

# 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).

## Complaint:

<b>CCT Reference</b>	F19/4391
<b>Date of application of the IA</b>	3 June 2019
<b>Applicant</b>	The Independent Assessor (IA)
<b>Respondent</b>	Councillor Cheyne Wilkie (the Councillor)
<b>Council</b>	Woorabinda Aboriginal Shire Council (the Council)
<b>Complainants/ Public Interest Disclosure</b>	The Complainant’s names have been withheld. The Tribunal was notified the Complainant’s are protected by the provisions of the Public Interest Disclosure Act 2010. The Tribunal is not permitted to publish the name on the Departmental website in decision summaries or give another entity any information that is part of a public interest disclosure section 150AS(5)(a) of the Local Government Act 2009 .

## Conflict of interest disclaimer/declaration (s150DT):

1. Having reviewed the material provided, all Tribunal members confirmed that they did not have a real or perceived conflict of interest in proceeding to decide the complaint.

## Hearing (s150AP & Chapter 7, Part 1):

<b>Time and Date:</b>	Day 1 -10am 5 December 2019 Day 2- 10am 11 December 2019 Day 3 -9.30 am 12 December 2019
<b>The Hearing</b>	The Tribunal conducted a three day public hearing at Level 21, Room 21.01, Central Plaza 2, 66 Eagle Street, Brisbane. The proceedings were audio recorded and transcribed. The Respondent Mayor and Councillor,

	<p>was present for the three day hearing and was represented by legal Counsel and a firm of solicitors. The Independent Assessor was represented by Counsel. The Tribunal heard by telephone the evidence of 9 of the witnesses with one witness providing their evidence in person at the hearing.</p> <p>The purpose of the hearing was to determine whether or not Councillor Cheyne Wilkie had engaged in misconduct in contravention of the <i>Local Government Act 2009</i>. Having considered the evidence together with the submissions received from the legal representatives in February and March 2020, on behalf of the Independent Assessor and the legal representatives on behalf of Councillor Wilkie the Tribunal determined on the balance of probabilities that eight allegations constituted misconduct and were sustained.</p>
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**Decision (s150AQ):DETERMINATION (SUMMARY)**

<b>A - Allegation 4</b>	<p>That between 1 October 2017 and 1 December 2017, Cheyne Wilkie, a Councillor and Mayor of the Woorabinda Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>
<b>B - Allegation 6</b>	<p>That on 27 June 2018, Councillor Cheyne Wilkie, a Councillor and the Mayor to Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a Councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>
<b>C - Allegation 8</b>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>
<b>D - Allegation 9</b>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda 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 involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>

<b>E - Allegation 10</b>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda 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 involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>
<b>F - Allegation 11</b>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda 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 involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>
<b>G - Allegation 12</b>	<p>That on 1 August 2018, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p>
<b>H - Allegation 13</b>	<p>That on or around 24 September 2018, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained.</b></p>

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

<b>Date of orders:</b>	23 February 2021
<b>Orders and/or recommendations:</b>	<p><b>The Tribunal orders that:</b></p> <p>a) Pursuant to;</p> <p>(i) section 150AR(1)(b)(ii) of the Act in relation to allegations 9,10 and 11; and</p> <p>(ii) former section 180(4) of the Act- in relation to allegations 4,6, 8, 12, and 13;</p> <p>the former Councillor and Mayor, Mr Wilkie must within 90 days of the date that a copy of this decision and orders is given to him by</p>

