to have a purpose other than just telling the time. So that is - you know, that is what we will test, we will look for other opportunities to do proximity measuring and payment stuff etc. If

it doesn't have a benefit, then it will be like another technology that we just won't adopt. I'm pretty sure that Apple know what they are doing, sort of.

200. In order for the purchase of the Apple watch to constitute maladministration, it must constitute the substantial mismanagement of public resources.

201. Mr Dowd has provided my investigation with evidence that the Apple watch is being used as part of a trial; is likely to have some utility and may be an efficient and convenient tool; and that no further Apple watches will be purchased if, after a suitable trial period, the Apple watch is not considered to provide sufficient benefit to the council.

202. I understand that some members of the community may consider the purchase of the Apple watch to be extravagant. It is a discretionary technological purchase and there is no evidence before me that it was an essential purchase.

203. Mr Houlahan responded to my provisional report:

The cost of the watch was \$879 + \$924 [Fringe Benefits Tax]= grand total of \$1803. It is important to note that FBT was deemed payable because under Australian Taxation Rules Mr Dowd already was in possession of a number of electronic devices that performed the same functions as the watch.

You do not pay fringe benefits Tax on a required business tool, as claimed by Mr Dowd.

It is also important to note that because the circumstances surrounding the purchase of the watch and other factors such as, was the purchase even necessary, I am reliably informed, the question of whether or not the watch attracted fringe benefit tax, was considered by several layers of management up to the most senior officer within the finance department.

Rather than reducing overheads and costs as claimed by Mr Dowd it simply added another unnecessary expense to council's overheads

...

Mr Dowd's claim that the watch was not on the asset list for no other reason than "*that happens from time to time*" is not correct. The watch was deemed a fringe benefit and as such was not entered into the asset register. The subsequent entry of the watch into the asset register appears to be a response to the adverse publicity surrounding its purchase and a belated attempt to disguise the fringe benefit by claiming it was a business tool.

In view of all the circumstances surrounding the purchase and potential efficiency gains claimed for the watch, I respectfully submit a finding that the purchase of the watch amounted to the substantial mismanagement of public resources would seem more appropriate.⁵²

204. For the reasons set out earlier in this report, I have chosen not to investigate the issue of payment of Fringe Benefits Tax. I considered, however, that the reasons for the Apple watch not being recorded on the asset register required further clarification.

205. Mr Dowd's response to my further enquiries included the following:

The Council remains frustrated by the level of interest in the purchase of the Apple watch. We consider this attention to be misguided, in so far as it is now almost universally accepted that an Apple Watch has similar functionality to an iPhone and an iPad and **does serve** a very clear and recognisable business purpose.

⁵² Letter to my Office dated 1 March 2019.

Ernst and Young have also confirmed that an Apple Watch is a business tool and, accordingly, does not attract Fringe Benefits tax of which our finance staff (who administer the Council's FBT arrangements) have been made aware and sought to resolve.

[...]

206. Mr Dowd reiterated that the period of time during which the Apple watch was not recorded on the asset register was an administrative oversight. The council also queried whether this level of scrutiny would be brought to bear on the purchase of a mobile phone purchased for testing on the TechnologyOne software.
207. The fact that the Apple watch was not an essential purchase and that there was a delay on entering it into the asset register does not necessarily indicate that the purchase of the Apple watch constitutes maladministration.
208. Ms Wenham provided a detailed response to my revised provisional report which submitted that Mr Dowd concocted a story, on affirmation, to support the purchase of the Apple watch. Ms Wenham referred, for example, to the timeline for purchase of the Technology One Software. I accept that the purchase of the Technology One software was not necessarily 'imminent' as stated by Mr Dowd. For the purposes of this investigation, I did not consider it necessary to put those matters to Mr Dowd. As I have not put those matters to Mr Dowd, I do not consider it would be fair to repeat them in detail in this report. Ultimately, my reasoning was not swayed by Mr Dowd's submissions about trialling the Apple watch with new technology.
209. I consider that the public indirectly benefits from measures implemented by the council to improve efficiency. Whilst I accept that the Apple watch has not yet been proven to improve efficiency, I accept that it is in a trial phase and has the potential to improve efficiency for the person in the role of CEO. I particularly note that the ability of the Apple watch to improve efficiency will be tested more effectively once the Ci-Anywhere product has been implemented across the council.
210. Ultimately, I accept that the Apple watch is council property and will be used for council purposes.
211. On balance, I consider that the information before me is insufficient to substantiate a view that the purchase of the Apple watch amounted to the substantial mismanagement of public resources. The purchase of the Apple watch therefore did not constitute maladministration in public administration.

SYC Networking Day

212. Mr Houlahan alleged that the council incurred a \$1300 expense for a 'Networking session SYC Golf Day' and that this transaction was concerning as it was unclear what value the council had obtained for the golf day. I note that SYC is a not-for-profit organisation centred on employment, training and youth services.
213. Mr Dowd provided the following response:

Through my strategic objectives and employment contract conditions, I am required to undertake a range of stakeholder and advocacy meetings, this includes with charitable organisations.

Without further context as to the allegation by the Reporter, I consider that this engagement with SYC was reasonable. We are working closely with SYC on a number of opportunities with the youth demographic. The City of Onkaparinga is

engaged and works closely with a multitude of not-for-profit organisations and we support them in various ways.⁵³

214. Upon request, Mr Dowd provided the following additional information:

...[the] City of Onkaparinga works closely with a range of not-for-profits including SYC who have a specific focus on the youth demographic.

The \$1,300 was spent specifically on supporting SYC's ongoing fundraising efforts in the form of a corporate networking day. The session was attended by more than 70 people from across various industries. As with all events hosted by not-for-profit organisations opportunities exist to meet with business leaders from across a broad range of sectors from across the state. These charitable events provide an avenue to demonstrate our support for the not-for-profit sector and in this example to SYC and their endeavours in the field of youth services. Value is achieved through promoting the work and opportunities that the City of Onkaparinga delivers not only within the youth space but also more broadly across the entire demographic. Networking days deliver avenues to create and build strategic alliances with various parties who may partner, sponsor [or] support our objectives into the future.⁵⁴

215. I note that the original allegation was vague and did not specifically allege that the transaction had been inappropriate or amounted to maladministration. Rather, the complainant queried the value obtained by the council in relation to this expense.

