

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	F19/7249
Subject Councillor	Councillor Richie Bates (the Councillor)
Council	Cairns Regional Council

2. Decision (s150AQ):

Date:	26 November 2019
Decision:	<p>Allegation 1</p> <p>The Tribunal determined, on the balance of probabilities, that the allegation that on 25 November 2015 Councillor Richie Bates, a councillor of the Cairns Regional Council, engaged in misconduct as defined in <i>section 176(3)(b)(ii) of the Local Government Act 2009</i> (the Act), in that his conduct involved a breach of trust placed in him as a councillor</p> <p>has been sustained.</p> <p>The Particulars of the conduct provided by the Independent Assessor are that:</p> <p>a. On 25 November 2015, an Ordinary Meeting of Council was held. One of the matters for consideration under general business related to the EBA negotiations. The Council considered whether due to the</p>

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

inability for Council to progress EBA negotiations, Council approves a flat payment of \$1500 per full time eligible employee (part time & casual on a pro-rata basis) as an administrative payment in addition to any payment prescribed by 2012 CRC EBA.

b. Councillor Bates attended the meeting.

c. The matter was not an ordinary business matter.

d. Councillor Bates had a personal interest in the matter in that at the time of the meeting he was a member of the AWU and had received an electoral donation of \$1000 from the TWU in 2012.

e. Councillor Bates did not inform the meeting of his personal interest in the matter and in doing so, failed to deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Local Government Act 2009.

f. Councillor Bates' personal interest in the matter could be deemed as being a real or perceived conflict of interest because the AWU and the TWU, were two of the unions comprising the Single Bargaining Unit (SBU). The SBU was established in 2012 to negotiate a new EBA with Council

Allegation 2

The Tribunal has determined on the balance of probabilities, that the allegation that, on 24 April 2018, Councillor Richie Bates, a councillor of Cairns Regional Council, engaged in misconduct as defined in section 176(3)(d)(ii) of the Act, in that his conduct contravened section 173(4) of the Act, **has been sustained.**

The particulars of the conduct provided by the Independent Assessor are that:

a. On 24 April 2018, an Ordinary Meeting of Council was held. One of the matters for consideration related to the EBA negotiations. The Council considered whether to:

i. Provide an administrative base wage rate increase of 2.25% backdated to 1 July 2017 for employees covered by Cairns Regional Council Certified Agreement 2012;

ii. Provide an administrative base wage rate increase of CPI (March Quarter All Groups Brisbane) or 2 % (whichever is the highest) effective 1 July 2018 for employees covered by Cairns Regional Council Certified Agreement 2012; and

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

	<p>iii. Continue to negotiate in good faith with Unions to finalise a new certified agreement.</p> <p>b. Councillor Bates attended the meeting.</p> <p>c. The matter was not an ordinary business matter.</p> <p>d. Councillor Bates had a personal interest in the matter at the time of the meeting he was a member of the AWU and had received electoral donations from the TWU and the AWU. Bates had received from the TWU a \$1000 donation in 2012 and a further \$2000 donation in 2016. He received from the AWU a \$1000 donation in 2016.</p> <p>e. Councillor Bates did not inform the meeting of his personal interest in the matter and in doing so, failed to deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way as required by section 173(4) of the Local Government Act 2009.</p> <p>f. Councillor Bates’ personal interest in the matter could be deemed as being a real or perceived conflict of interest because the TWU and the AWU were two of the nine unions involved in EBA negotiations with Council.</p>
<p>Reasons:</p>	<p>Allegation 1:</p> <p>The relevant provision the Tribunal was required to consider was whether the respondent had contravened section 173(4) of the Act as at the time of the conduct on 25 November 2015. At that time, section 173 of the Act stated:</p> <p>(1)(a) A matter is to be discussed at a meeting of a local government or any of its committees; and</p> <p>(c) a councillor at the meeting –</p> <p>(i) has a conflict of interest in the matter (the real conflict of interest); or</p> <p>(ii) could reasonably be taken to have a conflict of interest in the matter (the perceived conflict of interest) ;</p> <p>Section 173(4) states “ The councillor must deal with the real conflict of interest or perceived conflict of interest in a transparent and accountable way.</p> <p>Section 173(5) states the councillor must inform the meeting of –</p> <p>(a) the Councillor’s personal interest in the matter; and</p> <p>(b) if the councillor participates in the meeting in relation to the matter, how the councillor intends to deal with the real or perceived conflict of interest..</p>

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

The evidence filed by the Independent Assessor and by the Councillor, established that on 25 November 2015, the respondent attended an Ordinary meeting of the Cairns Regional Council and participated in the meeting when he had a personal interest that conflicted with his duties as a Councillor. The respondent participated in the Council meeting and did not declare to the Council meeting that he was a current member of the Australian Workers Union (AWU) or that he had received electoral donations from the Transport Workers Union (TWU). The matter under consideration by the Council at this time involved discussions regarding the Enterprise Bargaining Agreement (EBA) negotiations and the potential payment to all employees of a flat payment of \$1500.00. The Tribunal finds in failing to declare his interest he did not act in a transparent manner as required under the principles of the Act.

