

STATEMENT ON INVESTIGATION

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

16 December 2019

INVESTIGATION IN RELATION TO ACCEPTANCE OF GIFTS BY EMPLOYEES OF THE CITY OF ONKAPARINGA

The Independent Commissioner Against Corruption referred to my Office a matter arising from a complaint about council employees at the City of Onkaparinga accepting gifts between February 2014 and March 2018. The matter was referred on the basis that it raised potential issues of misconduct by individual council employees.

At the time of the relevant conduct, the Code of Conduct for Council Employees which was in place prior to 2 April 2018 (**the former Code**) applied.

Clause 2.19 and 2.20 of the former Code provided:

- 2.19 Council employees must not:
 - 2.19.1 Seek gifts or benefits of any kind.
 - 2.19.2 Accept any gift or benefit that may reasonably create a sense of obligation on their part or may be reasonably perceived to be intended to or would reasonably be likely to influence them in carrying out their public duty.
 - 2.19.3 Accept any gift or benefit from any person who is in, or who seeks to be in, any contractual relationship with the Council.
- 2.20 Notwithstanding clause 2.19.3, Council employees may accept hospitality provided in the context of performing their duties, including:
 - 2.20.1 Free or subsidised meals, beverages or refreshments of reasonable value provided in conjunction with:
 - 2.20.1.1 Council work related events such as training, education sessions, workshops and conferences; and
 - 2.20.1.2 Council functions or events; and
 - 2.20.1.3 Social functions organised by groups such as Council committees and community organisations.
 - 2.20.2 Invitations to and attendance at local social, cultural, or sporting events.

I commenced a preliminary investigation.

My investigation focused on over 30 entries in the council's gifts register during the relevant period. The gifts were provided by a range of businesses and included tickets to concerts and sporting events.

I put my tentative views on the matter to the then-Chief Executive of the council, including my view that there appeared to have been breaches of the former Code by individual employees. In particular, I considered that employees accepted gifts from contractors in circumstances where none of the exceptions in clause 2.20 of the former Code applied.

Outcome

After considering responses from the complainant and the council, I determined not to continue my investigation. In reaching that view, my considerations included:

- the current Code of Conduct for Council Employees (**the current Code**) does not include the strict prohibition on receipt of any gifts from contractors and potential contractors (which appeared to apply to most of the gifts considered by my investigation)
- while I disagreed with the council's broad interpretation of 'local event' for the purposes of the former Code, that definition is no longer relevant under the current Code
- according to the council's register, there has been a significant reduction in the number of gifts accepted since the former Code was abolished
- the fact that the council appears to have adequate processes in place to manage this issue
- there does not appear to have been a pattern of misconduct on behalf of any particular individual, instead the gifts of concern were accepted by a range of staff members.

I also had regard to my usual criteria for investigation and considered that:

- there does not currently appear to be an indication of a systemic issue in relation to gifts and benefits
- given the council's processes, it is not clear that any investigation would result in a meaningful outcome
- I was not satisfied that continued investigation of this matter would be an appropriate use of my limited resources.

While I consider that the council's declaration form for use under the current Code provides comprehensive guidance to council employees, I suggested to the council that it amend the form to require detailed reasons rather than a 'yes' or 'no' tick box. The current Acting Chief Executive Officer of the council provided me with a revised form which addresses my concerns.



Wayne Lines
SA OMBUDSMAN

16 December 2019