216. Mr Houlahan has since clarified that his concern in relation to this issue was the fact that an additional staff member and two non-staff members were included in the payment of \$1,300 for the networking day.

217. In response to my further queries, Mr Dowd expanded on why it was appropriate for him to attend the SYC Networking Day. I am willing to accept that Mr Dowd's attendance did not in itself constitute maladministration.

218. In relation to the attendance of others, Mr Dowd stated:

I cannot now recall who attended at the networking day. Whilst I note that Mr Houlahan alleged that two (2) Council employees and two (2) non-employees were in attendance, what is not clear is its relevance. The intent and purpose of this event has clearly been outlined again.

I again confirm that the fee paid by the Council was for participation in the event. It was a fixed fee for a team and in support of SYC. I further observe that whilst I cannot recall who attended the event as part of the fee, it is not unreasonable to invite guests, investors, or business to attend an event such as this. The invitation would have been extended to likeminded business associates to whom I considered may wish to become involved in furthering the aims of SYC, to contribute to their charitable cause, or otherwise assist the Council in future programs aimed at employment, investment, training and/or youth services.

219. I am somewhat surprised that Mr Dowd cannot recall who else attended the networking day. It appears more probable than not that persons who were not council employees attended at the expense of the council. In my view, the appropriateness of the council paying for those persons to attend depends on who those persons were. I have been unable to establish those persons' identity.

220. That said, contributing to a corporate networking day for a not-for-profit organisation is not, in my view, the mismanagement of council resources. While it is unclear whether the total expenditure was necessary in the circumstances, I am not satisfied that the

⁵³ Letter to my Office dated 13 March 2018.

⁵⁴ Letter to my Office dated 13 April 2018.

expenditure associated with the SYC Networking Day is likely to amount to substantial mismanagement of public resources. On that basis, I do not consider that further investigation of this issue is necessary or justifiable.

Adelaide Oval roof climb

221. It has been alleged that a total of \$4,923 was spent on a council event at Adelaide Oval in 2016 which included a tour and a roof climb. It is alleged that this expenditure was inappropriate.

222. Mr Dowd provided the following response:

This was a whole day strategic planning meeting held offsite with myself, the Director Group and managers. As part of the strategic planning day we received a presentation from the Stadium Management Authority Chief Executive Officer on a range of business and strategic matters and spent the rest of the day discussing and prioritising organisational objectives for each section for the coming year, establishing synergies across portfolios, revising budgets and areas for improvement and better organisational collaboration.

The actual walk was the final component of the strategic planning day. I acknowledge that when viewed in isolation, this type of organisational development activity does not immediately demonstrate a link to the services we deliver, but it is part of a broader leadership development program designed specifically for that purpose. The Skywalk element itself was at a cost of \$1631.00 and was not an additional expense but rather a BAU expense from our organisational development budget.

I am of the strong view that strategic planning for a leadership group is vital to an organisations success in achieving a clear vision and direction. I am also of the strong view that we need to be investing in our staff and leaders in a multitude of ways. Strategic planning days of this nature are in the ordinary course of doing business for organisations of our size and complexity and are in operation across all sectors of business. In ensuring that the leadership of the organisation is 'on the same page' we are able to more effectively communicate these strategies and their underpinning actions/measurements to the rest of the organisation for the delivery aspect to be achieved effectively and efficiently.

I recognise that there are some that question the use of a site such as the Adelaide Oval. When you take into account that the specific purpose for choosing this location was to receive a presentation from the stadium's Chief Executive about resilience, business planning and how they managed their budgets with such high overheads upfront with no income and for the specific purpose of taking our leaders out of their comfort zone so that they can challenge the norms and deliver an exceptional organisation, it may be more pertinent as to why this day existed. It should also be noted that there were a significant number of new managers to the organisation and it was essential that we all took the time to learn about each other's strengths and weaknesses and worked on a collective and shared vision for leadership for the organisation. This can only be done when the leadership is focussed on achieving the outcomes set for the day without distraction, hence the off sites are generally held away from the office to allow for this to occur. I can advise that the proposed outcomes for the day were achieved. This type of activity I believe is essential into the future. I need to be developing competency and resilience into my employees to be able manage not only their portfolios but also to remain committed and positive during times of such scrutiny.

The question has been raised as to why we would conduct these kind of events outside of our city. As highlighted above there was a specific purpose to this off site planning day. We do work with our local businesses and venues across a variety of different methods.⁵⁵

⁵⁵ Letter to my Office dated 13 March 2018.

223. Mr Dowd, in response to my provisional report, has stated that the roof climb was a 'necessary component of the Strategic Planning Day' as a 'team building component.'⁵⁶ I discuss Mr Dowd's response to my provisional report on this issue in greater detail later in this report.

224. I note that in Mr Dowd's report to the council meeting on 17 April 2018 he stated:

Community sentiment did not align with our corporate business practice specifically around team planning days. We consider these are important employee development activities and we will continue these types of events however, we will ensure expenditure for these types of events is responsible and will aim to minimise our spend on associated costs such as catering/venue hire (section 4.4 of the guideline).

225. During the course of my investigation, it became apparent that [REDACTED] [REDACTED] also participated in the roof climb. My investigation was provided with a copy of a photograph demonstrating that [REDACTED], who is not an employee of the council, participated.

226. Questions were put to Mr Dowd during his interview on affirmation. I set out the relevant transcript below:

Q: I have a question about the Adelaide Oval roof climb...Did [REDACTED] do the roof climb as well?

A: No. I'm pretty sure he didn't.

