

# Councillor Conduct Tribunal: Councillor misconduct complaint – Summary of decision and reasons for department’s website

*Local Government Act 2009: Sections 150AS(2)(c)*

## 1. Complaint:

<b>CCT Reference</b>	F19/1397
<b>Subject Councillor</b>	Councillor James Hansen
<b>Council</b>	Fraser Coast Regional Council

## 2. Decision (s150AQ):

<b>Date:</b>	12 February 2019
<b>Decision:</b>	<p>It is alleged that on 13 October 2018, Councillor James Hansen, a councillor of Fraser Coast Regional Council, engaged in misconduct as defined in former section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act), in that his conduct constituted a breach of the trust placed in him as a councillor.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none"> <li>a. On 13 October 2018, a fellow FCRC councillor posted a comment on Facebook about a meeting with Complainant 2 about the Tobruk dive site;</li> <li>b. On 13 October 2018, in response to Councillor Lewis’s post, Councillor Hansen posted the comment, “<i>Mate this government is as uslessn (sic) as tits on a bull, ██████████ is almost as useless as the Premier</i>”; Councillor Hansen then posted a further comment, ‘<i>And...apparently ██████████ supposed to be black ██████████, looks as white as you and I</i>’.</li> </ol> <p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 13 October 2018, Councillor James Hansen, a councillor of Fraser Coast Regional Council, engaged in misconduct as defined in former section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct constituted a breach of the trust placed in him as a councillor, <b>has been sustained.</b></p>

**Reasons:**

The Tribunal found that the statements in questions were made on Cr Hansen's social media account and given the admission that the posts were placed by the councillor, the question for the Tribunal was whether the making of the comments on Facebook constituted misconduct by considering whether or not Cr Hansen's behaviour breached any relevant code, statutory obligations and/or behavioural standards.

The Tribunal noted that the councillor's comments:

- Caused concern to [REDACTED] who stated the comments were seen by the public and they were offensive and inappropriate, especially made by a council representative. The Mayor reported that Cr Hansen's Facebook profile identified him as a councillor of the Council.
- Caused offence to complainant [REDACTED], a member of the public, who found them totally unacceptable and perceived them as racist.
- Were perceived by [REDACTED] as 'absolutely appalling and nothing less than racist, and lacking dignity and respect especially when made by an elected representative'.
- Were perceived by complainant [REDACTED], a member of the public and [REDACTED], as impacting the reputation of council as well as, as an elected councillor, not upholding the values and common decency of our society'. [REDACTED] also identified as a man with Aboriginal heritage and was 'appalled by this ignorance of cultural history'.

The Tribunal was satisfied that:

- The conduct contravened local government principle 4(2)(c), in that Councillor Hansen's Facebook comment had the potential to, and in fact, did cause offence to members of the community who identify as Aboriginal.
- The conduct contravened local government principle 4(2)(e) in that Councillor Hansen's comment may be a breach of s18C(1) of the *Racial Discrimination Act 1975* (Cth), in that 'the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people'; and
- The conduct is inconsistent with s12(3)(b) of the Act which states that councillors have the responsibility to provide high quality leadership to the local government and the community.

	<p>Considering all the evidence received, the Tribunal has determined that:</p> <ul style="list-style-type: none"> <li>• on the balance of probabilities there had been a breach of the code of conduct, and a failure to comply with the principles as stated in the Act;</li> <li>• This breach of the trust placed in the councillor constitutes misconduct as defined in former s176(3)(b)(ii) of the Act; and</li> <li>• this allegation has been sustained, and in terms of s150AQ(1)(a) the Councillor has engaged in misconduct.</li> </ul>
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**3. Orders and/or recommendations (s150AR - disciplinary action):**

<b>Date of orders:</b>	12 February 2019
<b>Order/s and/or recommendations:</b>	Pursuant to Section 150AR(1)(b)(i) of the Act, the Tribunal orders that Cr Hansen make a public admission that the councillor engaged in misconduct, at an ordinary meeting of the Fraser Coast Regional Council within one month of the receipt of the notice of this determination.
<b>Reasons:</b>	<p>The Tribunal considered any aggravating or mitigating circumstances which might be relevant to any sanction, which included:</p> <ul style="list-style-type: none"> <li>• The councillor has no disciplinary history.</li> <li>• The councillor demonstrated full and early co-operation with the OIA, thus sparing the OIA the expense of fully investigating this matter.</li> <li>• The councillor removed the comment as soon as one complainant challenged Cr Hansen that the posts were racist.</li> <li>• The councillor promptly provided a written apology to ██████ dated 16 October 2018, one day after the complaints were lodged.</li> <li>• The councillor also met with ██████ and personally apologised to ██████.</li> <li>• The councillor’s comments although causing offence and hurt, appear not to have been intended to be racially malicious.</li> <li>• The councillor states that he has “developed a close working relationship with the local Aboriginal group”.</li> <li>• The councillor has indicated an awareness of the potential misuse of social media and further states, <i>“The most important thing is to learn from your actions, this I have done, I finish by saying stay away from social media as much as possible”</i>.</li> </ul> <p>Section 322 of the Act applies in relation to conduct engaged in by a councillor before 3 December 2018. Pursuant to s322(2), in deciding how to deal with the conduct, the conduct tribunal must apply the former conduct definitions to the conduct and make an order that is</p>

substantially the same as an order that could have been made under former section 180.

In considering the potential effectiveness of any order or recommendation and the purpose to be achieved by it, the Tribunal finds a sanction with a remedial focus, rather than a punitive focus would be the most effective. The Tribunal acknowledges the remedial actions of Cr Hansen since the event, including the apparent genuine apology to [REDACTED], statements of remorse, engagement with local Aboriginal groups and a cautiousness with social media.

The Tribunal orders pursuant to s150AR(1)(b)(i) of the Act, that Cr Hansen make a public admission that the councillor engaged in misconduct at an ordinary meeting of the Fraser Coast Regional Council within one month of the receipt of the notice of this determination.