

**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:

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| CCT Reference | F19/2576 |
| Subject Councillor | Councillor John Kremastos (the councillor) |
| Council | Cassowary Coast Regional Council (the council) |

2. Decision (s150AQ):

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| Date: | 3 April 2019 |
| Decision regarding Allegation 1: | <p>The Tribunal conducted a hearing on whether or not Cr John Kremastos, the Mayor and a councillor of Cassowary Coast Regional Council, engaged in misconduct. It was alleged that between 8 June 2016 and 15 August 2017, he engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> in that his conduct involved 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">a. On 18 September 2015, Councillor Kremastos joined the Cassowary Coast Unity Association Inc (the Association), an association registered with the Office of Fair Trading.b. At the local government elections on 19 March 2016, Councillor Kremastos was elected as Mayor of the Cassowary Coast Regional Council.c. Councillor Kremastos’ membership with the Association was an interest that was required to be recorded in his register of interest at item 14, pursuant to section 171B of the Act.d. On 8 April 2016, Councillor Kremastos submitted his first register of interests via the approved form, a Form 2 – Register of interests of a councillor and their related persons (Form 2). Councillor Kremastos’ register of interests recorded his membership with “CCUA”. “CCUA” was used as an acronym of Cassowary Coast Unity Association Inc. |

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| | <p>e. Councillor Kremastos updated his register of interests via a Form 2 on 9 June 2016 and 29 May 2017. On both occasions, Councillor Kremastos failed to record his membership with the Association.</p> <p>f. On 14 August 2017, Councillor Kremastos updated his register of interests via a Form 2 and recorded his membership with the Association at item 14.</p> <p>The alleged conduct could amount to misconduct on the basis that it did not comply with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’.</p> <p>Councillor Kremastos failed to comply with section 171B of the Act in that the Form 2, submitted on 9 June 2016 and 29 May 2017, did not record his membership with the Association. As a result, Councillor Kremastos’ register of interests was not an accurate reflection of his interests between 8 June 2016 and 15 August 2017.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation has been sustained and that therefore the Councillor has engaged in misconduct.</p> |
| <p>Reasons:</p> | <p>Cr Kremastos acknowledged that his register of interests was not an accurate reflection of his interests between 8 June 2016 and 15 August 2017. Following his election to Mayor, he had enquired from an Association member whether it had been “wound up”. The advice he received was that it had been and therefore, following receipt of that advice, Councillor Kremastos did not record the Association in his register of interests.</p> <p>After a complaint was received by Council from the complainants in relation to the omission of his membership of the Association in his register of interests, Cr Kremastos made further enquiries with an executive member of the Association. He was advised that the advice provided earlier was incorrect and that the Association still existed. On 14 August 2017, Councillor Kremastos updated his register of interests via a Form 2 and recorded his membership with the Association at item 14.</p> <p>The conduct has contravened local government principle 4(2)(e), in that the councillor’s register of interests was not an accurate reflection of his interests between 8 June 2016 and 15 August 2017, thus breaching section 290 of the <i>Local Government Regulation 2012</i>, and that this constitutes non-compliance with the local government principle of ‘ethical and legal behaviour of councillors and local government employees – s4(2)(e)’.</p> |

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| <p>Decision regarding Allegation 2:</p> | <p>The Tribunal conducted a hearing on whether or not Cr John Kremastos, the Mayor and a councillor of Cassowary Coast Regional Council, engaged in misconduct. It was alleged that on 8 November 2018, Councillor John Kremastos, the Mayor and a councillor of Cassowary Coast Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved 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"> a. On 8 November 2018, Councillor Kremastos attended Council’s Asset Sustainability Committee meeting. b. A matter for consideration at the meeting was a report about the awarding of a contract for the construction of extensions to the Water Office at the Innisfail Depot. The report recommended the contract be awarded to [REDACTED]. c. The matter was not an ordinary business matter. d. The meeting resolved unanimously to adopt the recommendation. e. The Principal of [REDACTED] made a \$200 donation at the 2016 local government election to a registered group of candidates, the Cassowary Coast Unity Alliance, of which Councillor Kremastos was a member at the time. f. Councillor Kremastos did not inform the meeting of his personal interest in the matter. <p>The conduct was not in accordance with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’, in that Councillor Kremastos did not inform the meeting of his personal interest in the matter as required by section 175E of the <i>Local Government Act 2009</i>.</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation has been sustained and that therefore the Councillor has engaged in misconduct.</p> |
| <p>Reasons:</p> | <p>Cr Kremastos admitted that he had failed to declare the conflict of interest at the meeting. The day after the meeting on 8 November 2018, Councillor Kremastos realized that he should not have voted on this decision the day before. He advised the Acting CEO. The Acting CEO, contacted the CEO to seek his advice which led to the calling of a special council meeting at which the resolution of the Asset Sustainability Meeting on 8 November was repealed and the matter of awarding the contract was delegated to the Acting CEO.</p> |

