

# 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>	F21/13065
<b>Subject Councillor</b>	Councillor James Hansen (the Councillor)
<b>Council</b>	Fraser Coast Regional Council ('FCRC')

## 2. Decision (s150AQ):

<b>Date:</b>	17 November 2023
<b>Decision:</b>	<p>The Tribunal has determined, on the balance of probabilities, that the allegation that on 5 March 2021, Councillor James Hansen, a councillor of Fraser Coast Regional Council ('FCRC'), 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 the conduct was inconsistent with local government principle 4(2)(c), being 'democratic representation, social inclusion and meaningful community engagement' and the responsibility of a councillor in section 12(3)(b) to provide high quality leadership to the local government and to the community, <b>has been sustained</b>.</p> <p><b>Particulars of the conduct which amounted to misconduct was as follows:</b></p> <ol style="list-style-type: none"><li>1. The Environmental Advisory Group ("EAG") was established by the FCRC as a voluntary advisory group to provide advice and assistance to the FCRC in informing its decision-making process in relation to environmental policy for the Fraser Coast local government area. The</li></ol>

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	<p>EAG members are drawn from a diverse cross-section of the Fraser Coast community.</p> <ol style="list-style-type: none"> <li>2. On 27 February 2020, the EAG members unanimously approved to extend an invitation to a Butchulla Native Title Aboriginal Corporation representative for permanent inclusion on the EAG panel. Councillor Hansen was recorded as absent for this meeting.</li> <li>3. On 5 March 2021, Jesse Kaine, a council officer of the FCRC, sent an email to the EAG Participants, attaching the draft agenda for the upcoming EAG meeting on 11 March 2021. Item 2.1 of the draft agenda involved an update of previous issues which included extending an invitation to a Butchulla Native Title Aboriginal Corporation representative for permanent inclusion on the EAG panel.</li> <li>4. On 5 March 2021 at 7:03pm, Councillor Hansen responded to the EAG by reply email, stating the following: <ul style="list-style-type: none"> <li><i>“I’ll try and be there, I fail to understand why we need a permanent indigenous rep, shouldn’t it be skill not skin colour? I’m Indigenous just not aboriginal”.</i></li> </ul> </li> <li>5. On 6 March 2021 at 7:51pm, Councillor Hansen subsequently followed his previous response with a further comment in a subsequent email, stating the following: <ul style="list-style-type: none"> <li><i>“Didn’t mean to offend by that comment just a sincere question, I’m happy to go with what the group feel”.</i></li> </ul> </li> <li>6. Between approximately 6 March 2021 and 9 March 2021, various members of the EAG expressed concern with Councillor Hansen’s comments made on 5 March 2021 including the following EAG members who responded directory to Councillor Hansen as follows: <ol style="list-style-type: none"> <li>a. On 6 March 2021 at 12:08pm, external advisory committee member Mr Mike Moller of the Wide Bay Burnett Environment Council Inc wrote to Councillor Hansen by email in response, stating the following: <ul style="list-style-type: none"> <li><i>“...For your information, I believe the invitation was extended to the Butchulla people because of their ongoing key role in helping to manage the land and sea country in the Fraser Coast Region (like other groups on the EAG), NOT because of their skin colour”.</i></li> </ul> </li> <li>b. On 8 March 2021, Mr Rodney Buchanan the Environmental Coordinator at council wrote to Councillor Hansen by email in response to the comments, stating the following: <ul style="list-style-type: none"> <li><i>“The purpose of the Environmental Advisory Group is to provide opinion from a diverse cross section of the Fraser Coast community”;</i></li> </ul> </li> </ol> </li> </ol>
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	<p><i>“The invitation for Butchulla/Gubbi Gubbi representation should have been standard from the group’s establishment but this has not yet been achieved;</i></p> <p><i>“As the group develops capacity there is a benefit in discussing a wider perspective of what environmental management means to the entire Fraser Coast community”; and</i></p> <p><i>“This will be essential in developing items such as an Environmental Strategy and/or Biodiversity Action Plan in ensuring for community inclusion”.</i></p> <p>c. On 8 March 2021, Councillor Hansen replied to Mr Rodney Buchanan stating the following:</p> <p><i>“Thanks mate, we will agree to disagree”.</i></p> <p>d. On 9 March 2021, Dr David Scheltinga from Qld water wrote to Councillor Hansen by email in response to his comments, stating the following:</p> <p><i>“While I recognise that you didn’t mean to offend, and I thank you for your apology, the wording of the email was hurtful and whilst I appreciate that you feel like your intention was not to be so, it unfortunately was”;</i></p> <p><i>“I’ve done some really great courses around cultural awareness which I think would help explain this and I encourage everyone to do these”;</i></p> <p><i>“The word 'indigenous' refers to the concept of a place-based ethnic culture that has not migrated from its homeland and is not a settler/colonial population. Just because a person is born somewhere it does not make them indigenous”;</i></p> <p><i>“Also, to use the words “skill not skin colour” when discussing having an indigenous representative is not appropriate, as too often throughout our history (and still today) the indigenous population has suffering greatly purely due to their skin colour”;</i> and</p> <p><i>“The EAG would benefit greatly from the skill and knowledge that a representative of the Butchulla or Gubbi Gubbi would bring”.</i></p> <p>Councillor Hansen’s conduct in sending the emails set out in these particulars was inconsistent with the local government principle as prescribed under section 4(2)(c) of the Act, being ‘democratic representation, social inclusion and meaningful community engagement’, in that the comments did not demonstrate social inclusion or meaningful community engagement and fell short of the high level of leadership required of a councillors in section 12(3)(b) when interacting with council officers and community representatives.</p>
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<b>Reasons:</b>	<p>1. The Councillor accepted the particulars above including making the comments, however denied any misconduct.</p> <p>2. The issue for the Tribunal was whether the Councillor’s comments amounted to misconduct.</p> <p>3. The definition of misconduct is contained in section 150L(1)(b)(i) of the Act, which relevantly provides:</p> <p style="text-align: center;"><b>150L What is misconduct</b></p> <p style="text-align: center;"><i>(1) The conduct of a councillor is <b>misconduct</b> if the conduct—</i></p> <p style="text-align: center;">...</p> <p style="text-align: center;"><i>(b) is or involves—</i></p> <p style="text-align: center;"><i>(i) a breach of the trust placed in the councillor, either knowingly or recklessly; ...<sup>1</sup></i></p> <p>4. The responsibilities of councillors are set out in section 12 of the Act, which relevantly provides:</p> <p style="text-align: center;"><b>Responsibilities of councillors</b></p> <p>5. A councillor must represent the current and future interests of the residents of the local government area</p> <p style="text-align: center;">...</p> <p>6. All councillors have the following responsibilities—</p> <p style="padding-left: 20px;">(a) ensuring the local government—</p> <p style="padding-left: 40px;">(i) discharges its responsibilities under this Act; and</p> <p style="padding-left: 40px;">(ii) achieves its corporate plan; and</p> <p style="padding-left: 40px;">(iii) complies with all laws that apply to local governments;</p> <p style="padding-left: 20px;">(b) providing high quality leadership to the local government and the community;</p> <p style="padding-left: 20px;">(c) participating in council meetings, policy development, and decision making, for the benefit of the local government area;</p> <p style="padding-left: 20px;">(d) being accountable to the community for the local government’s performance.</p> <p style="text-align: center;">...</p> <p style="padding-left: 20px;">(6) When performing a responsibility, a councillor must serve the overall public interest of the whole local government area.</p>
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<sup>1</sup> The remainder of section 150L(1)(b)(i) of the Act is not relevant to this matter and has been omitted.