Q: I think I have a photo of [REDACTED] in the roof climb gear.

A: With me?

Q: I think so. Maybe eight employees or so. He's on one end and you're on the other.

A: Let me check it for you.

Q: I think it's him.

A: So [REDACTED] arranged - so the roof climb wasn't just a roof climb.

Q: Yes.

A: [REDACTED] had arranged for [REDACTED] who is the Chief Executive Officer of the Stadium Management Authority, Adelaide Oval, to come and talk to us during the day. So we went offsite and did our business planning by each team, each director and each manager for the oncoming year and [REDACTED] came down and talked to us about resilience, how he inherited a business and had to make money from it, with a \$35 million debt, or whatever the number was...and as part of that day we concluded the day with the roof climb. I thought [REDACTED] and [REDACTED] left, but if he stayed he may have stayed. We'll have to go to the photo. I just can't recall.

Q: That's okay.

A: But he was at the presentation from [REDACTED] because that is how it came about.

Q: So you might not recall this exactly, but I understand that 17 council employees were scheduled to do the roof climb, and that a deposit was paid in advance before the planning day. So it looks like the council paid for 17 employees to do the roof climb. Do you happen to recall if those 17 employees all did the roof climb?

⁵⁶ Letter to my Office dated 1 March 2019.

A: *[Shakes his head]*

Q: No memory? What I'm trying to establish is if 17 employees were all arranged to do the roof climb, but then on the day [REDACTED] also did the roof climb, I guess it's unclear who paid for [REDACTED] to sort of add onto the group.

A: Yes.

Q: Because presumably, I suppose, he could have paid for himself or the council could have paid, so that's what I'm trying to get to the bottom of at this time.

A: I think that would be two separate questions: so whether [REDACTED] was going to do the roof climb or not, I'll get the answer to, and then whether when push came to shove people actually wanted to get up on that roof and climb, so I'll get you the answer to that.

227. Mr Dowd provided further information by way of letter dated 31 August 2018. Mr Dowd stated:

I confirm that Council did pay for [REDACTED] roof climb at the Adelaide Oval. I must stress that [REDACTED] through his relationship with [REDACTED] assisted in the organisation of the leadership development day. It was [REDACTED] that aided to organise both the facilities at Adelaide Oval, access to the Adelaide Oval Stadium Management Authority Chief Executive, [REDACTED] to speak to the group on leadership and resilience and included in this package was a discounted price for the roof climb. [REDACTED] participated in this activity as part of the leadership development program.

228. In response to my provisional report, Mr Dowd stated:

At the Strategic Planning day, a presentation was received from the Stadium Management Authority CEO, [REDACTED], [who] addressed a range of business and strategic matters and the Council employees spent the remainder of the day in workshops discussing issues such as:

- prioritising organisational objectives;
- establishing synergies across portfolios;
- revising budgets;
- identifying areas for improvement; and
- how to best achieve organisational collaboration.

As set out in your provisional findings at paragraph 163 [of my provisional report], a Strategic Planning Day **is** a valuable exercise for a government agency **and does** bring broader value to the community. It has also been accepted that it is common practice for such a planning day to take place off-site, which is a finding that, likewise, supports the quarterly Directors Group workshops held off-site.

However, the Council **disagrees** with the concerns held regarding the roof climb component of that planning day and [REDACTED] participation in the same. [REDACTED] assisted in the organisation of this Strategic Planning Day, including organising the facilities at Adelaide Oval, at a discounted fee and access to the CEO, [REDACTED] as a guest speaker.

That is, without [REDACTED] assistance, the Council would not have had access to such a world class venue, with a highly regarded motivational speaker, providing insight into matters such as resilience, business planning and management of budgets within an organisation of high overhead, at a discounted price, which represents exceptional value for money.

It was not, in this context, inappropriate for the Council to include [REDACTED] in the roof climb activity, particularly given [REDACTED] was involved in facilitating sessions with the Directors and Managers across the whole day.

The Council **disagrees** with the provisional finding that the roof climb was not a necessary component of the Strategic Planning Day. Rather, **it was**, as a team building component.

Again, it is common practice at such planning days for there to be team building exercises, or otherwise exercises that might take participants out of their 'comfort zone', in order to facilitate a shared experience amongst the group and to build team work, trust and camaraderie. Indeed, your provisional view, set out at paragraph 165 [of my provisional report] acknowledges that such an activity may have been a '*morale-building experience*' for the Directors and Managers. That was absolutely the point of the same.

It was considered that the roof climb activity was ideal to instil a sense of 'ownership' amongst the Directors and Management Group, giving them a shared purpose and common goal, qualities which readily translate into the workplace. The Skywalk component represented only \$1,631 of the Strategic Planning Day expenditure, for 17 participants, being \$95 per head. The remainder of the expense was for venue hire and catering across the day. Objectively, it is a minimal expense.

Accordingly, the Council **disagrees** that the expenditure associated with the Adelaide Oval roof climb was excessive, or that it was an '*extracurricular activity*' (paragraph 165). Rather, the Council submits that the roof climb was an integral team building component of the Strategic Planning Day.

It necessarily follows that the Council **disagrees** that the expenditure associated with the roof climb constituted substantial mismanagement of public resources. Not only was there no 'mismanagement' but it was also an expenditure that any person approaching the assessment with an open mind and a reasonable approach would consider to be in the nature of 'de minimus'.

