

ATTACHMENT G

**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	F19/3472
Subject councillor¹	Ms Stacey McIntosh (the former Councillor)
Council	Logan City Council (the council)

2. Decision (s150AQ):

Date:	27 June 2019
Decision:	<p>During the hearing process, the Applicant (the Independent Assessor), advised the Tribunal in a written submission that she would not be proceeding with the application in respect of the following allegations:</p> <p>Allegation 1: It is alleged that on 21 November 2018, Councillor Stacey McIntosh, a councillor of Logan City Council, engaged in misconduct as defined in section 176(3)(b)(v) of the <i>Local Government Act 2009</i> (the Act), in that her conduct constituted a refusal to comply with a direction or order of the regional conduct review panel or tribunal about the councillor.</p>

¹ Note that the name of the councillor may be included on the register if the Tribunal decided the councillor engaged in misconduct. Where misconduct by the councillor has not been sustained the councillor needs to agree to their name being included (s150DY(3)).

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The particulars of the alleged conduct are as follows:

- a. On 20 August 2018, the Local Government Regional Conduct Review Panel (RCRP) sustained a finding that Councillor McIntosh had 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, namely that it contravened local government principle 4(e) requiring the ethical and legal behaviour of councillors.
- b. In sustaining this allegation, the RCRP made the following orders:
 - i. That Councillor McIntosh write a letter of apology to the Councillors in time to be read at an ordinary meeting of Council within three months of the Order (Order 1); and,
 - ii. That Councillor McIntosh provide [REDACTED] together with [REDACTED], with a written apology for recording the meeting without their knowledge and consent (Order 2).
- c. The three-month period specified in Order 1 in which an apology was to be made, concluded on 20 November 2018.
- d. Between 20 August 2018 and 20 November 2018, Council held the following ordinary meetings:
 - i. 28 August 2018;
 - ii. 25 September 2018;
 - iii. 23 October 2018; and,
 - iv. 13 November 2018.
- e. Councillor McIntosh failed to comply with Order 1 of the RCRP in that she failed to provide a letter of apology to the Councillors to be read at an ordinary meeting within three months of the Order being made.

Allegation 2: It is alleged that between 19 August 2018 and 22 December 2018, Councillor Stacey McIntosh, a councillor of Logan City Council, engaged in misconduct as defined in section 176(3)(b)(v) of the Local Government Act 2009 (the Act), in that her conduct constituted a refusal to comply with a direction or order of the regional conduct review panel or tribunal about the councillor.

The particulars of the alleged conduct are as follows:

- a. On 20 August 2018, the RCRP sustained a finding that Councillor McIntosh had 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, namely that it contravened local government principle 4(e) requiring the ethical and legal behaviour of councillors.
- b. In sustaining this allegation, the RCRP made the following orders:
 - i. That Councillor McIntosh write a letter of apology to the Councillors in

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	<p>time to be read at an ordinary meeting of Council within three months of the Order (Order 1); and,</p> <p>ii. That Councillor McIntosh provide [REDACTED] together with [REDACTED], with a written apology for recording the meeting without their knowledge and consent (Order 2).</p> <p>c. On 4 December 2018, the Applicant obtained confirmation from [REDACTED] that Councillor McIntosh had failed to provide a written apology for recording the meeting without their knowledge and consent in accordance with Order 2.</p> <p>d. On 21 December 2018, the Applicant obtained confirmation from [REDACTED] that Councillor McIntosh had failed to provide a written apology for recording the meeting without their knowledge and consent in accordance with Order 2.</p> <p>e. Councillor McIntosh failed to comply with Order 2 of the RCRP in that she failed to provide a written apology [REDACTED]</p> <p>Therefore, the Tribunal finds pursuant to s150AQ(1)(a) that the councillor has not engaged in misconduct in respect of the allegations.</p>
<p>Reasons:</p>	<ol style="list-style-type: none"> 1. The Respondent (Ms McIntosh) submitted she had not received notice of the hearing by the RCRP or the outcome in the matter dealt with in August 2018 and thus was unaware of the Orders. 2. The Applicant provided evidence as to the Departmental records held in respect of communications sent to the Respondent in this 2018 matter. The Applicant properly conceded on the evidence that it is "probable" that the Respondent did not receive a copy of the Notice of hearing in the matter, and that accordingly the Respondent was denied natural justice in respect of the earlier proceedings. 3. It was noted by this Tribunal, without coming to a final determination of the issue, that if no effective notice was in fact given of the hearing in the earlier proceedings, that it may be that the decision is infected by jurisdictional error and is no decision at all (<i>Minister for Immigration and Multicultural Affairs v Bhardwaj</i> (2002) 209 CLR 597; [2002] HCA 11 at [51]). 4. The Tribunal considered that the Respondent cannot now be held to account for failure to comply with the orders if in fact she never received notification of them. 5. The Applicant submitted that "it will no longer be proceeding with matter no F19/3472". 6. The Tribunal therefore found pursuant to s150AQ(1)(a) of the Act that the councillor has not engaged in misconduct in respect of the allegations in this matter.

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

Date of orders:	Not applicable
Order/s and/or recommendations:	
Reasons:	