

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	F19/6880
Subject Councillor	Councillor Denise Sims (the Councillor)
Council	Moreton Bay Regional Council (the Council)

2. Decision (s150AQ):

Date:	14 December 2019
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that, between 18 April 2016 and 4 June 2019, Councillor Sims, a councillor of Moreton Bay Regional Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act) as it then was, in that her conduct involved a breach of the trust placed in her as a councillor has been sustained .

Reasons:	<p>Although the parties have agreed that the allegation is made out and that it can amount to misconduct, the Tribunal also must be satisfied that that is the case.</p> <p>On the basis of the ASOF and the material before it the Tribunal finds that between the period 18 April 2016 and 4 June 2019, the Councillor had not informed the chief executive officer of her husband’s income from employment with the Christian Outreach Centre, being over \$500 per year. The register is available for public inspection and is required to be kept up to date for the purposes of transparency. The information provided, within the scope of the particulars specified, must be sufficiently informative to enable the issue of whether or not an actual or perceived conflict may or does arise in regard to future decisions of Council.¹</p> <p>Section 171B of the Act creates a statutory obligation for a councillor to inform the CEO of the particulars of an interest within 30 days after the interest arises. The intention of the councillor is not an element in the section, and accordingly it is not necessary for the Applicant to establish that the omission was deliberate. In the circumstances of this matter it is accepted that the Respondent had genuinely misunderstood the requirements, which the Tribunal finds is demonstrated through the Councillor’s self-referral to the Office of the Independent Assessor seeking clarification of the requirements. However, this does not change the fact that the obligation imposed under section 171B of the Act was not fulfilled in regard to the other source of income earned by the Councillor’s husband that was in excess of \$500.</p> <p>The concept of ‘trust in a councillor’ is viewed broadly, in relation to the trust that the community has in the <i>position of councillor</i>, rather than a specific trust or limited focus trust, such as a fiduciary trust. Councillors are ‘entrusted’ by electors in the community with the power to make policy and decisions in many areas affecting the life, lifestyle and well-being of the members of the relevant community. There is little day to day close monitoring of conduct of councillors by anyone in a supervisory role, as may apply to many workers. As elected representatives in responsible positions with significant powers, councillors have great discretion and are entrusted to use their powers appropriately in the public interest. Any breach of this trust can have a corrosive effect on the community and its confidence in local government.</p> <p>In this context, having regard to the local government principles in section 4 of the Act, and also the failure to comply with Schedule 5 and section 171B(2) of the Regulation, the Tribunal finds on the balance of probabilities that the allegation is sustained.</p>
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¹ *Scaffidi v Chief Executive Officer, Department of Local Government and Communities* [2017] WASCA 222; (2017) 52 WAR 368 at [47] to [48].

3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	14 December 2019
Order and/or recommendations:	The Tribunal orders, pursuant to s150AR(1)(b)(iii) of the Act, that Cr Sims be counselled by the Chief Executive Officer (CEO) of the Council about the misconduct and how not to repeat the misconduct within 60 days of being given a copy of this decision and order. The CEO is to report to the Independent Assessor at the end of the 60 days, confirming such counselling has been undertaken.
Reasons:	<p>The conduct of the Councillor in regard to the allegation, is accepted to have been the result of a misunderstanding, which the Councillor corrected in a timely manner when the issue was raised. It is also noted that the Councillor cooperated with the inquiries made by the Applicant, and has accepted responsibility, indicative of the Councillor having insight. The Councillor's is also without any disciplinary history, which is relevant to consideration of the appropriate orders.</p> <p>It is accepted that the disciplinary order should in the circumstances of this matter be at the lower end of the disciplinary order scale. In particular, the misconduct arises in circumstances where there is no deliberate intention to conceal the interest and that the Councillor sought clarification from the OIA.</p> <p>It is noted that having regard to the comparative referred to by the Applicant, that matter involved more than one allegation, the councillor was the Mayor and was serving her fifth term as a councillor. Those factors may have influenced the orders made in that case and is more serious conduct than that of Councillor Sims.</p> <p>The Tribunal notes that the Councillor did receive some training in October 2018. However the nature and extent to which such training dealt with the requirements for providing sufficient details for the register of interests, is unclear from the submissions and material before the Tribunal. There is some doubt due to the conduct having occurred, and the record of prior training before the Tribunal that the Councillor has received sufficient guidance and information on the issue to date.</p> <p>Accordingly, it is determined that the Respondent would benefit from counselling, under section 150AR(1)(b)(iii) to ensure that she has a full understanding of the requirements for the updating of the register, so that the issue does not arise again in the future. In the circumstances of the current matter, no further order appears to be necessary. However,</p>

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	should the issue arise again in the future, a more serious consequence may arise from a finding of misconduct.
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