

# 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:

<b>CCT Reference</b>	F19/6375
<b>Subject Councillor</b>	Councillor Donna Gates (the Councillor)
<b>Council</b>	Gold Coast City Council (the Council)

## 2. Decision (s150AQ):

<b>Date:</b>	25 October 2019
<b>Allegation 1 - Decision:</b>	<p>It is alleged that between 8 September 2016 and 22 December 2016, Donna Gates, a councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i> (the Act) in that her conduct involved a breach of the trust placed in her as a councillor.</p> <p>Particulars of the alleged conduct which could amount to misconduct are as follows<sup>1</sup>:</p> <ol style="list-style-type: none"> <li>1. After re-election as a councillor in 2016, Cr Gates signed and submitted to Council several approved Form 2 forms to update her register of interests, as maintained by the office of the Chief Executive Officer.</li> <li>2. The relevant interests included in Part 12 of the Forms as lodged, (which is headed "<i>Gifts over \$500 or all gifts totalling more than</i></li> </ol>

<sup>1</sup> The Amended Application referred to all of the Agreed Statement of Facts (ASOF) as being the particulars. The particulars provided here are summaries prepared by the Tribunal for ease of reference. Further details as to the facts outlined in the ASOF, are referred to below where necessary.

**ATTACHMENT G**

	<p>\$500"), were described as "race tickets" when in fact they were sums of money given to the Councillor by various persons and companies for the purposes of attending a fundraising race day event.</p> <p>3. On 7 March 2019, Cr Gates submitted a further Form 2, which corrected the description of the moneys paid for these and earlier such items to "donation" and included the date and amount for each item.</p> <p>4. As a consequence, the register of interests was inaccurate for the period from 16 September 2016 to 6 March 2019.</p> <p>The Tribunal determined, on the balance of probabilities, that the allegation <b>had been sustained</b>.</p>
<p><b>Reasons:</b></p>	<p>Although the parties agreed that both allegations are made out and that they amount to misconduct, the Tribunal also considered whether it was satisfied that this was the case.</p> <p>On the basis of the Agreed Statement of Facts (ASOF) and the material before it the Tribunal found that the description of the gifts referred to in regard to Allegation 1 was inadequate to convey the nature of the gift. A person inspecting the register would not understand from the description that the nature of the gift was money rather than "race tickets". The Tribunal considered that it is implied in Schedule 5 and section 291(1) of the Regulation that the "description" of the gift must be reliable, as the register is available for public inspection and is important 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 relation to future decisions of Council.</p> <p>Further, this description was adopted in eleven Form 2 updates to the Register, which were each opportunities for the Councillor to consider the question of whether the description was adequate. It was noted that the alleged misdescriptions in all of the items appeared to have arisen from replication of wording adopted as the description for such gifts following the 2016 election. Accordingly, in all of the circumstances, there was sufficient evidence to find, that there was a failure to fully comply with the requirement in Schedule 5 to the Regulation, that there be a "description" of the gifts.</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. Any breach of this trust can have a corrosive effect on the community and its confidence in local government.</p>

**Councillor Conduct Tribunal**

GPO Box 15009, City East, Q 4002

**ATTACHMENT G**

	<p>In this context, and having regard to local government principles in section 4 of the Act, and also the failure to comply with Schedule 5, the Tribunal found on the balance of probabilities that the allegation was sustained.</p>
<p><b>Allegation 2 - Decision</b></p>	<p>It is alleged that between 3 November 2016 and 5 December 2016, Donna Gates, a councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Act in that her conduct involved a breach of the trust placed in her 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>1. On 4 November 2016, Cr Gates received a sum of money, namely \$2500 from a person, which was paid into a campaign account.</li> <li>2. Cr Gates did not inform the Chief Executive Officer of the Council of the gift by submitting a Form 2, within 30 days of receiving the payment.</li> <li>3. On 7 March 2019, Cr Gates advised as to the interest, on the required Form 2.</li> </ol> <p>The Tribunal determined, on the balance of probabilities, that the allegation <b>had been sustained</b>.</p>
<p><b>Reasons:</b></p>	<p>In regard to Allegation 2, 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 was accepted that the Respondent was under a misapprehension as to whether in fact the donation had already been declared in relation to a donation by another entity. However, this does not change the fact that the obligation imposed under section 171B of the Act was not fulfilled in regard to this donation, and an important detail was omitted from the register – the name of the donor.</p> <p>In the context of the concept of breach of trust as referred to in regard to Allegation 1, the local government principles in section 4 of the Act, and the failure to comply with section 171B(2) of the Regulation, the Tribunal found on the balance of probabilities that the allegations were sustained.</p>

**Councillor Conduct Tribunal**

GPO Box 15009, City East, Q 4002

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

<p><b>Date of orders:</b></p>	<p>25 October 2019</p>
<p><b>Orders and/or recommendations:</b></p>	<p><b>ALLEGATION 1:</b></p> <p>The Tribunal ordered, pursuant to s150AR(1)(b)(iii) of the Act, that Cr Gates 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 this order. The CEO is to report to the Independent Assessor at the end of the 60 days, confirming such counselling has been undertaken.</p> <p><b>ALLEGATION 2:</b></p> <p>The Tribunal ordered, pursuant to s150AR(1)(b)(iii) of the Act, that Cr Gates 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 this order. The CEO is to report to the Independent Assessor at the end of the 60 days, confirming such counselling has been undertaken.</p>
<p><b>Reasons:</b></p>	<p>The conduct of the Councillor in regard to both allegations, was accepted to have been the result of an error, which the Councillor corrected in a timely manner when the issue was raised. It was 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 longstanding service in the role, without disciplinary history, is of note and relevant to consideration of the appropriate orders.</p> <p>It was accepted (as submitted by the Respondent) that the purpose of civil disciplinary proceedings is generally not punitive but protective. However, the Tribunal noted that orders must also reflect the expectations of the community and may also be directed to deterrence or be compensatory.</p> <p>The Tribunal found 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 in regard to allegation 1 relates to a misdescription only which appears to have arisen over time, and without intention to mislead. However, it did result in the register containing several misleading descriptions of the nature of the gifts received.</p> <p>The second allegation involved the more substantial misconduct, as it resulted in the register not referring to a particular donor in regard to the donation made. This was not considered to be consistent with the apparent legislative purpose of such registers, to enhance transparency.</p>

**ATTACHMENT G**

	<p>The Tribunal also noted that a breach of section 171B(2) can be offence (albeit that is not the course adopted in these proceedings), indicating the relative seriousness with which the legislature considers such conduct is to be treated.</p> <p>In the circumstances of this matter, the Tribunal did not consider it appropriate to make no order (as was submitted by the Respondent), even if this can be argued to be open on the reading of the former section 180(4) with section 322(2) of the Act. In accordance with the purpose of the provisions requiring recording of interests in the register of interest, it is important that it be recognised both by the subject Councillor and other councillors, that the failure to comply with the requirements for updating the Register, is not acceptable, and suitable measures need to be taken to ensure that the conduct is not repeated.</p> <p>Accordingly, it was 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.</p>
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