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| | <p>Upon returning from his holiday, the CEO reported the matter to the CCC and the Department.</p> <p>Section 175E(2) of the Act states that a councillor must inform the meeting about the councillor's personal interests in a matter, including the following particulars about the interest:</p> <ol style="list-style-type: none"> a. The nature of the interests; b. The nature of the relationship or value and date of receipt of the gift; and c. The nature of the other person's interest in the matter. <p>No exclusions applied, therefore the councillor did have a mandatory obligation to inform the meeting of the conflict and manage it appropriately.</p> |
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3. Orders and/or recommendations (s150AR - disciplinary action):

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| Date of orders: | 27 April 2019 |
| Orders regarding Allegation 1: | <p>Pursuant to Section 150AR(1)(b)(i) & (iv) of the Act, the Tribunal orders that Cr Kremastos:</p> <ol style="list-style-type: none"> a. Make a public admission that the councillor engaged in misconduct, at an ordinary meeting of the Cassowary Coast Regional Council within one month of the date of this Order; and b. Pay to the local council an amount of \$100, to be paid within 60 days of the date of this Order. |
| Reasons: | <p>The Tribunal considered the facts and circumstances relevant to any sanction along with the submissions on sanction. The Tribunal determined the following were aggravating circumstances:</p> <ul style="list-style-type: none"> • that Councillor Kremastos has received training on avoiding the alleged misconduct; and also • that as Mayor, it is reasonable that he be held to a higher standard of conduct. <p>The Tribunal agreed that the following were mitigating factors and should be taken into consideration when determining any sanction:</p> <ul style="list-style-type: none"> • Councillor Kremastos has no disciplinary history; • Councillor Kremastos has demonstrated full and early co-operation which has spared the OIA the expense of fully investigating both matters; |

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| | <ul style="list-style-type: none"> • Councillor Kremastos recorded his membership with the Association when he first lodged a Form 2 on 8 April 2016. <p>The Tribunal accepts that the non-recording of the councillor’s interest in the Cassowary Coast Unity Association Inc. was not a deliberate attempt to hide this fact from his register or the public. The Tribunal has also noted where the councillor acted on the erroneous statement by [REDACTED] that the Association ‘had been wound up’ during the period of non-recording on the register of interests. The Tribunal notes that reportedly, the Association was inactive during this period.</p> <p>It may well be that Cr Kremastos, in good faith, trusted the advice provided to him by [REDACTED], his campaign manager and a fellow member of the Association, whom he described as his link to the Association. However, the Tribunal considers that when it comes to compliance with statutory requirements, it is incumbent upon a councillor, and especially the Mayor, to be vigilant and make appropriate enquiries to satisfy himself that he is meeting his legal obligations.</p> <p>Regardless of the reason, the end result was that an important factor of statutory integrity compliance for councillors was inaccurate for the period 8 June 2016 and 15 August 2017. The Tribunal views statutory compliance requirements more seriously than other non-statutory integrity conduct.</p> <p>The Tribunal considers that a public admission is an appropriate order in the circumstances but also believes that a small monetary sanction is appropriate, from the perspective that the conduct did involve a breach of a statutory compliance requirement, which is viewed quite seriously in the legislation.</p> |
| <p>Orders regarding Allegation 2:</p> | <p>Pursuant to Sections 150AR(1)(b)(i) of the Act, the Tribunal orders that Cr Kremastos:</p> <ul style="list-style-type: none"> • Make a public admission that the councillor engaged in misconduct, at an ordinary meeting of the Cassowary Coast Regional Council within one month of the date of this Order. |
| <p>Reasons:</p> | <p>The Tribunal considered the facts and circumstances relevant to any sanction along with the submissions on sanction. The Tribunal determined the following were aggravating circumstances:</p> <ul style="list-style-type: none"> • that Councillor Kremastos has received training on avoiding the alleged misconduct; and also • that as Mayor, it is reasonable that he be held to a higher standard of conduct. <p>The Tribunal agreed that the following were mitigating factors and should be taken into consideration when determining any sanction:</p> |

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- Councillor Kremastos has no disciplinary history;
- Councillor Kremastos has demonstrated full and early co-operation which has spared the OIA the expense of fully investigating both matters;
- Cr Kremastos identified the failure to declare his conflict of interest within 24 hours of the meeting and immediately advised the Acting CEO.

The Tribunal considered a small monetary sanction (s150(1)(b)(iv)) would normally also be appropriate. However, the Tribunal notes that Cr Kremastos identified the failure to declare the conflict of interest within 24 hours and took appropriate steps to have the matter dealt with by phoning the acting CEO. The Tribunal accepts this is a mitigating factor for Cr Kremastos.

The Tribunal strongly recommends that Cr Kremastos and the other councillors involved should have in place a robust process to enable them to identify potential conflicts of interest. The Tribunal strongly recommends that they work with the CEO to develop and adopt an appropriate process for ensuring that conflicts of interest are identified in the future.