The Tribunal also finds that the Councillor was aware of the conflict of interest at the time of the meeting and failed to deal with a real or perceived conflict of interest by informing the Council meeting of the particulars of this conflict of interest as required by section 173(4) and section 173(5) of the Act.

The Tribunal finds on the balance of probabilities that the contravention of section 173 of the Act constitutes misconduct as defined in section 176(3)(d)(ii)

Allegation 2

The evidence established that on 24 April 2018, the respondent attended a closed session of the Cairns Regional Council where the item on the agenda for discussion related to EBA. The Council discussions included a number of items regarding the position to be adopted by the Council in relation to the proposed EBA conditions of employment for Council employees including specifically discussions as to whether the Council would continue to negotiate with unions to finalise a new certified agreement.

The respondent provided sworn evidence to the Tribunal where he accepted that despite having received a donation of \$1000.00 from the TWU on 3 May 2012 and a further \$2000.00 on 26 February 2016 he accepted that he did not inform the Council meeting of this personal interest in the matter under discussion. The Tribunal noted from the evidence that the respondent was a current member of the TWU at the time of the meeting on 24 April 2018.

The Tribunal finds that the respondent, despite his knowledge of the conflict of interest provisions of the Act, failed to declare on 24 April

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

	<p>2018 to the Council meeting, that he had a personal interest in the matter under discussion by the Council. The respondent also failed to declare how he would deal with or manage the conflict of interest during the meeting as required by section 173 (4) and 173(5) of the Act.</p> <p>The Tribunal is satisfied to the requisite standard of proof, the balance of probabilities, that the conduct of respondent constitutes misconduct as set out in the provisions of section 176(3)(d) and 174(4) of the former Act.</p>
--	--

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

Date of orders:	24 August 2020
Order/s and/or recommendations:	<p>Allegations 1 and 2:</p> <p>The Tribunal orders that:</p> <p>The Tribunal makes one order in respect of both allegations, pursuant to s150M and s150AR(1)(b)(i) of the Act, that the respondent make a public admission that he engaged in misconduct, within 90 days of this order.</p>
Reasons:	<p>The Tribunal considered the relevant factors contained in the brief of evidence and also sought and considered submissions from the parties.</p> <p>The Tribunal considered that the relevant facts and circumstances demonstrated that the respondent had engaged in misconduct and that this conduct was contrary to the principles that underpin the Act.</p> <p>The Tribunal considered and balanced the mitigating circumstances against the aggravating circumstances. The Tribunal considered:</p> <ul style="list-style-type: none"> a) the respondent has a disciplinary history; b) a considerable amount of time has occurred since the conduct occurred; c) the delay in dealing with the matters; d) the respondent cooperated with the applicant during the investigation; e) the respondent admitted to the conduct; f) there was a lack of training provided to Councillors that specifically addressed the requirements of section 173 of the Act as it was. <p>The conduct of the Councillor in regard to both allegations, it is accepted that it was not deliberate. It is also noted that the respondent cooperated</p>

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

with the inquiries made by the applicant, and has accepted responsibility, indicative of having insight. Whilst the respondent has a disciplinary history, it was unclear why the allegations had not been previously dealt with.

The Act provides that a breach of section 173(4) is an offence and a breach of the trust placed in the councillor. The Tribunal noted that the respondent was not re-elected following the March 2020 elections and accordingly the Tribunal's Orders are limited in such circumstances by the provisions in section 150AR(5) of the Act .

As the matter involved conduct that occurred prior to December 3 2018, the Tribunal made orders under section 150AR of the Act that are substantially the same orders that could have been made under the former section 180 of the pre-amended Act.

The Tribunal finds it appropriate in the interests of deterrence of this type of conduct and to maintain community confidence in the system of governance and transparency in the decision-making process that an order is made that the respondent make a public admission that he engaged in misconduct, within 90 days of the order.

The admission can be made by the respondent on a date arranged by the Chief Executive Officer of the Council in accordance with local government standing orders and within 90 days of the date a copy of this decision and orders is given to the respondent by the Registrar.

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002