

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	F19/6005
Subject Councillor	Councillor Glenn Tozer (the councillor)
Council	Gold Coast City Council

2. Decision (s150AQ):

Date:	14 December 2019
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that, between a date unknown in 2012 and 19 October 2017, Glenn Tozer, a Councillor of Gold Coast City Council, engaged in misconduct as defined in section 176(3)(b)(ii) ¹ 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 has been sustained .

¹ As applied by section 322 of the Act.

Reasons:

In written submissions, the Respondent's solicitor has noted that "*there is/ was perhaps some confusion if an Honorary Membership was a declarable interest for register purposes...the confusion surrounding this point still has not be (sic) resolved by evidence in these proceedings*". At oral hearing a similar submission was made, i.e. that an honorary membership was not necessarily required to be advised by the Councillor to the CEO.

This submission is somewhat inconsistent with paragraph 20 of the SOF which specifically refers to the relevant provisions of section 171B(2) of the Act, the requirements of the form 2 (which reflect Schedule 5, item 14), and that the failure to disclose the honorary membership was a breach of trust. Earlier in the submissions, the point is made that the SOF was agreed to in "*totality*". However, as the challenge to the allegation on this basis was raised in the written submissions and reiterated in oral submissions, the Tribunal has considered the issue.

It is noted that the Councillor has submitted that the Turf Club honorary members were "*routinely and liberally handed out*" by the Turf Club to the Gold Coast City Councillors. The Respondent's solicitor also submitted that there was no evidence that the Respondent ever used or accessed the benefits of the honorary membership.

The issue came to light at a 15 November 2016 Council meeting at which the Respondent and 6 other councillors declared a potential conflict of interest when voting on a resolution involving the Turf Club. It was noted (apparently at that time) that the Respondent had not recorded the details of this honorary membership on his register of interests.

It is not entirely clear from the Respondent's submissions as to the basis upon which it is asserted that the honorary membership was not required to be advised under section 171B(2) of the Act and section 291(1) and Schedule 5, item 14 of the Regulation. The Applicant's submissions merely set out and rely upon these provisions and do not provide any further insight into the issue being raised by the Respondent.

Although the Applicant bears the onus of proof overall in these proceedings, the Respondent at least bears the evidentiary onus, to clearly raise and explain the legal or factual issue which is disputed and provide any supporting evidence upon which he wishes to rely.

In the absence of any such submissions to clarify the point, the legislative provisions have been considered in the context of the agreed facts. There is no element in the applicable legislative provisions specifying that the membership must be a paid membership in order to be required to be disclosed. There would also appear to be no basis upon which to doubt that the Turf Club is within the scope of the ordinary meaning of the words "*body or association*" in item 14 of Schedule 5.

Councillor Conduct Tribunal

GPO Box 15009, City East, Q 4002

	<p>It could possibly be argued that membership was not held by the Respondent until he was informed of it and acceded to it by words or conduct. The evidence available is not entirely clear as to when that was. However, it is noted that there is undisputed evidence that the Councillor wrote to the Turf Club on 31 July 2015 acknowledging his honorary membership for the 15/16 racing season, and the Councillor apparently did not take action to resign his membership until 18 October 2017.</p> <p>Accordingly, there appears to be no dispute that the Councillor was a "<i>member</i>" of the Turf Club, even if an honorary member for at least the period from 31 July 2015, to 18 October 2017.</p> <p>Accordingly, subject to the issue as to intention discussed below, it is found that the Councillor was a member of the Turf Club for the period from at least 31 July 2015 to 18 October 2017, and that this membership is prima facie, sufficient to give rise to the obligation in s.171B(2) of the Act for the Councillor to make the required notification, "<i>within 30 days after the interest arises</i>".</p> <p>The Tribunal finds on the basis of the wording of section 171B(2) of the Act and section 291(1) and Schedule 5 part 14 of the Regulation, on the facts and evidence before it, that there was an obligation on the Respondent to provide the required information to the CEO as to the Turf Club membership within 30 days of the time he commenced to hold the membership.</p> <p>Accordingly, the Tribunal finds that the Councillor failed to provide the information required under section 171B(2) for at least the period from or about 31 July 2015 to 18 October 2017.</p> <p>Having regard to the wording of the former section 176 of the Act, the local government principles in section 4 of the Act, and the nature and circumstances of the conduct which was, on the balance of probabilities, a breach of section 171B(2), the Tribunal is satisfied that the conduct of the Respondent is appropriately categorised as misconduct.</p> <p>In this context, the Tribunal finds on the balance of probabilities that the allegation is sustained.</p>
--	--

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

Date of orders:	14 December 2019
Order/s and/or recommendations:	Having found that the councillor engaged in misconduct, pursuant to section 150AR(1) of the Act, the Tribunal orders that:

	<p>The Tribunal orders pursuant to s150AR(1)(b)(iii) of the Act (being an order substantially the same as an order that could have been made under the former section 180), that:</p> <ul style="list-style-type: none"> ○ The Tribunal orders, pursuant to s150AR(1)(b)(iii) of the Act, that Cr Tozer be counselled by the Chief Executive Officer (CEO) of the Council about the misconduct and how not to repeat the misconduct within 60 days of the Respondent being given a copy of the decision and order. The CEO is to report to the Independent Assessor at the end of the 60 days, confirming such counselling has been undertaken.
<p>Reasons:</p>	<p>The Tribunal has determined that the Respondent would benefit from counselling, under section 150AR(1)(b)(iii) to ensure that he has a full understanding of the requirements for the updating of the register, so that the issue does not arise again in the future. In the circumstances of the current matter, no further orders appear to be necessary. However, should the issue arise again in the future, a more serious consequence may arise from a finding of misconduct.</p>