7. The Local Government Principles are set out in section 4 of the Act and relevantly provide:

**4 Local government principles underpin this Act**

*(1) To ensure the system of local government is accountable, effective, efficient and sustainable, Parliament requires—*

*(a) anyone who is performing a responsibility under this Act to do so in accordance with the local government principles; and*

*(b) any action that is taken under this Act to be taken in a way that—*

*(i) is consistent with the local government principles; and*

*(ii) provides results that are consistent with the local government principles, in as far as the results are within the control of the person who is taking the action.*

*(2) The local government principles are—*

...

*(c) democratic representation, social inclusion and meaningful community engagement.*

8. The Tribunal has also considered the Code of Conduct, being the *Code of Conduct for Councillors in Queensland* of 4 August 2020. This Code of Conduct is a requirement under section 150D of the Act, and must set standards of behaviour for Councillors in the performance of their responsibilities as Councillors.

9. Before assuming public office, Councillors must:

- i. Understand and commit to complying with the local government principles and obligations of Councillors in accordance with section 169 of the Act, as well as the standards of behaviour set out in this Code of Conduct;
- ii. Make a declaration of office, during which Councillors must declare that they will abide by this Code of Conduct.

10. The relevant sections of the Code of Conduct to these allegations are:

...

*1.2 Respect and comply with all policies, procedures and resolutions of Council*

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...

*2.3 Have proper regard for other people's rights, obligations, cultural differences, safety, health and welfare.*

*3. Ensure conduct does not reflect adversely on the reputation of Council.*

11. The Tribunal considered that whilst the Councillor is both entitled, and expected to make enquiries and express his views on matters he is involved in, has an interest in, or in advocating on behalf of his constituents; the statements the subject of this report went beyond what was appropriate for a Councillor and were reasonably insulting, disparaging and discriminatory of first nations Australians and the Butchulla people in particular.
12. Taking into account the concerns expressed by external representatives, Mr Mike Moller, Wide Bay Burnett Environment Council Inc and Dr David Scheltinga, Qld Water, who were members of the EAG, the statements of the Councillor could reasonably have undermined trust in the councillor and the council to meaningfully engage with the community and represent the interests of the whole local government area.
13. Due to the Councillor's prior disciplinary history for like conduct, his declaration of office to fulfil his duties in accordance with local government principles, and the training he had received, that the Councillor was at least aware that making racially insensitive comments may be in breach of his legislative obligations and should have been alert, particularly when engaging directly in council business, that he was required to do so in a manner which meaningfully engaged with indigenous members of the FCRC community.
14. That the conduct standards imposed on a Councilor are a permissible limitation on the freedom of expression provided for by the *Human Rights Act 2019 (Qld)*.
15. The Councillor accepted making the comments, however provided by way of explanation that he believed he was asking a legitimate question and that he did not mean to cause offence.
16. The Councillor nonetheless recognised that his email did cause offence to members of the EAG. The Tribunal noted his apology to the members of the EAG. Whilst this was deemed mitigating, the comments still

