

IR MFI 4
1175/11
6.7.11

Blayney draft recommendation

The Commission notes the wording chosen by Deputy President Grayson in his Statement and Recommendations made on 11 August in IRC 759/10 in a dispute between depa and Wagga Wagga City Council in the context of public statements attacking council employees:

"It is, of course, trite to observe, but nonetheless again in the context of these observations, entirely appropriate, to observe that Council has various obligations to its employees, including but not limited to the significant obligation of duty of care to protect employees against damage to their personal and professional reputation".

These words are relevant in this current dispute between depa and Blayney Shire Council which arises from comments which were allowed to be made publicly by the Deputy Mayor Councillor Radburn at the meeting of the Council on 9 May.

~~It is clear that the General Manager of the Council had a responsibility to act to protect Mr O'Brien when it became clear that the Mayor was allowing Councillor Radburn to speak in a way which put at risk Mr O'Brien's well-being and professional reputation. The Mayor has the primary responsibility of managing and controlling meetings of the Council. It falls to the Mayor to prevent, as far as possible, public attacks upon council employees. If the Mayor fails to do this, then the General Manager has an obligation to bring this responsibility to the Mayor's attention.~~

I recommend that the Mayor acknowledge that it would have been preferable to have prevented Councillor Radburn making the statements that were made.

While there is a separate referral of a complaint about the behaviour of the Deputy Mayor (about which I will make observations shortly) it is **the view of the notifying union** clear that neither the General Manager nor the Mayor took appropriate steps to discharge their responsibilities and protect the employee concerned.

I recommend that the Council immediately arrange training for all Councillors, to also be attended by the senior staff, on obligations under the Council's Code of Meeting Practice and the Code of Conduct. ~~In particular, training should focus on the Council's obligations to staff to provide a safe and hazard-free working environment but should also note the Council's general duty of care to protect employees against damage to their personal and professional reputations.~~

~~So that this recommendation does not appear to target one of two individuals, it makes sense to recommend that this be compulsory for all councillors.~~

In relation to the investigation of the potential breach of the Code of Conduct, **I note that a Sole Conduct Reviewer has been appointed to investigate, make findings and recommendations in relation to the matter involving Mr Paul O'Brien, Director Environmental Services and Councillor Kevin Radburn. I recommend that the Deputy Mayor, the Council and Mr O'Brien provide whatever assistance or information is required of the Sole Reviewer for him to complete his deliberations, report his findings and any**

recommendations to Council in an expeditious manner. I recommend that the Council take immediate steps to expedite this investigation. I note that a Code of Conduct Sole Review has been appointed but there is some confusion about the process and timeframe. I encourage clarification and expedition to a speedy conclusion.

I note that Mr O'Brien is prepared to provide any information to the Sole reviewer to allow this matter to be expedited.

A further matter was also brought to the attention of the Commission. The matter related to allegations that the accuracy of the adopted Minutes of the meeting of 9 May 2011 had been compromised at the Ordinary Council Meeting of 13 June 2011. I recommend that the parties to the dispute take immediate steps to expedite the assessment of this further complaint to determine if this matter should also be referred to a Conduct Review Committee or Reviewer. I am also concerned that at the following meeting of the Council on 13 June, when draft minutes prepared by staff were amended by the Council and the resulting minutes do not reflect what occurred in the incident at the previous meeting.

I note that the Division of Local Government has been monitoring what steps the Council will take to correct the minutes when they meet next on 11 July and I further note that a notice of rescission has been placed on the agenda for this meeting to reverse to the draft minutes provided by staff.

Now that the parties understand that a tape recording of the meeting exists, then the correction of the minutes so that they do accurately reflect what occurred should proceed. The existence of this recording, made by a local journalist has led to publication of an article in the Blayney Chronicle under the heading "Tape contradicts amendment to Council minutes".

This is an undesirable state of affairs that will challenge the confidence of the local community in the activities of the Council and this matter should be resolved expeditiously.

Finally, I understand that members of depa, dissatisfied with the Council's response to the attacks upon Mr O'Brien, have placed a series of bans on services to Councillor Radburn in particular but also generally in relation to the Council for meetings in which Councillor Radburn may participate will be involved. I recommend that these bans be lifted to allow the Council and the relevant councillors to consider the recommendations made today.

This dispute is relisted for report back on .