229. In response to my provisional report Mr Houlahan indicated that he understood that one of the other participants was [REDACTED] daughter, whom he believed also works for [REDACTED] company. Mr Houlahan and Ms Wenham also questioned the discrepancies in information provided by the Council in relation to the roof climb event.
230. In response to my request for further clarification, Mr Dowd confirmed that while 19 persons participated in the roof walk, the council only paid for 17 of those participants, all of whom were council employees. The council provided my investigation with a list of those employees and their positions within the council. The council clearly stated that it did not pay for any non-council staff to participate in the roof climb.
231. [REDACTED] confirmed to my investigation that he and another staff member from his business each led a team of the total number of participants through the Roof Climb team-building activity (the total number of attendees required two groups given the allowable maximum number of climbers at any one time). According to [REDACTED], they attended in a strictly professional capacity as management consultants and registered psychologists to observe behaviours, team work and communication of attendees during the Roof Climb followed by team debriefing back in the Workshop room.⁵⁷
232. [REDACTED] confirmed to my Office that neither he nor his fellow staff member paid for the climb, and that he considers either the council or Adelaide Oval would have paid for their participation.⁵⁸
233. [REDACTED], Chief Executive of Adelaide Oval SMA Ltd, spoke at the council's Strategic Planning Day. [REDACTED] confirmed to my investigation that:
- 19 individuals undertook the roof climb

⁵⁷ Email to my Office dated 3 September 2019.

⁵⁸ As above.

- 17 climbers were paid for at \$89⁵⁹ per climber with two climbers not being charged
 - while the records do not clearly indicate which two individuals received complimentary roof climbs, his recollection was that it was [REDACTED] and [REDACTED].
234. [REDACTED] provided my Office with the invoice from Adelaide oval and declarations signed by each of the climbers. Those records were consistent with the information provided to my investigation by Mr Dowd.
235. On the basis of the evidence provided to my investigation, I accept that the council did not pay for [REDACTED] and [REDACTED] to participate in the roof climb.
236. I accept that a Strategic Planning Day is a valuable exercise for a government agency and thus can be considered to bring value to the broader community of ratepayers. I am also willing to accept that it is common practice for a Strategic Planning Day to take place off-site. I do not consider that it was innately inappropriate for the council to attend a location which was outside the bounds of the council area, in order to facilitate its Strategic Planning Day of 2016.
237. I also accept that a roof climb may be used as a team-building exercise, and has been used for that purpose by various corporate bodies.
238. However I have concerns about the council's decision to include a roof climb at the Adelaide Oval as part of the Strategic Planning Day.
239. I do not consider that the roof climb was a necessary component of the Strategic Planning Day. Whilst it may have been an enjoyable, morale-building experience for the council employees, I do not consider that the public gained any benefit from the inclusion of the roof climb as an activity. Mr Dowd has acknowledged that community sentiment was opposed to the expenditure associated with the roof climb. I consider that the amount spent on the roof climb (\$1,631) was an excessive amount to spend on such an activity at a Strategic Planning Day, and that the amount contributes to the inappropriateness of the expenditure.
240. In light of the above, I consider that the expenditure associated with the Adelaide Oval roof climb constituted the substantial mismanagement of public resources.
241. In reaching that view, I have carefully considered Mr Dowd's response to my provisional report. I am not persuaded that the roof climb was necessary to instil a sense of ownership and shared purpose among managers or that such team building could not have occurred without incurring an expense of \$1,631. It concerns me that Mr Dowd's response indicates little insight into community expectations in that regard.
242. It also concerns me that the council has sought to argue that the expenditure should be considered in the nature of 'de minimus'. As I have previously indicated, the fact that expenditure may be minimal in light of an agency's overall budget is not the point. An agency has to be scrupulous at all times in expending public resources and, in my view, a failure to do so can result in the substantial mismanagement of public resources regardless of the amount involved.

⁵⁹ The total amount of \$1631 included \$118 for a photo pack as well as \$1513 for 17x \$89 climber's fees.

Opinion

In light of the above, my view is that the council committed maladministration in public administration for purposes of section 5(4)(a)(i) of the ICAC Act by its practice which resulted in the systemic misuse of corporate credit cards, in relation to the following expenses:

- expenditure by the Director's Group, including restaurant meals, hire cars and catering
- catering for council employees
- gifts for council employees
- purchases of flowers
- expenditure on the hire car and extra nights' accommodation for Mr Dowd's trip to New Zealand
- the Adelaide Oval roof climb.

In addition, my view is that incurring the above expenses was wrong under section 25(1)(g) of the Ombudsman Act. I am concerned that, at the time the purchases were made, the policies of the council were inadequate and did not stipulate appropriate limitations on the use of the corporate credit cards. Arguably the council's former policies and procedures contributed to the systemic use within the council of credit cards, accruing expenditure which was often inappropriate without an apparent regard for the appropriateness of the expenditure by either the cardholder or the manager approving the cardholder's expenses.

I acknowledge the significant steps taken by the council in order to alter its practices and procedures to ensure that future credit card expenditure is appropriate. While I have expressed concerns about the preamble which is contained in the council's new 2018 Purchase Card Policy, Mr Dowd indicated that the council is willing to amend it and I take no issue with the proposed amendment. In those circumstances, I do not consider it necessary to make a recommendation in that regard. That said, I anticipate that the council will provide me with a copy of the amended Purchase Card Policy in due course.

Whether former Mayor Rosenberg committed maladministration in public administration by systemic misuse of corporate credit cards

243. It has been alleged that Mayor Rosenberg (as she then was) incurred the following expenses on her corporate credit card and that the expenses were inappropriate:
- a function for elected members on 17 January 2016 totalling \$1,878
 - one night of accommodation at the Hyatt Regency Hotel on 2 November 2015 totalling \$272
 - the purchase of a football Guernsey on 7 August 2014 totalling \$399
 - the purchase of a painting on 16 February 2015 totalling \$240
 - the purchase of picture frames on 2 December 2015 totalling \$360.⁶⁰
244. For simplicity, I will refer to former Mayor Rosenberg as ‘Mayor Rosenberg’ throughout the remainder of this report.
245. Mayor Rosenberg has emphasised her disappointment that the portion of the Provisional Report pertaining to her was not dealt with separately and feels the lack of outcome at the time cost her the election.⁶¹ In my view, in this particular matter there is a public interest in providing the whole picture in relation to the council’s expenditure in one report. I also note in that regard that my provisional report included my view that Mayor Rosenberg did not commit maladministration.
246. Mayor Rosenberg provided the following response to the allegation about the lunch function for elected members:

As background, the Mayor is issued with a credit card to conduct necessary council business and that expenditure on this card is allocated as part of the annual budget **approved by Council publicly**.