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	<p>displayed a concerning lack of insight and understanding by the Councillor.</p> <p>17. Accordingly, the Tribunal found that the Councillor breached the trust reposed in him at least recklessly. The Tribunal considered the Councillor was aware or should have been aware – based on his previous findings of misconduct – that the making of inappropriate, offensive or discriminatory statements could result in a finding of misconduct.</p> <p>18. On that basis, the Councillor acted recklessly as to the consequence of making the impugned comments. Taken together, the failure to comply with the Code of Conduct, as well as the particularized local government principles 4(2)(c) and (e) and the obligations of Councillors under section 12(3)(b) of the Act, the Councillor has breached the trust reposed in him and engaged in misconduct under section 150L(1)(b)(i).</p> <p>19. The Tribunal determined that on the balance of probabilities Allegation One was <b>sustained</b>.</p>
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**3. Orders and/or recommendations (s150AR - disciplinary action):**

<b>Date of orders:</b>	20 November 2023
<b>Orders:</b>	<p>The Tribunal orders that, for Allegation 1, within 90 days of the date that a copy of this decision and orders are given to him by the Registrar:</p> <ul style="list-style-type: none"> <li>a. Pursuant to s 150AR(1)(b)(ii) of the Act, Councillor Hansen is reprimanded;</li> <li>b. Pursuant to s 150AR(1)(b)(v) of the Act, that Councillor Hansen reimburse the local government for \$1,500 representing some of the costs arising from the councillor’s misconduct.</li> </ul>
<b>Reasons:</b>	<ul style="list-style-type: none"> <li>1. The Tribunal observed that the Councillor did not contest the factual basis of the allegation, however, did reject that his comments amounted to misconduct.</li> <li>2. The Tribunal considered the Councillor’s prior disciplinary history. The Councillor had an extensive disciplinary history including for conduct that is similar to the present conduct.</li> <li>3. Recently, the Tribunal found that the Councillor had engaged in misconduct when making comments, posts and/or likes on Facebook that were inappropriate including in relation to offensive, racist and</li> </ul>

discriminatory comments regarding to Indigenous persons. In that matter, the Tribunal, noting the Councillor's prior disciplinary history, ordered that:

- i. he be reprimanded; and
  - ii. a recommendation be made to the Minister to suspend the councillor for not less than one (1) calendar month.
4. Following the recommendation of this Tribunal, on 1 September 2023, the Minister, under section 122(2)(a) of the Act, recommended that the Governor in Council suspend the Councillor for a period of one (1) calendar month. *The Local Government (Fraser Coast Regional Council—Suspension of Councillor) Amendment Regulation 2023* was made under the Act by the Governor in Council on 7 September 2023 and prescribed that the Councillor be suspended from office for a period of 1 month starting on 8 September 2023 and concluding on 8 October 2023.
5. The Tribunal took into account that the finding above was determined by the Tribunal after the date of the misconduct subject of this report.
6. The Tribunal considered the following to be aggravating factors:
- i. the Councillor had previous inappropriate conduct findings for similar conduct;
  - ii. the Councillor had previous misconduct findings for similar conduct;
  - iii. in this matter the conduct occurred while the Councillor was directly engaged in council business;
  - iv. the Councillor continued to demonstrate little insight into his conduct;
  - v. the Councillor had previously received training relating to his legislative obligations; and
  - vi. the Councillor is an experienced councillor.
7. The Tribunal accepted in mitigation the Councillor did not knowingly mean to cause offence. The Tribunal also noted the date of this allegation was some time ago.
8. The Applicant submitted that the Tribunal should order that:
- i. The Councillor be reprimanded;
  - ii. The Councillor reimburse the local government for some or all of the costs arising from his misconduct; and/or

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	<p>iii. A recommendation be made to the Minister to suspend the Councillor for a stated period.</p> <p>9. The Councillor made no submissions on possible disciplinary orders.</p> <p>10. Given this misconduct occurred prior to the recent order of suspension for like conduct, the Tribunal did not consider another recommendation for suspension was appropriate.</p> <p>11. The Tribunal did consider it appropriate that the Councillor be reprimanded for his misconduct.</p> <p>12. Given the repeated 'like' conduct of the Councillor, the Tribunal also considered it appropriate that the Councillor reimburse the local government some of the costs arising from his misconduct.</p>
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