	<p>the Registrar; make a public admission at a Council meeting that he has engaged in misconduct</p> <p>b) Pursuant to section 150AR(1)(b)(iv) of the Act, Mr Wilkie pay to the local government 35 penalty units (\$4,665.00) within 120 days of the date that a copy of this decision and orders is given to him by the Registrar;</p> <p>c) That pursuant to section 150AR(1)(b)(ii) of the Act, Mr Wilkie is reprimanded for the conduct pertaining to Allegations 8, 9,10 and 11;</p> <p>d) That pursuant to section 150AR(1)(b)(ii) of the Act and section 180(4) of the former Act, Mr Wilkie is reprimanded for the conduct pertaining to Allegations 4, 6, 8,12 and 13.</p>
<p><b>Reasons:</b></p>	<ol style="list-style-type: none"> <li>1. The Tribunal considered the factors identified by the parties to be agreed together with the evidence and submissions presented by the parties throughout the hearing process considered to be relevant.</li> <li>2. The orders made reflect the seriousness of the conduct but also take account of the circumstances and relevant factors outlined in submissions and the evidence. Some of the factors considered were that the Councillor has no previous disciplinary history, that he was in his first term as Mayor and Councillor of the Woorabinda Aboriginal Shire Council having been elected 1 March 2016, that the Councillor from the outset has denied the essential circumstances of the allegation and that the conduct could amount to a breach of trust and misconduct.</li> <li>3. However in making financial penalty orders the Tribunal considered relevant the employment status of the Councillor at the date of the hearing of this matter, December 2019, and noted that the Councillor had resigned from his position as Mayor and Councillor effective from 25 October 2019. The Tribunal took into account this change of financial circumstances and as a consequence extended the period in which to comply with this order.</li> <li>4. As the allegations involved conduct that occurred both prior to 3 December 2018 (the former Act), before the Tribunal was established, and after 3 December 2018(the Amended Act) , the Tribunal made orders specific to the date the conduct took place. For conduct that occurred prior to 3 December 2018 the orders made under section 150AR are substantially the same as orders that could have been made under the former section 180 of the pre-Amended Act<sup>1</sup>.</li> </ol>

<sup>1</sup>Section 322(2) (c )

## Decision (s150AQ):DETERMINATION

<b>Date:</b>	23 February 2021
<b>A - Allegation 4</b>	<p>That between 1 October 2017 and 1 December 2017, Cheyne Wilkie, a Councillor and Mayor of the Woorabinda Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained.</b></p> <p>Particulars of the alleged conduct:</p> <ol style="list-style-type: none"> <li>a) Ms Lauren Ms McMillan is employed as a Web Portal Manager for the Council.</li> <li>b) Within a few days of Ms McMillan commencing her role, the Respondent gathered the Indigenous members of staff around him, excluding Ms McMillan.</li> <li>c) The Respondent stated to the Indigenous staff “I wish these white c...s would f..k off so I could spend my money”. Ms McMillan heard this comment and was the only non-Indigenous Council employee present.</li> </ol> <p>The Respondent’s conduct in relation to Ms McMillan, a Council employee, was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’ or the responsibilities of councillors to provide high quality leadership to the local government and community under section 12(3)(b) of the Act.</p>
<b>Reasons for Decision</b>	<p>The parties did not agree on all of the facts of this matter and the Councillor notified the Independent Assessor prior to the hearing that he disputed this allegation and did not accept that the conduct amounts to misconduct or a breach of trust. The Tribunal was satisfied there was sufficient evidence before it to establish on the balance of probabilities that the conduct the subject of the allegation took place and that such conduct constitutes misconduct.</p> <p>The Tribunal formed the view, having considered the facts, the evidence and the written submissions of the legal representatives on behalf of the Independent Assessor and the Councillor that the Councillor did state to several indigenous staff members in an open plan area of the workplace</p>

and in the presence and hearing of a non- indigenous and recently appointed council employee, words to the effect that “ I wish these white c.....’s would f.... off so I can spend my money”

The tribunal heard evidence that this comment caused the non-indigenous employee “to be visibly upset” and that “she felt unwelcome” as a consequence of this remark made by the Mayor.

The Councillor in a written statement disputed that he made the comment, however did not dispute that he did call the indigenous staff towards him for a discussion but denies excluding the non -indigenous staff member. The Respondent provided verbal evidence that he did use language to the effect of “white c....” and “black c....”, in contexts such as when he was “joking” (gammin)when he was outside of his “office, sitting on a bench..” where no-one can hear him” and when he is “frustrated” (ref page 429 of the transcript line 31-35).

The Tribunal noted the verbal evidence of the Councillor that he could not recall whether he used those words in the office on this occasion and that if he did use those words “he could not recall where he said it” (Transcript of proceedings page 437)

The Tribunal’s view is that all councillors and Mayors are required at all times to uphold the principles that underpin the Act including *‘ethical and legal behaviour of councillors and local government employees’* . The Tribunal notes that section 12(3)(b) of the *Local Government Act 2009* (the Act) requires all councillors to provide ‘high quality leadership to the local government and the community’ and finds that the use of derogatory and racist language in the workplace and in the presence of council employees is unacceptable conduct and in contravention of the Act and inconsistent with the principles that underpin the Act

**Breach of the Trust placed in the Councillor.**

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 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.

