

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	F21/4149
Subject Councillor	Councillor Timothy Logan Koo-Aga (the councillor) 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)). ¹
Council	Porpuraaw Aboriginal Shire Council

2. Decision (s150AQ):

Date:	11 April 2023
Decision:	The Tribunal has determined, on the balance of probabilities, that the allegation that on or about 8 June 2020, Councillor Timothy Logan Koo-Aga, a councillor of Porpuraaw Aboriginal Shire Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the <i>Local Government Act 2009</i> , in that his conduct constituted a breach of the trust placed in him as a councillor, either knowingly or recklessly, in that his conduct was inconsistent with section 12(3)(b) of the Act, being his responsibility as a councillor to provide high quality leadership to the local government and the community has been sustained .

¹ This notice should be delayed until 7 days after the date of the Tribunal letter advising the councillor of the decision and reasons in relation to the complaint, to enable the councillor time to indicate if they would like their name included in the publication or not.

	<p>Particulars of the alleged conduct which amounted to misconduct are as follows:</p> <ul style="list-style-type: none"> a. In March 2020, Councillor Koo-Aga was elected as a Councillor of the Pormpuraaw Aboriginal Shire Council for his second term. b. On or about 8 July 2020, Councillor Koo-Aga engaged in a physical altercation with a member of the public, Mr Gavin Holyrod (“Mr Holyrod”²), in the car park between the Pormpuraaw CEQ store and the local Arts and Culture Centre, as follows: <ul style="list-style-type: none"> i. Councillor Koo-Aga was approached by Mr Holyrod; ii. Mr Holyrod made gestures towards Councillor Koo-Aga; iii. Councillor Koo-Aga took off his hat and glasses and put them in his vehicle; iv. Councillor Koo-Aga then approached Mr Holyrod and punched Mr Holyrod; v. Councillor Koo-Aga continued to engage in a physical altercation with Mr Holyrod, where both Councillor Koo-Aga and Mr Holyrod punched each other a number of times; and vi. An unknown male person approached Councillor Koo-Aga and My Holyrod (sic) and broke up the fight. c. The Manager of the Arts and Culture Centre, Mr Paul Jakubowski (“Mr Jakubowski”), and approximately 40 other people witnessed the altercation, and a couple of people were saying “No, stop, stop” or words to that effect.
<p>Reasons:</p>	<ul style="list-style-type: none"> 1. In this case, the Respondent Councillor was captured on CCTV being involved in a physical altercation with a member of the public outside a store in the local government area. However, the CCTV footage was of limited evidentiary value, and merely supported the Councillor’s admissions that he had engaged in the altercation. 2. The Respondent did not appear at the final hearing and filed no evidence or submissions, having referred to his statement to the Independent Assessor and claiming he had “<i>nothing more to say</i>”. The Respondent in that statement said he was acting in self-defence of “<i>local obligations and family kinships in Aboriginal families</i>”; however, the Tribunal had insufficient evidence on which to accept that claim where the Respondent refused to take part in the hearing. 3. The Tribunal was also not willing to accept the contention of the Applicant that the conduct was witnessed by some “<i>40 witnesses</i>”,

² This is in fact a typo – the individual’s name is Mr Gavin Holroyd.

	<p>where those witnesses could not be independently identified, did not provide any evidence and were not recognized in any of the Applicant’s evidence.</p> <p>4. What is clear from the video footage is that the Respondent had alternative choices to escalating the matter; he could have walked away and done nothing to escalate the situation, or he could have entered his vehicle and driven away.</p> <p>5. In any event, Councillors are elected officials who represent the local government area. This much is clear from the Act, which requires Councillors to provide high quality leadership to the local community (section 12(3)(b) of Act), but also from the Applicant’s submissions which detail “[i]n smaller regional and remote local government areas in Queensland elected councillors are personally known to and visible within their communities... First nations councils are also distinctive because in addition to delivering traditional local government services they are also involved in the delivery or co-ordination of a range of social welfare and social justice services”.</p> <p>6. Councillors cannot reasonably be considered as discharging this obligation when they engage in physical fighting with members of the local community. A fight between a Councillor and a member of the public has the capacity to call the office of councillor, and indeed all of local government, into disrepute. It is entirely antithetical to the concept of good government for elected officials to be brawling with members of their constituency.</p> <p>7. The Tribunal is also satisfied that the Respondent breached the trust reposed in him as Councillor, and did so recklessly. Though he may well have (briefly) turned his mind to the possibility of criminal charges arising from his fight with Mr Holroyd, it is apparent that he honestly believed he was acting in self-defence, and that he was reckless as to the potential outcome of the altercation.</p>
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3. Orders (s150AR - disciplinary action):

Date of orders:	11 April 2023
Orders:	<p>The Tribunal orders that, within 60 days of the day that he is issued with this decision and reasons:</p> <p>1. Pursuant to section 150AR(1)(b)(ii) of the Act, the Respondent is reprimanded.</p>

Reasons:	<ol style="list-style-type: none"> 1. The Respondent had no relevant misconduct history which would have informed his behaviour at the time of the misconduct. 2. The Tribunal considered the matter to be serious. Councillors must uphold the highest standards of personal conduct as representatives of local government. This obviously precludes Councillors from fighting members of the general public. 3. However, the Tribunal also considered several mitigation factors: <ol style="list-style-type: none"> a. The altercation was provoked by Mr Holroyd’s claims, including that he would “spear” the Respondent (a serious threat or challenge in First Australian communities); b. The Respondent initially attempted to de-escalate the situation with Mr Holroyd; c. The Respondent self-reported the matter to the CEO and to Queensland Police Service, and cooperated with the Police investigation; d. The Respondent raised a reasonable response which was not challenged by the Applicant; and e. The Respondent admitted that he was involved in a physical altercation with Mr Holroyd and did not challenge the allegation before the Tribunal. 4. The Tribunal does not believe that a financial penalty is warranted for a Councillor with no prior disciplinary history in these circumstances. It also questions an order for additional training or counselling for a Councillor who has already received the benefits of significant training by the Department. 5. Nor is a public admission of misconduct a sufficient penalty in this case. Rather than a public admission (where the onus is on the Councillor to comply) the Tribunal considers that a reprimand is more appropriate (where the reprimand simply exists by order of the Tribunal).
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