When I first became Mayor, I received my credit card and asked what rules were around its use. At that time there were no formal rules. I then requested rules be put into place against which use and misuse would be measured.

...

I also **voluntarily** began having all my credit card expenditure **publicly** produced in the Mayor’s Report each six months. I am pleased to say this requirement has now found its way into the procedures for council, so all future Mayors will also be required to publicly report. As you would know the Mayor’s report is on the Council agenda and repeated in the minutes.

In the time I have been Mayor of the City of Onkaparinga and prior there has been a mayoral budget for events, civic activities, thank you functions, etc. at the discretion of the Mayor. I have also over my 11 years tried in various ways to build a strong relationship bond between councillors and staff. I use the mayoral budget allocation (**set by Council**) in a range of ways such as:

- Christmas lights competition
- garden competition
- civic events
- volunteer thank you.

One such expenditure has been to occasionally invite councillors and partners and certain staff to my home for a Christmas lunch and celebration. Over the last 8 years I have held one in 2011, 2012, 2013, with none in 2014 (due to caretaker). The 2015

⁶⁰ In response to my provisional report, Mr Houlahan provided further examples of what he considered to be inappropriate expenditure by Mayor Rosenberg. In all of the circumstances, I do not consider that investigation of that further expenditure is necessary or justifiable.

⁶¹ Letter to my Office dated 8 February 2019.

event was cancelled because we had 42 degrees temperature and high winds forecast. That cancelled event was carried over and held in January 2016. No event was held in the later part of 2016 or 2017 for Christmas...

As you can see from the history all councillors are invited, they are all clearly aware of the event and never have they questioned my holding the event or suggested it was inappropriate.

At the 2016 event 13 elected members and partners attended and seven staff attended.

For those attending it is a pleasant event, an opportunity to mix socially outside the constraints of the Chamber with the objective of strengthening relationships. I am of the view these sessions are worthwhile.

The City of Onkaparinga is a large elected body of 21 (soon to be 13). At each election we have around 50% turnover of councillors and I have believed it important to try to bind the group from the early stages. I am sure this has worked in previous council periods and is important to good decision making.

It is important to note that all decisions about the fund available to the Mayor are set by the chamber and if they don't wish for there to be a fund they simply have to remove it.⁶²

247. The allegation in relation to accommodation was that Mayor Rosenberg incurred the expense following her attendance at the Local Government Association (LGA) Annual General Meeting and that it was unclear whether Mayor Rosenberg attended in her capacity as Mayor or in her capacity as President of the LGA.

248. Mayor Rosenberg provided the following response to the allegation:

As the Principal Member of council I attend each AGM and OGM of the LGA as the registered voting member. In all the years I have attended this event on behalf of council I have only stayed in Adelaide overnight once. In other years I have driven home and returned early the next morning for the LGFA AGM as voting member. That particular year I had health issues and was overly tired at the end of each day and felt it safer to stay in town rather [than] do the 1.5 hour trip home.

My term as President of the LGA started on **13 December 2016**, over a year after this event and the date that has been put to you for investigation.

The Council nominated me as a candidate for President publicly and so would be aware of the dates, as would the public.

The attached registration form clearly shows I am registered as Mayor for the AGM of the year in which you are questioning.⁶³

249. The allegation in relation to the football Guernsey and the painting was that these items appeared to have been purchased as gifts. Mayor Rosenberg provided the following response to the allegations:

The items of purchase in the allegations, namely a football Guernsey, piece of art and 20 photo frames all appeared on publicly reported credit card statements within the Mayor's Report. At no time have any questions been raised by any councillor or member of the public about any of those items.

I will address each purchase separately.

⁶² Letter to my Office dated 25 January 2018; emphasis in original.

⁶³ Letter to my Office dated 25 January 2018.

Football Guernsey - South Adelaide Football Club is the official SANFL club within the City of Onkaparinga. Council participates as a sponsor in a range of events at the club and they in turn provide the facility to council for community events, e.g. the Australia Day Bush Fair. In August 2014 the club held a commemorative match celebrating 50 years since its last premiership in 1964. Each player wore a commemorative Guernsey to celebrate the event. They were later sold to interested parties.

I purchased one Guernsey on behalf of the City of Onkaparinga as a contribution of our council to this significant celebratory event. Contrary to the allegation, it was not bought as a gift for an individual, but rather as part of a memorabilia collection for council.

Council involves itself in a raft of activities to support our community, commemorate events, recognize achievements and support remembrance of significant achievements.

I think it is appropriate for council to support such a significant event by the purchase of this piece of memorabilia. It happens once in 50 years!

By the way the Guernsey is on the wall in the Noarlunga office and available to be moved around our city to any council venue requesting it. It was and remains the property of the City of Onkaparinga. I advise that it was not purchased as a gift for anyone.

A piece of art was purchased in February 2015 for \$250 from an art exhibition held at Hugo Winery, with art on sale by Peggy Miller King. I formally opened this art exhibition.

This purchase, once again, was on my credit card statement within the public agenda. It is not unusual, albeit infrequent, that the council via staff or me will purchase a piece of art to build on and complement pieces within the City of Onkaparinga art collection. This collection is on display throughout our offices, libraries, community centres and youth centres. It is a fantastic way of promoting our local talent, encouraging those starting out and adding to our council's valuable collection.

Once again, contrary to the allegation, this piece was purchased as an addition to our art collection, not as a gift to anyone.

It is also currently on the wall in the Noarlunga office and remains the property of the City of Onkaparinga.⁶⁴

250. The allegation in relation to the picture frames was that they were a gift from Mayor Rosenberg to the elected members. Mayor Rosenberg provided the following response to the allegation:

A charge of \$360 was raised on Michelle Wooldridge's credit card and listed as "Mayor Gifts to EM".