In this context and having regard to the local government principles in section 4(2)(e) of the Act, and the Councillors failure to comply with section 12(3)(b) of the Act, the Tribunal is satisfied on the balance of probabilities that the conduct constituted a breach of the trust placed in

	<p>the councillor and that the allegation of misconduct <i>is sustained pursuant to section 176(3)(b)(ii) of the Act</i> .</p>
<p><b>B - Allegation 6</b></p>	<p>That on 27 June 2018, Councillor Cheyne Wilkie, a Councillor and the Mayor to Woorabinda Aboriginal Shore Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a Councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained.</b></p> <p>Particulars of the alleged conduct:</p> <ul style="list-style-type: none"> <li>a) On 27 June 2018 Naomi Wilson, Rhonda Hill and two Child Care Diploma graduates were invited to the Council so the graduates could be given accolades for their achievement. At the time, Ms Wilson was employed as a consultant by the Council.</li> <li>b) As Ms Wilson entered the Council chambers Councillor Wilkie stopped her with his hand raised and said "You cannot go in" .Ms Wilson replied, "Why not Mr Mayor?" Councillor Wilkie replied "because you are not black".</li> <li>c) Ms Wilson was mortified by this comment and replied, "Mr Mayor, look at my shoes. They are black. Look at my slacks they are black. Look at my shirt, it is black. Look at my blazer, it is black. And look at my eyes Mr Mayor there is black there also".</li> <li>d) The Mayor then stepped back and said, "Oh no you have just got us \$4.5 million, you can never leave. We will build you a house here for you to stay". Ms Wilson told Councillor Wilkie, "Mr Mayor I have negotiated yet another \$26,000.00 and I don't think you are going to get that".</li> <li>e) Councillor Wilkie's conduct in relation to Ms Wilson, a consultant employed by the Council, was not consistent with local government principle 4(2)(e ) being 'ethical and legal behaviour of councillors and local government employees' or the responsibilities of councillors to provide high quality leadership to the local government and the community under section 12(3)(b) of the Act.</li> </ul>
<p><b>Reasons for Decision</b></p>	<p>The parties did not agree on all of the facts of this matter and the Councillor notified the Independent Assessor prior to the hearing that he disputed this allegation and did not accept that the conduct amounts to misconduct or a breach of trust. The Tribunal was satisfied there was sufficient evidence before it to establish on the balance of probabilities that the conduct the subject of this allegation took place and that such conduct constitutes misconduct.</p>

The Tribunal formed the view, having considered the facts, the evidence and the written submissions of the legal representatives on behalf of the Independent Assessor and the Councillor that the Councillor did engage in the conduct as alleged.

The impugned conduct of the Mayor occurred at the entrance to the Council chambers of the Woorabinda Shire Aboriginal Council when the Mayor stated to a white Council employee, with one hand raised that “you cannot go in”. The employee was, Ms Naomi Wilson, an experienced and senior Child Care consultant employed by the Woorabinda Aboriginal Shire Council. When Ms Wilson asked “why that was Mr Mayor?”, that she could not go into the building, the Mayor replied “because you are not black”.

Ms Wilson had been invited to attend a meeting that was being held in the Council chambers and her evidence to the Tribunal was that she was very upset by the conduct of the Mayor when he attempted to prevent her from entering by the use of racist language. The Tribunal noted the evidence of a witness to the incident who was an Aboriginal and South Sea Islander council employee, when she stated that she was “disgusted by the conduct” of the Mayor and his demonstrated lack of respect for such a senior member of the workforce. This witness stated that in her view the statement made by the Mayor..” was humiliating for her(Ms Wilson) and just rude”. The witness also gave evidence that in her view ..”that ‘s a very racist remark to a person who has come down to this community to help our day care centre..”<sup>2</sup>

The Councillor in his evidence and during the hearing acknowledged that he did make the remark to Ms Wilson as provided in Particulars of the allegation at a,b,c & d, above. However the Councillor disputed in affidavit evidence that Ms Wilson “appeared shocked” and he provided an explanation for this conduct as ‘just gammin’ (just joking).

