

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	F19/9759
Subject councillor:	Councillor James Hansen (the Councillor)
Council	Fraser Coast Regional Council (the Council)

2. Decision (s150AQ):

Date:	24 September 2021
	<p>The Tribunal conducted a hearing to determine whether Councillor Hansen had engaged in misconduct arising from the comments he posted on his private Facebook profile regarding two consecutive terrorist mass shootings that occurred at the Noor Mosque and the Linwood Islamic Centre in New Zealand in March 2019.</p> <p>DECISION:</p> <p>The Tribunal determined on the balance of probabilities, that the allegation, that on a date unknown between 14 March 2019 and 19 March 2019 Councillor James Hansen a Councillor of the Fraser Coast Regional Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i>(the Act) in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly in that it was inconsistent with local government principle in 4(2)(c) of the Act, being ‘democratic representation, social inclusion and meaningful community engagement’ has been sustained.</p>

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	<p>The Particulars of the alleged conduct provided by the Independent Assessor to the Tribunal are as follows:</p> <p>a. On 15 March 2019, two terrorist, mass shootings occurred at the Noor Mosque and the Linwood Islamic Centre in Christchurch, New Zealand during Friday prayers.</p> <p>b. On an unknown date between 14 March 2019 and 19 March 2019, Councillor Hansen posted the following comment on his private Facebook profile:</p> <p><i>“So here is my take on the attack in NZ, we all hate and speak against terrorism, but we need to remember the 10s of thousands who have died at the hands of Muslim terrorist over recent times let’s condemn terror at all levels” and ,</i></p> <p><i>”I’m so sick of the one sided media, let’s remember Islam has killed hundreds of millions over the past few centuries(sic)”.</i></p>
<p>Reasons:</p>	<ol style="list-style-type: none"> 1. The Councillor notified the Independent Assessor that he disputed the allegation that such conduct amounts to misconduct or a breach of trust by him as a Councillor. 2. The Councillor accepted that he posted the Facebook comments and that he spoke to the local newspaper regarding this post. However he disputed his comments contravened the relevant provisions in the <i>Local Government Act 2009</i> (the Act). 3. In these circumstances the Tribunal must be satisfied there is sufficient evidence before it to establish the allegation is made out to the required civil standard of proof, being the balance of probabilities, and that the conduct meets the definition of misconduct provided by section 150L(1)(b)(i) of the Act. 4. The Tribunal in reaching its decision considered the evidence and the submissions provided by the Independent Assessor, and the response and submissions of the Councillor. <p>The evidence was viewed in the context of the relevant councillor conduct provisions and the Behavioural standards contained in the Code of Conduct for Councillors in Queensland, the provisions in the Act and the Principles that underpin the Act. The Tribunal also considered provisions with respect to limitation on human rights contained in the Human Rights Act Queensland (2019).</p> <ol style="list-style-type: none"> 5. The Councillor made several submissions including :

a. that 'the comments were made on his personal Facebook page' and were unrelated to his role as a Councillor; and

b. that he deleted the Facebook comments when he became aware that persons had interpreted the post in a way that he had not intended; and

c. that the complete Facebook post was 'cherry picked' and the media did not report the final concluding sentence which was stated to be

"in closing I condemn all acts of terrorism no matter who or what group carries them out".

The Tribunal accepted the accuracy of statements (b & c) above provided by the Councillor.

6. The Facebook post (described in the Particulars of the allegation above) was reported by the Fraser Coast Chronicle newspaper and other Newscorp media publications on 20 March 2019. The Chronicle included comments made in response to the Councillor's Facebook post, by the president of Islamic Council of Queensland stating that 'Councillor Hansen did not understand Islam' and that *'Islam does not condone any act of violence or the taking of innocent life'*.

7. Councillor Hansen participated in an interview conducted by the Chronicle media on 26 March 2019. This interview was reported in the *Fraser Coast Chronicle* newspaper on 27 March 2019 and made reference to the comments of Councillor Hansen following the Christchurch massacre.

The Tribunal considered that because he took part in the interview without clearly indicating in what capacity he was making the further comments, that were later reported in the Fraser Coast Chronicle, that the inference could be drawn that he had made such further comments in his capacity as a councillor and not as a private citizen.

The newspaper report described him as Councillor Hansen and apparently interviewed him in the capacity of a Fraser Coast councillor.

8. He did not resile from being identified as Councillor Hansen, nor did he seek to clarify that the Facebook comments made on a date between 14 March -19 March 2019, were his personal views only and not comments that could be attributed to him in the position of a Fraser Coast Regional Councillor. The Councillor was also reported to have endorsed some of comments he had posted on Facebook during the interview.

Councillor Code of Conduct

Behavioural Standard 3.2

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9. Councillors are required to observe the Behavioural Standards provided in the Code of Conduct for Councillors in Queensland including :

3.2 *-When making public comment, **clearly** state whether they are speaking on behalf of Council or expressing their personal views. [emphasis added]*

Councillor Hansen did not identify that he was speaking to the media as a private individual and providing his personal views only. As a consequence of this failure to clarify in which capacity he was making the comments he contravened Behavioural Standard 3.2 of the Code of Conduct.

Under such circumstances the provisions of the Local Government Act are triggered and apply to this conduct.