Each year I provide a small gift to each elected member for Christmas as a thank you from myself and the organisation for the efforts they have put in during the year.

Traditionally these are things that reflect work in our community and the purchases aid community groups.

For instance in 2017 the purchase included a year calendar by the Willunga Recreation Park and art group as a fundraiser. In the past, one year it was a CD of a song written by a local artist celebrating the Onkaparinga region and our citizens.

I don't consider that it is unreasonable for part of the Mayor's budget to be used in such a way. The year in question the gift was a framed photo of the current elected

⁶⁴ Letter to my Office dated 25 January 2018.

body. All elected members were given the gift and indeed all elected members have received a small gift every year.

To date, although I am rarely thanked, I have never had **any** councillor return the gift.

251. In order for the above expenses by Mayor Rosenberg to constitute maladministration, the expenses must have resulted in the substantial mismanagement of public resources.
252. The function for elected members on 17 January 2016 incurred expenditure totalling \$1,878. Mayor Rosenberg has explained her reasons behind hosting the function and its intended purpose. I note that approximately 33 persons attended, with expenditure of \$57 per head.
253. I have considered a number of factors, including
 - the benefit (real or perceived) gained by the public from the expenditure
 - the public's expectations of government agencies
 - the appropriateness of the amount of the expenditure
 - the infrequency of such functions being held.
254. I note that it is part of the role of the Mayor to be a community figurehead, to build relationships between the elected members and to promote a cohesive elected body. I do not consider that Mayor Rosenberg was overreaching her role as Mayor by holding a Christmas gathering. I consider that strengthening relationships between councillors so as to avoid a divisive and acrimonious elected body brings indirect benefits to the community, as a dysfunctional elected body will not perform to the standard expected by the community.
255. In all the circumstances, while I query whether the expenditure of \$1,878 was necessary, I am not able to conclude that in these particular circumstances, it constituted the substantial mismanagement of public resources.
256. The allegation that Mayor Rosenberg had inappropriately spent \$272 on one night of accommodation at the Hyatt Regency Hotel on 2 November 2015 was based on the allegation that she may have attended in her capacity as President of the LGA rather than in her capacity as a representative of the council. I am satisfied that as at 2 November 2015, Mayor Rosenberg had not yet commenced in the role of President of the LGA.
257. I do not consider that \$272 was an excessive amount for Mayor Rosenberg to incur for hotel accommodation. I also note that this was a one-off expense and I accept that it was reasonable in the circumstances. Based on the available evidence, I do not consider that the expense of \$272 constitutes the mismanagement of public resources.
258. The basis of the allegation relating to the football Guernsey and the painting was that it appeared that these items had been bought as gifts for unknown recipients, and on that basis the expenditure of public funds for this purpose was inappropriate.
259. This allegation has not been substantiated. Mayor Rosenberg has provided a reasonable explanation for the reason these items were purchased and the circumstances surrounding their purchase. I also note the infrequency of these types of purchases by Mayor Rosenberg. I do not consider that the purchase of these items was inappropriate or constitutes the substantial mismanagement of public resources.
260. Mayor Rosenberg has acknowledged that \$360 was spent on Christmas gifts, given from the Mayor to the 21 elected members. This averages approximately \$17 per head.

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261. Mayor Rosenberg's submissions include that the Mayor's credit card budget was approved by resolution of the elected body; that the gifts were given to elected members who have never objected to the use of the Mayor's budget in this way; and that no elected member has ever returned the gift.
262. In my view, the fact that a particular expense has been sanctioned (explicitly or implicitly) by the elected body does not preclude a finding that such an expense constitutes maladministration in public administration. Depending on the circumstances, such a fact may influence whether the conduct in question was 'the conduct of a public officer' or 'a practice, policy or procedure of a public authority', which are differing types of maladministration.
263. In this matter, I consider that the decision of the Mayor to purchase Christmas gifts for the elected body remains, relevantly, the conduct of a public officer.
264. In my view, it is not an appropriate use of public funds for a Mayor to purchase Christmas gifts for elected members. I do not consider that the public gains a benefit from the Mayor purchasing Christmas gifts to give to elected members.
265. I consider that the purchase of gifts for the elected members, using public resources, amounted to the mismanagement of public resources.
266. I have considered whether the mismanagement was substantial, and thus amounts to maladministration. I note that the amount spent on the Christmas gifts was not, in itself, excessive. I also note Mayor Rosenberg's submission that the purchases are small, reflect work in the community, and aid community groups. This issue was not canvassed in the Community Engagement Feedback Report. However, whilst there may be mixed views in the community, given all of the circumstances I do not consider that this purchase would fail to meet the expectations of the public as a whole.
267. I also comment that Mayor Rosenberg has been transparent about the purchases and has taken steps to ensure that Mayoral expenditure is published.
268. On the evidence available, I consider that Mayor Rosenberg's conduct in purchasing Christmas gifts for elected members was not conduct that resulted in the *substantial* mismanagement of public resources.

Opinion

In light of the above, my view is that Mayor Rosenberg did not commit maladministration in public administration for purposes of section 5(4)(a)(i) of the ICAC Act in relation to the following expenses:

- the Christmas function for elected members
- one night's accommodation at the Hyatt Regency Hotel
- the purchase of a football Guernsey
- the purchase of a painting
- the purchase of Christmas gifts for elected members.

Whether the council acted in a way that was wrong by failing to maintain accurate records in respect of credit card expenditure

269. The complainants allege that the council has failed to maintain accurate records. The complainants specifically allege that some transactions do not include the name of the merchant, and that in most instances, the date used in the FOI documents is the date of entry into the council's electronic financial system, rather than the date the transaction took place. The complainants also allege that inconsistent identification codes are used, making it difficult to identify where the money is coming from.