The Councillor’s evidence was that he did not observe or think that Ms Wilson was upset by this conduct and he accepted responsibility for the conduct when he stated “it was “entirely his fault for making the statement”<sup>3</sup> (Transcript P-441 L 15). The legal submissions presented for the Respondent was that the conduct was not unethical and does not amount to misconduct<sup>4</sup> because:

- There was no intent to cause offence or embarrassment;
- The Mayor intended the matter as a joke;
- The Mayor did not behave unethically or immorally

<sup>2</sup> Transcript P 293 L 10-20 & p 294 L40.

<sup>3</sup> Transcript P 441 L 15.

<sup>4</sup> Respondent’s submissions February 2020 at [136]& [134]



Having considered the evidence provided by the Respondent and the Applicant and all witnesses the Tribunal determined that the Respondent's conduct in the circumstances of a professional workplace environment was not accepted to be a joke and did offend or embarrass Ms Wilson and the council employee that was also present. The Tribunal did not accept the submission and evidence that the Mayor was just joking, however even if he had been joking such conduct was unacceptable and racially prejudicial as it occurred in a professional environment and in the presence of council employees.

The Tribunal's view is that all Councillors and Mayors are required at all times to observe the principles and the responsibilities pursuant to the provisions of the Local Government Act. This includes affording respect to all council employees equally and without discrimination based on age or skin colour. The Tribunal determined the conduct of the Councillor and Mayor fell below the standards expected from a person in a position of leadership in local government. Elected councillors, including local government Mayor's, are required under the Act to adhere to the principles of *ethical and legal* conduct, section 4(2)(e) of the Act, and to provide *high quality leadership to the local government and local government employees*, section 12(3)(b) of the Act .

The Tribunal determined the conduct of the Councillor as set out in the allegation contravened section 4(2)(e) and section 12(3)(b) of the Act.

**Breach of the Trust placed in the Councillor.**

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 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.

In this context and having regard to the local government principles in section 4(2)(e) of the Act, and the Councillor's failure to comply with section 12(3)(b) of the Act, the Tribunal is satisfied on the balance of probabilities that the conduct constituted a breach of the trust placed in the councillor and that the allegation of misconduct *is sustained pursuant to section 176(3)(b)(ii) of the Act* .

<p><b>C - Allegation 8</b></p>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p> <p>Particulars of the alleged conduct:</p> <ul style="list-style-type: none"> <li>a) On 28 November 2018, at an Ordinary Meeting of Council, the Council considered a matter relating to the Woorabinda Aboriginal and Torres Strait Islander Corporation for Social and Emotional Wellbeing and Health, trading as Yoonthalla Services Woorabinda (hereafter referred to as 'Yoonthalla'). The matter related to whether Council would endorse the CEO to develop a divestment strategy for Yoonthalla to take over the management of social programs, which would allow Council to focus on their core business of roads, water, sewerage and civil infrastructure.</li> <li>b) The matter was not an ordinary business matter.</li> <li>c) Councillor Wilkie attended the Ordinary Meeting.</li> <li>d) Councillor Wilkie had a personal interest in the matter in that his wife, Samantha Wilkie- O'Chin (Wilkie-O'Chin), was a Director of Yoonthalla at the time of the meeting.</li> <li>e) Councillor Wilkie did not inform the meeting of his personal interest in the matter.</li> <li>f) Councillor Wilkie's personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest due to his wife's role as a Director of Yoonthalla.</li> <li>g) The Councillor's conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of Councillors and local government employees' in that Councillor Wilkie did not inform the meeting of his personal interest in the matter as required by section 175E of the Act.</li> </ul>
<p><b>D - Allegation 9</b></p>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda 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 involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained.</b></p> <p>Particulars of the alleged conduct:</p> <ul style="list-style-type: none"> <li>a) On 23 January 2019, at an Ordinary Meeting of Council, the Council considered a matter relating to payment by Council</li> </ul>

