

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

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

Note that the Tribunal is prohibited from giving another entity information that is part of a Public Interest Disclosure unless required or permitted under another Act; or including in this summary the name of the person who made the complaint or information that could reasonably be expected to result in identification of the person: S150AS(5)(a) and (b).

1. Complaint:

CCT Reference	F20/1270
Subject Councillor	Councillor Dan Stewart (the councillor)
Council	Gympie Regional Council

2. Decision (s150AQ):

Date:	1 December 2020
Decision:	<p>The Tribunal conducted a hearing on whether or not the councillor engaged in misconduct in that he engaged in misconduct, in that on an unknown date between 27 August 2019 and 31 August 2019, Dan Stewart, a Councillor of Gympie Regional Council, engaged in misconduct as defined in section 150L(1)(c)(iv) of the <i>Local Government Act 2009</i>, in that he released information to the public via his Facebook page that he knew, or should reasonably have known, was information that was confidential to the local government in breach of section 171(3) of the Act, namely that Council had agreed to provide Showgrounds for the hosting of a major annual campervan and motorhome rally in October 2020.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation was sustained and that therefore the councillor has engaged in misconduct.</p>

Councillor Conduct Tribunal

PO Box 15009, City East, Q 4002

Reasons:	<ol style="list-style-type: none"> 1. On 28 August 2019, an ordinary Council meeting was held. Item 9.5 of the agenda was Request for Support for Upcoming Event, which related to the hosting of a caravan and motorhome show at Gympie Showgrounds. 2. During the meeting, the Mayor advised that Council was going “into Committee” to discuss a number of matters, including agenda item 9.5. Council resolved that following the closing of the meeting to the public and moving “into Committee” all matters and all documents discussed, raised, tabled and/or considered whilst the meeting is closed and “in committee”, are confidential to Council and the Council wishes to keep them confidential. 3. Councillor Dan Stewart attended the meeting and voted for the motion. 4. Following the Council meeting, Councillor Stewart published a post on his Dan 4 Gympie Facebook page which included an update on the Council meeting. Relevantly, Councillor Stewart published that: <i>“Council agreed to provide Showgrounds for the hosting of a major annual campervan and motorhome rally in October 2020 which is expected to bring 700 to 1000 campervans and motorhomes to Gympie for a week or more. They are expected to be significant economic benefit to the community at the time, as well as great opportunity for tourism promotion.”</i> 5. On 30 August 2019, Councillor Stewart updated his Facebook post by deleting the words quoted in particular e. 6. The Applicant and the Respondent filed a statement of agreed facts outlining an agreed position on the above events, in which Councillor Stewart admitted to the misconduct. 7. The Tribunal considers it is permitted to accept an Agreed Statement of Facts under section 150AQ(2)(c) of the Act.
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	1 December 2020
Orders and/or recommendations:	Having found that the councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal orders that within 90 days of the date that a copy of this decision and orders are given to him by the Registrar:

	<ul style="list-style-type: none"> a. Pursuant to s150AR(1)(b)(i) of the Act, that Cr Stewart make a public admission that he engaged in misconduct; b. Pursuant to s150AR(1)(b)(iii) of the Act, that Cr Stewart attend training or counselling to address the councillor’s conduct at the expense of the councillor (including without limitation the appropriate use of Facebook and handling confidential information as a Councillor); and c. Pursuant to s150AR(1)(b)(iv) of the Act, that Cr Stewart pay an amount of \$700 to the local government.
<p>Reasons:</p>	<ul style="list-style-type: none"> 1. The Tribunal notes the Councillor’s frank and swift acceptance of the facts is indicative of remorse, and undoubtedly mitigates his conduct. By admitting both to the facts and to engaging in misconduct, the Councillor has saved significant time and expense for both the Applicant and the Tribunal. 2. However, the Tribunal also finds that the Councillor’s previous disciplinary history is a peculiarly aggravating factor, principally because of the striking similarities between the allegation brought before the former Tribunal on 5 December 2016 and the current matter. 3. The Tribunal notes that the Respondent has also attended further training sessions facilitated by the DLGRMA to refresh his obligations under the Act and is now a senior Councillor with more experience in local government. 4. The confidentiality of Council information is not to be undermined lightly. By doing so, the integrity of Council decision making is undermined and public trust in the ethical, sound and defensible nature of Council decisions can be adversely affected. This is further aggravated by the Respondent being a senior Councillor and having received additional training in his obligations. 5. Accordingly, it is determined that a public admission by the Respondent pursuant to section 150AR(1)(b)(i) of the Act is necessary to ensure that the Respondent adequately reflects upon the gravity of his conduct and the potential that Tribunal findings may have on the public’s perception of his capacity and ability to discharge his elected office diligently. 6. The Tribunal also made an order for counselling or training, as the Councillor would benefit from a session such that he has a full understanding of the requirements of his position to ensure this issue does not arise again in the future.

	<ol style="list-style-type: none">7. Finally, the Tribunal considered a pecuniary order to be appropriate. Whilst the Applicant suggests a “nominal amount” be imposed under section 150AR(1)(b)(iv), the Tribunal does not consider this would adequately reflect a finding where the Respondent has engaged in misconduct in circumstances nearly identical to the 2016 finding.8. The Tribunal considers that, had the Respondent heeded his earlier appearance in the former Tribunal in 2016 or the training provided to him by the DLGRMA, he could have avoided the institution of the present proceedings. Though the Tribunal reiterates that the early admission of the Respondent as to the facts of the matter has saved a lengthy hearing, the fact that the Tribunal has had to hear the matter at all is because of his second transgression of the Act.9. Had the Respondent not admitted to the conduct it is likely this Tribunal would have weighed both specific and general deterrence to discourage this kind of repeat offending and imposed a penalty in the order of 10-15 penalty units (or between \$1,300 and \$2,000). The size of such a penalty would have been intended to dissuade Councillors in a similar situation from betraying the trust of Council and their elected office in disclosing confidential information.10. However, the Respondent’s cooperation should also be adequately reflected in the Tribunal’s decision – Councillors should be encouraged to admit responsibility for their conduct. Not only does this bolster public opinions of honesty and candour in elected officials, but also saves the Applicant and this Tribunal (and therefore, the Council) the time and cost of long, complex and argumentative proceedings. Taking this consideration into account, the Tribunal considers it appropriate to further reduce the pecuniary penalty.11. For the reasons outlined above, the Tribunal will also order that the Respondent pay an amount of \$700 to the local government under section 150AR(1)(b)(iv).
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