270. Mr Dowd provided the following information to my investigation:

Some transactions do not show merchant name

I note there are transactions within the 1160 odd page FOI document provided to the Applicant which had non-merchant descriptors such as ****PAYPAL**** or in some instances information such as 'split 50% for expenses'. This may be as a result of how the information was entered into council's financial institutions expense and transaction management system, however, I am confident that the transactions were bona fide and the appropriate level of information has been captured...

Posting date versus transaction date

I am unclear why this is of particular concern for the Reporter. The information provided to the FOI applicant (Mr Houlahan) was extracted from council's financial institution's expense and transaction management system (Smartdata). I would also suggest it is not unusual for a one to two day 'processing delay' in credit card transactions due to banking institution processes. Further, nowhere in that FOI application, which I suspect is the source of this allegation, did it specify that the transaction date was required. In my view the information provided at the time satisfied the applicant's request and the matter of which date was in the extract is largely irrelevant.

Inconsistent identification codes are used as to where the money is coming from.

I am unclear as to what is being alleged. All expenditure comes from approved budget lines which must be assigned to a payment each month when they are entered/reviewed into Smartdata. Every section within council has specific budget lines against which their expenditure is recorded.⁶⁵

271. In response to an enquiry regarding whether Mr Dowd considered that the records the council currently keeps in respect of credit card expenditure are satisfactory, Mr Dowd provided the following response:

Yes. I consider the records kept by council in relation to credit card expenditure to be entirely satisfactory. Officers are accountable for payments made using a corporate credit card and are required to comply with council's procedure by recording those transactions in the council's financial institutions expense and transaction management system (Smartdata) provided as an online system by council's financial institution.

In all instances tax invoices /receipts are required to be sighted by the approving supervisor and hardcopies retained as per legislative obligations.

Furthermore, corporate credit card transactions are subject to internal audit as part of the approved internal audit program.

Previous internal audits have not identified fraudulent purchases by employees, however, to ensure council's continuous improvement of its activities and having regards to risk assessment we continue to identify opportunities that exist to

⁶⁵ Letter to my Office dated 11 December 2017.

implement further efficiencies and internal control measures for this type of procurement method.

Please see the two public reports that have been provided to Council's Audit, Risk, Value and Efficiency Committee regarding the FOI application and our continuous improvement activities.

Monthly reminders are sent to all card holders and supervisors to complete their expenses report in Smartdata for review and approval...Council's processes are designed to provide transparency in purchases and payment methods.

Monitoring of purchasing is ongoing and as and when anomalies are identified managed on a case by case basis [sic]. If systemic, serious or intentional misuse of a credit card by an individual was to be identified procedures under the Code of Conduct for employees would initially apply with escalation to relevant agencies externally if warranted. No instances of this requirement have been triggered to date through the use of credit cards.⁶⁶

272. In response to general enquiries regarding the council's expenditure on flowers, Mr Dowd provided the following additional information:

I acknowledge the difficulties experienced with some of the descriptions that have been provided and we are taking steps to ensure this improves through our Better Business Practice pilot workshops with staff that commenced in 2017. A range of staff have participated in these workshops, with a view to integrating this program into Onkaparinga's 'onboarding' process which aims to increase the level of transparency and effectiveness of our staff's written correspondence including descriptions on purchasing transactions.⁶⁷

273. Mr Dowd has provided the following general comments on my investigation into the council's credit card expenditure:

In summary, a lot of what has been requested throughout your examination of the Council's credit cards is subjective and open to a wide variety of opinions. I acknowledge that the descriptions on many of the transactions do not assist in this regard. Therefore context and understanding of the facts is critical in any analysis. This is evident in the current media and social media that are being reported about our use of credit cards where this context and information is not being reported appropriately, but rather sensationalised or selectively chosen for third party's particular agendas to be advanced. As discussed with you previously the operating budget for Onkaparinga over this period was in excess of \$500M. It is particularly challenging and disappointing that we have to continue to defend individual line item expenditure for the purpose of sensationalism and we are not recognised for our continuing efforts in reducing our operating costs and delivering our lowest rate increases year on year during this period.

In close relation to your investigation is the nature of the approach by the Onkaparinga Council Watch, some Councillors and the community in taking this matter through the media which I consider is extremely inappropriate and has caused a detrimental impact on the administrative staff of the Council. It should be noted that the actions by some councillors may have achieved a better outcome had the matter been addressed through our normal Council internal channels rather than being 'played out' through the media avenue. The use of our credit cards has been reported to our Audit Committee twice, in my view it would have been a more appropriate mechanism for the Councillors to continue with this line of examination to obtain the facts and context to inform opinions and views. It is also worth noting that the time and effort in defending these allegations ultimately comes at a cost which is often larger than the original query.

⁶⁶ Letter to my Office dated 11 December 2017.

⁶⁷ Letter to my Office dated 13 March 2018.

We have acknowledged on the public record where the community's sentiment has been expressed and where it does not accord to the historical practices of the Council. We have been in the process of internally reviewing our practices since mid-2017 with two reports already provided on the public record through our Audit Committee and other matters are being addressed through our internal executive meetings. These reviews are internally generated and are undertaken by the staff for the right reasons, namely to promote community trust and confidence in the Council through appropriate expenditure of ratepayer funds.

I am confident that the reviews being undertaken internally by three separate areas of the organisation, namely governance, business performance improvement and procurement will achieve an appropriate outcome and I am happy to forward to you a summary of the outcomes of these reviews.

A report is scheduled to be tabled with Council in April 2018 as a summary of the work undertaken to date and the future actions to take place regarding credit card usage which will be on the public agenda.

