

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:

CCT Reference	F19/9552
Subject councillor:	Mayor Margaret Strelow (the Councillor)
Council	Rockhampton Regional Council (the Council)

2. Decision (s150AQ):

Date:	2 July 2020
Decision:	<p>The Tribunal conducted a hearing on whether or not Cr Strelow engaged in misconduct when she failed to update her Register of Interests to include a hospitality benefit received from Adani Enterprises Pty Ltd (Adani).</p> <p>The Tribunal has determined, on the balance of probabilities, that the allegation(as amended) that, between 16 April 2017 and 8 June 2019, Councillor Margaret Strelow, the Mayor and Councillor of the Rockhampton 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 trust placed in her as a councillor in that it was inconsistent with local government principle 4(2)(e) of the Act requiring <i>ethical and legal behavior of councillors...</i></p> <p>has been sustained.</p> <p>The particulars of the alleged conduct which could amount to misconduct are as follows:</p> <ol style="list-style-type: none"> a. Councillor Strelow was re-elected as a Mayor of the RRC on 19 March 2016. b. On 18 March 2017, Councillor Strelow as part of the trade mission to India received the following hospitality from Adani Enterprises Pty Ltd (Adani):

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- i. Flight from Mumbai Airport to Madurai Airport ;
 - ii. Transport to and from Kamuthi Solar plant;
 - iii. Flight from Madurai Airport to Chennai Airport;
 - iv. Dinner at the Trident Hotel; and
 - v. Transport to and from the Trident Hotel.
- c. Councillor Strelow did not inform the CEO of the particulars of the interest namely the hospitality received from Adani via a form 2 within 30 days after the interest arose.
- d. On 18 August 2017, Cr Strelow signed and submitted an approved Form 2. Cr Strelow added and removed interests in land in item 8.
- e. On 8 June 2018 the DLGRMA sent a letter to the CEO pursuant to section 296(1) of the Local Government Regulation 2012(the Regulation) that Cr Strelow's register of interest did not contain particulars that should be listed in the register under section 17 of Schedule 5, namely hospitality received from Adani during the trade mission to India in March 2017(hospitality interest)
- f. The letter required the CEO to take action pursuant to section 296(2) and ensure Cr Strelow comply with sections 296(3) or (4) to ensure that the register of Interest is a true record of fact.
- g. On 5 July 2018, Cr Strelow provided a Statutory Declaration pursuant to section 296(4) of the Regulation dated 4 July 2018 stating that the particulars in her Register of Interests are a true record of fact and do not need to be amended.
- h. On 6 August 2018 , Cr Strelow signed and submitted an approved Form 2 in which she did not inform the CEO of the particulars of the hospitality interest. Cr Strelow removed and added interests in land in item 8.
- i. On 11 September 2018, Cr Strelow signed and submitted an approved Form 2 in which she did not inform the CEO of the particulars of the hospitality interest. Councillor Strelow added the Capricornia Budgerigar Society incorporated in item 14.
- j. On 7 May 2019, the OIA sent a letter to the CEO pursuant to section 296(1) of the Regulation that Councillor Strelow's register of interests did not contain particulars that should be listed in the register under section 17 schedule 5 namely hospitality received from Adani during the trade mission to India in March 2017.
- k. The letter required the CEO to take action pursuant to section 296(2) and ensure the Councillor Strelow comply with sections 296(3) or (4) to ensure that the register of interests is a true and correct record of fact.
- l. On 5 June 2019, Councillor Strelow provided a Statutory Declaration pursuant to section 296(4) of the Regulation 201 dated 5 June 2019 to the OIA stating that the particulars in her register of interest are a true record of fact.
- m. The alleged conduct could amount to misconduct on the basis that Councillors have a legal obligation under section 171B of the Act

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	<p>to inform the CEO of the particulars of their interests or changes to their interests within 30 days of the interest arising or the change happening.</p> <ul style="list-style-type: none"> n. Section 291 of the <i>Local Government Regulation</i> 2012 sets out the particulars required to be contained in a register of interests. Councillor Strelow failed to comply with section 171B of the Act, in that the Form 2 submitted on 18 August 2017, 6 August 2018, and 11 September 2018, did not inform the CEO of the particulars of the hospitality interest as required by section 17 of schedule 5 of the Regulation. As a consequence, Councillor Strelow’s register of interest, as maintained by the CEO, was inaccurate for the period from 16 April 2017 to 30 August 2019. o. Section 17 of schedule 5 of the Regulation relates to other financial interests or non-financial interests. Section 17(2) of schedule 5 defines ‘interest’ of the relevant person, to mean a financial or non –financial interest of which the relevant person is aware; and that raises, appears to raise, or could raise, a conflict between the relevant person’s duty under the Act and the holder of the interest. p. The receipt of hospitality by Councillor Strelow could raise a conflict of interest between the Councillor’s duty under the Act to make a decision in the public interests and her personal interests as a recipient of the hospitality.
<p>Reasons:</p>	<p>The parties did not agree on all the facts of this matter and the Councillor notified the Independent Assessor that she disputed the allegation and did not accept that the conduct amounts to misconduct or a breach of trust. The Tribunal in these circumstances must be satisfied there is sufficient evidence before it to establish the allegation is made out and that the conduct amounts to misconduct.</p> <p>On the basis of the facts, evidence and written submissions from both the Independent Assessor and the Councillor and the Councilor’s legal representatives the Tribunal finds that between the period 16 April 2017 and 8 June 2019, the Councillor did not inform the chief executive officer of a personal hospitality benefit received from Adani , being the cost of air travel and ground transport and a hotel dinner, while in India on authorized Council business. The information was required to be included in the register of interests and is to be available for public inspection in compliance with the transparency and accountability provisions of the Act. The information is to be sufficiently informative to enable the issue of</p>

whether or not the **awareness** of an actual or perceived conflict may or does arise in regard to future decisions of Council.¹

The Councillor submitted that the hospitality benefit (the interest) received from Adani, was not an interest that was required to be declared in her ROI. This submission is inconsistent with paragraph 33 and 35 of the facts provided by the Independent Assessor which specifically refers to the relevant provisions of section 171B(2) of the Act, the requirements of Schedule 5 Item 17 of the Local government Regulations.