These provisions are the Principles that underpin the Act and the Responsibilities of Councillors including to uphold ...

“democratic representation, social inclusion and meaningful community engagement”(s4(2)(c); and

to “provide high quality leadership to the local government and the community”(s12(3)(b).

The evidence confirmed and the Councillor accepts that he made two statements on Facebook that included the following comment that was also made to the Chronicle newspaper during the interview::

“ I’m so sick of the one sided media, let’s remember that Islam has killed hundreds of millions over the past few centries”.

10. While the Tribunal accepts that councillors are able to express their personal opinions and views this must be done in a way that distinguishes them from their role as a Councillor and clearly states that all such opinions and comments are their personal views only and not representative of the views or policy of the Council.

11. Personal opinions must be expressed in a way that complies with all other relevant legislation including Human Rights and Anti –Discrimination statutes. To do otherwise will also trigger the provisions of the *Local Government Act* and may result in findings of misconduct against the councillor.

Local Government Principles

12. In the circumstances of this matter the Tribunal considers that the Councillor participated in an interview in his capacity as a councillor and

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endorsed the Facebook post and made further comments that were inconsistent with the Local Government principles (s 4).

The Principle in section 4 requires that councillors *'when performing a responsibility under the Act'...* are to do so *'in a way that is consistent with the local government principles'*.

The conduct by the councillor when viewed in the context of the Act contravened the principle requiring *'Democratic representation, social inclusion and meaningful community engagement'*.

The Councillor by various other provisions of the Act (section 12), is required *'to provide high quality leadership' ... and to 'serve the overall public interest of the whole government area'*.

13. The Tribunal accepts the Councillor's submission that he did not intend by the comments to engage in any hate speech, misrepresent the facts or incite division. However when councillors engage in the use of social media the words used "do matter" and should be chosen cautiously; as condemning acts of Islamic terrorism and condemning Islam itself are not the same thing.

The Councillor stated *'Islam is responsible for killing millions'*. It is not relevant that it was not his intention for the statement to be understood in this way.

The Tribunal found the comments made in this statement (above) could be taken as divisive, not socially inclusive, and were capable of causing offence to the Muslim community and disrespectful to those who practice the religion of Islam.

14. The Councillor failed to clarify if he was speaking or commenting regarding his Facebook post in a private capacity or on behalf of the Council in his capacity as a councillor, or clarify this at any stage during the Tribunal proceedings.

15. The conduct was found to contravene Behavioural Standard 3.2 of the Code of Conduct, the principle under the Act of "social inclusion and meaningful community engagement" (s4(2)(c), and was inconsistent with the responsibilities imposed by section 12 of the Act to

"represent the current and future interests of the residents of the local government area" (12(1)) and "to provide high quality leadership to the local government community" (s12(3)).

16. The Tribunal determined the conduct to be a breach of the trust placed in the councillor pursuant to the provisions of section 150L(1)(b)(i) of the Act.

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	<p>Breach of the Trust placed in the councillor.</p> <p>17. 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 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>18. In this context, 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:	10 November 2021
Orders and/or recommendations:	<p>Having found that the councillor engaged in misconduct, the Tribunal makes the following orders :</p> <ul style="list-style-type: none"> a) An order reprimanding the Councillor pursuant to section 150AR(1)(b)(ii) of the Act; and b) That the Councillor attend training to address the specific conduct which was the subject of the allegation pursuant to section 150AR(1)(b)(iii). <p><i>Recommendation: The Tribunal recommends the training required by this order be in-service training to be arranged by the Local Government Division (Governance and Capability) within the Department of State Development Infrastructure, Local Government and Planning within 90 days or at the earliest available opportunity after that time period.</i></p>
Reasons:	<p>In considering the appropriate orders to be made under the Act the Tribunal had regard to a previous disciplinary finding made in October 2018 which involved posting an offensive comment on a personal Facebook page. The Councillor was required to make a public admission to the Fraser Coast Council that he had engaged in misconduct.</p> <p>In view of this previous history the Tribunal received a submission from the Applicant concerning possible Tribunal orders to be made. The</p>

Applicant proposed as the Councillor has demonstrated lack of insight that he may benefit from further training specifically directed to the use of social media together with a financial penalty order.

The Councillor provided a response to the Applicant's proposal and clearly stated that he was opposed to any penalty or further training as he does not accept that his actions represent misconduct or wrong-doing.

The Tribunal also considered that the Councillor, while disputing any wrong-doing, did at all times promptly co-operate with the investigation and Tribunal process and did not dispute making the Facebook posts or the comments reported in the media. He further requested for the matter to be resolved as quickly as possible.

It was also noted that the Councillor is very experienced and is currently serving in his third term as a Fraser Coast Regional councillor.

In the Tribunal's view, and considering the circumstances of this case, there is little to be achieved from ordering a public admission or a financial penalty as either of these orders would be unlikely to achieve any protective objective.

There was no evidence before the Tribunal that the Councillor had been provided with training specifically related to the use of social media by councillors, and it is anticipated that such training may prevent further contraventions by the Councillor when using social media, making public comment or expressing personal views.

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 provisions of the Act and the Code of Conduct regarding the obligations of councillors to consider and comply with provisions relevant to social media posts and when making public commentary.

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