



STATEMENT ON INVESTIGATION

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

12 November 2018

Outcome of Ombudsman investigation into alleged misconduct by a council employee

The Ombudsman received a referral from the Independent Commissioner Against Corruption concerning an employee of a Council. The referral alleged that an employee had breached clauses of the Code of Conduct for Council Employees (which applied at the relevant time) by pouring sugar into the fuel tank of a vehicle that was parked at the Council's December 2016 Christmas function, causing damage. The vehicle contained a sign across the windscreen which was derogatory to another staff member of the council. The owner of the vehicle complained to the council.

The Ombudsman conducted an investigation and determined, that on the balance of probabilities it was more probable than not, that the employee had undertaken the conduct. The Ombudsman formed this view based on the significant circumstantial evidence (including evidence from a number of independent witnesses) and the implausibility of other possible scenarios.

The Ombudsman concluded that the employee's conduct at the function was not reasonable or respectful towards the owner of the vehicle, nor did the employee act in a way that generates community trust and confidence in the council by damaging the vehicle and this conduct amounted to breaches of clauses 2.4 and 2.5 of the Code as well as section 110(4) of the Local Government Act. On that basis the employee committed misconduct in public administration for the purposes of section 5(3)(a) of the ICAC Act, and acted contrary to law for the purposes of section 25(1)(a) of the Ombudsman Act. The Ombudsman recommended under section 25(2) of the Ombudsman Act that the council consider taking disciplinary action against the employee.

The Ombudsman also investigated whether the council's handling of the incident involving the employee was unreasonable within the meaning of the section 25(1)(b) of the Ombudsman Act. The council received a complaint from the owner of the vehicle however it did not treat the complaint in accordance with its formal policies, never wrote to the employee about the complaint, did not report the matter to the police, ICAC or any other third party. The council claimed that it was advised by the vehicle owner that they had reported it to the Police. The council verbally advised the vehicle owner that it was a police matter. The council obtained legal advice that advised that the employee's actions could not be attributable to the council because the employee was not at work on work premises whilst the conduct occurred. The Ombudsman disagreed with this view as staff were invited to attend the function during work hours and those who attended were on paid time. The Ombudsman therefore considered that the council acted in a manner that was unreasonable within the meaning of section 25(1)(b) of the Ombudsman Act and recommended pursuant to section 25(2) of the Ombudsman Act that the Council review the process undertaken to deal with the vehicle owner's complaint.