The Tribunal considers that when councillors receive benefits or interests from third parties an objective test is triggered to assess if this **does or may create an awareness** or perception of a conflict of interest. The conflict will be assessed in accordance with the facts and circumstances of each case. However no councillor will be exempt from this assessment if they have received a benefit or interest while on authorized council business, for example in this case while attending a Trade Mission in India with several other Mayors from central Queensland.

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. Compliance with the legislation is not optional. It is not at the councillor's discretion as to whether they or the council abide by the law, for it is mandatory. Even if there was no suggestion of impropriety arising out of a councillor's failures, compliance with legislative requirements is important particularly for elected government representatives in senior positions, including a councillor or the mayor.

In the circumstances of this matter it is accepted by the Tribunal that the Councillor misunderstood the meaning and purpose of the provisions of the Act, and consequently formed a genuine but an inflexible view that the benefit received from Adani did not need to be declared in her register of interests. The Tribunal considered the Councillor was confused and misunderstood the Regulations and this was demonstrated as the Chief Executive Officer obtained legal advice on her behalf at an early stage.

However, this does not change the fact that the obligation imposed by section 171B of the Act was not observed by the Councillor and as a consequence the hospitality benefit received from Adani in March 2017 was not declared in the register of interests pursuant to the provisions of the Regulation Schedule 5 Item 17. The public record thus remained inaccurate for the period 16 April 2017 until at least 8 June 2019, and as a consequence the public interest was undermined in this respect.

¹ Scaffidi v Chief Executive Officer, Department of Local Government and Communities [2017] WASCA 222; (2017) 52 WAR 368 at [47] to [48]

	<p><i>Breach of the Trust placed in the Councillor</i></p> <p>The concept of ‘trust in a councillor’ is embodied in the principles of the Act and is viewed broadly, in relation to the trust that the community has in the position of councillor. As elected representatives in responsible positions with significant powers, councillors have great discretion and are entrusted to use their powers to undertake negotiations and to use their powers to make policy and decisions, appropriately, impartially and 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 and having regard to the local government principles in section 4 of the Act, and the Councillors’ failure to comply with section 291 Schedule 5 of the Regulation and section 171B of the Act, the Tribunal is satisfied on the balance of probabilities that the conduct constituted a breach of trust placed in the councillor and that the allegation of misconduct is sustained.</p>
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3. Orders and/or recommendations (s150AR - disciplinary action):

Date of orders:	4 November 2020
Order/s and/or recommendations:	<p>Having found that the councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal orders that:</p> <ol style="list-style-type: none"> 1. Pursuant to section 150AR(1)(b)(i) Councillor Strelow make an apology at the next Council meeting that she has engaged in misconduct; 2. Pursuant to section 150AR(1)(b)(iii), and within 21 days from the date of receipt of this this order, Councillor Strelow update her Register of Interests for the period 16 April 2017 to 8 June 2019, to record the hospitality benefit received from Adani; and attend in-service training in relation to the completion of the Register of Interests and the type of interests that must be recorded pursuant to Schedule 5 of the Regulation; 3. The in-service training be undertaken within 90 days from the date of receipt of this order by the Councillor, the costs of the training to be paid at the expense of the Councillor(s150AR(1)(b)(iii)). The Independent Assessor to be notified by the CEO upon the completion of the training.

<p>Reasons:</p>	<p>In making the orders the Tribunal took into account that the Councillor has no previous disciplinary history and has extensive experience as both a councillor and mayor of the Council. It is also noted that the Councillor had participated in training provided by the Department of Local Government Racing and Multicultural Affairs (DLGRMA) relating to Councillor Conduct and ethical training in 2017, Integrity training in 2018, and Belcarra amendments training in 2018.</p> <p>The Tribunal notes that the above training was provided contemporaneously with the investigation process regarding the contravention of section 171B(2) of the Act and Schedule 5 of the Regulation. However the nature and extent to which such training dealt with the requirements for compliance with section 171B of the Act, and the inclusion of interests in the Register of Interests that may raise an awareness of a conflict of interest, is not clear from the submissions and material before the Tribunal.</p> <p>It is also noted that the Councillor challenged the applicability of the statutory obligation of section 171B(2) and Schedule 5 of the Regulation to her personal circumstances over a lengthy period. As a consequence the Independent Assessor submitted in relation to sanction that this conduct resulted in 'a diversion of resources by the OIA to fully investigate the matter'²</p> <p>Accordingly it is determined that the Councillor requires further training to ensure this issue does not arise again and that the Councillor acquires a complete understanding of the obligatory provisions of the Act and the Regulation regarding the requirements to record '<i>non-financial and financial interests</i>' in the Register of Interests.</p>
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² Statement of Facts by the Independent Assessor at [40 d.]