Finally, it should not be underestimated the impact that the disclosure of the Freedom of Information has had on the administrative staff of Onkaparinga. These are people doing their jobs, who are community members themselves, rate payers and who are immensely passionate about delivering the great outcomes that they do for the community. My primary responsibility will continue to be regarding their welfare and providing them with a culturally appropriate and safe working environment.⁶⁸

274. Cr Bray responded to my revised provisional report in relation to Mr Dowd's comments about councillors taking this matter to the media. I do not consider it necessary to repeat those comments in full, as ultimately nothing turned on Mr Dowd's comments for the purposes of this investigation. I note, however, that Cr Bray's response included the following submissions:

- Cr Bray did not initiate contact with the media but was grateful to the media for the opportunity to distance himself from the relevant expenditure
- detrimental impact to staff was not caused by the media reporting, but the type of expenditure; arguably senior management let council staff down
- using normal council channels would have not achieved an appropriate result, instead keeping the investigation and council responses to those whose actions were being investigated under the oversight of those whose actions were being investigated.

275. I note that Mr Dowd made the following comments at the Council meeting on 17 April 2018:

Corporate Governance undertook a process compliance review following the release of the FOI documents. The review found that many descriptions used to describe transactions were inadequate and did not provide an appropriate level of context to the purchase...

276. The 2018 Purchase Card Procedure provides that the cardholder is responsible for ensuring that all transactions are recorded in line with defined description standards. The person authorising the cardholder's expenditure is also responsible for ensuring that the description standards are being met.

277. The description standards are listed in clause 9 of the 2018 Purchase Card Procedure, which relevantly states:

The Cardholder must use naming standards to describe the transaction using information in the format of:

⁶⁸ Letter to my Office dated 13 March 2018.

[what] [why] [project] [where] [for]

Where naming standard is not applicable, leave blank.

278. It is unclear in what circumstances the naming standard could be considered to be not applicable. It is also concerning that cardholders are instructed that the description for the purchase may be left blank in any circumstance at all.
279. I have considered the allegation that the date used in the FOI documents is the date of entry into the council's electronic financial system, rather than the date the transaction took place. Mr Dowd has indicated that the application for access did not include a request for the transaction date.
280. The scope of the original FOI application for access was in the following terms:
- Please provide full details of all credit cards and corporate cards in use by the City of Onkaparing (sic) for the period from 1st January 2014 to the 1st January 2017.
- Details to include person/s and or positions the credit cards are allocated to and separate detailed monthly expenditure statements for each individual card for the period.
- Please also include details of the maximum monthly expenditure limit on each card and maximum limit on individual transactions for each card.
281. Based on the terms of the FOI application, it does not appear that the applicant specifically requested the dates that the transactions took place. On that basis, it is not unreasonable that the council did not provide that information within the documents which were disclosed pursuant to FOI.
282. I note that Mr Dowd has indicated that hardcopies of original receipts relating to corporate credit card transactions are retained by the council.
283. My provisional report included a tentative view that the allegation that the council has failed to record information as to what date each transaction took place, merely because that information was not disclosed in the documents which were released following the FOI applications, was not substantiated.
284. In response to my provisional report, Mr Houlahan clarified:
- I am not aware of any allegation that the council failed to record information as to what date each transaction took place [...]. I incorrectly assumed my request for monthly credit card statements would provide actual dates of transactions, particularly as that was the case with my first credit card FOI request. The information would have helped link associated expenses such as taxi hire with the function or event attended.
285. The use of identification codes appears to be an internal council procedure, recording which budget lines each credit card expense is associated with. I do not consider I have sufficient evidence before me to conclude that the identification codes are being used 'inconsistently'.
286. However, I am of the view that for accurate and transparent record keeping, the entries into the SmartData system must include the name of the merchant and a full description of the purpose and reason for the purchase.
287. I have commented above in this report that the council's descriptions of flower-related expenditure were inadequate. The council has been unable to demonstrate any reason at all for numerous flower-related expenses and has been unable to demonstrate who the recipient of flowers was in many instances.

288. In my view, the council's failure to ensure that every credit card transaction is accompanied by the name of the merchant and an accurate description was wrong.
289. Mr Richardson's response to my revised provisional report included the following points:
- the council's ability to respond to my investigation has been hampered by poor, inadequate and, in some cases, inaccurate input of detailed descriptions of the expense transactions and supporting documentation into the council's records
 - the council has now provided training by way of tens sessions across the organisation attended by 131 employees in relation to expense transaction descriptions and details of reasons for expenditure
 - he expects that the council will continue to audit current practices
 - oversight of current practices of corporate card procurement was recently the subject of an independent internal audit and the outcomes of the internal audit will continue to be reported through the council's Audit Committee until all actions are complete.
290. I commend the council on taking those steps.

Opinion

My view is that by failing to keep accurate records, the council acted in a manner that was wrong under section 25(1)(g) of the Ombudsman Act. I include a recommendation in relation to this issue at the conclusion of this report.

Summary and recommendations

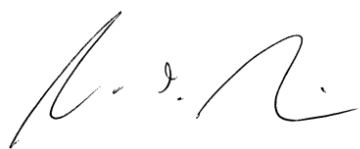
In light of the above, my final view is that:

- the council committed maladministration in public administration for purposes of section 5(4)(a)(i) of the ICAC Act by its practice which resulted in the substantial mismanagement of public resources, in relation to the following expenses:
 - expenditure by the Director's Group, including restaurant meals, hire cars and catering
 - catering for council employees
 - gifts for council employees
 - purchases of flowers
 - expenditure on the hire car and extra nights' accommodation for Mr Dowd's trip to New Zealand
 - the Adelaide Oval roof climb.
- Mayor Rosenberg did not commit maladministration in public administration for purposes of section 5(4)(a)(i) of the ICAC Act in relation to the following expenses:
 - the Christmas function for elected members
 - one night's accommodation at the Hyatt Regency Hotel
 - the purchase of a football Guernsey
 - the purchase of a painting
 - the purchase of Christmas gifts for elected members.
- by failing to keep accurate records of credit card transactions, the council acted in a manner that was wrong under section 25(1)(g) of the Ombudsman Act.

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

Recommendation

That the council remove the phrase 'Where naming standard is not applicable, leave blank' from clause 9 of the 2018 Purchase Card Procedure



Wayne Lines
SA OMBUDSMAN

25 November 2019