	<p>of the public liability insurance premium for Yoonthalla.</p> <ul style="list-style-type: none"> <li>b) The matter was not an ordinary business matter.</li> <li>c) Councillor Wilkie attended the ordinary meeting.</li> <li>d) Councillor Wilkie’s wife, Wilkie-O’Chin, was a Director of Yoonthalla at the time of the meeting.</li> <li>e) Councillor Wilkie did not inform the meeting of his personal interest in the matter.</li> <li>f) Councillor Wilkie’s personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because his wife held a position as a Director of Yoonthalla at the time of the meeting.</li> </ul> <p>The conduct was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of Councillors and local government employees’ in that Councillor Wilkie did not inform the meeting of his personal interest in the matter as required by section 175E of the Act.</p>
<p><b>E - Allegation 10</b></p>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 150L(1)(b)(i) of the Local Government Act 2009, in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p> <p>Particulars of the alleged conduct:</p> <ul style="list-style-type: none"> <li>a) On 23 January 2019, at an Ordinary Meeting of Council, the Council considered a matter relating to a block of land (Lot 165) being included in the Master Plan as the location for Yoonthalla’s Community Controlled Health Service.</li> <li>b) The matter was not an ordinary business matter.</li> <li>c) Councillor Wilkie attended the ordinary meeting.</li> <li>d) Councillor Wilkie’s wife, Wilkie-O’Chin as a Director of Yoonthalla at the time of the meeting.</li> <li>e) Councillor Wilkie did not inform the meeting of his personal interest in the matter.</li> <li>f) Councillor Wilkie’s personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because his wife held a position as a Director of Yoonthalla at the time of the meeting.</li> </ul> <p>The conduct was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of Councilors and local government employees’ in that Councillor Wilkie did not inform the meeting of his personal interest in the matter as required by section 175E of the Act.</p>
<p><b>F - Allegation 11</b></p>	<p>That on 23 January 2019, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined</p>

	<p>in section 150L(1)(b)(i) of the Local Government Act 2009, in that his conduct involved a breach of the trust placed in him as a councillor, either knowingly or recklessly.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained</b></p> <p>Particulars of the alleged conduct:</p> <ul style="list-style-type: none"> <li>a) On 23 January 2019, at an Ordinary Meeting of Council, the Council considered a matter relating to whether Council would facilitate the transition of certain community services from Council to Yoonthalla.</li> <li>b) The matter was not an ordinary business matter.</li> <li>c) Councillor Wilkie attended the ordinary meeting.</li> <li>d) Councillor Wilkie’s wife, Wilkie-O’Chin, was a Director of Yoonthalla at the time of the meeting.</li> <li>e) Councillor Wilkie did not inform the meeting of his personal interest in the matter.</li> <li>f) Councillor Wilkie’s personal interest in the matter could be deemed as being a real conflict of interest or a perceived conflict of interest because his wife held a position as a Director of Yoonthalla at the time of the meeting.</li> <li>g) The conduct was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of Councillors and local government employees’ in that Councillor Wilkie did not inform the meeting of his personal interest in the matter as required by section 175E of the Act.</li> </ul>
<p><b>Reasons for Decision – allegations 8, 9, 10 and 11</b></p>	<p>The four allegations arise out of the presence of the respondent at two council meetings on 28 November 2018 and 23 January 2019 during which consideration was given to matters relating to a corporate entity (the Y Corporation) established to take over the roles of some community activities under the control of the Council. Historically, those activities had been performed by external parties. The respondent had played an active role in the establishment of the Y Corporation. He was a director of the entity from 21 March 2017 to 17 May 2018. He resigned because he had “two big jobs” with the council and a different corporation connected to the Council. The period of the respondent’s directorship preceded the date of the two council meetings.</p> <p>The respondent’s wife was an unpaid director of the Y Corporation during the time frame which the two council meetings the subject of these allegations occurred.</p>

The respondent did not dispute that he did not inform the meetings of a personal interest in the matters being considered by council. Nor did he contest the other particulars provided for each of the allegations, save for the two final particulars in each case. He disputes that a real conflict of interest or perceived conflict of interest arose by virtue of his wife's position as a director of the Y Corporation.

The respondent in his affidavit stated that he had limited recollection of the council meeting of 28 November 2018. Allegation 8 relates only to that meeting at which a resolution was passed that the Council endorses the CEO to develop a Divestment Strategy” for the Y Corporation. The respondent accepted that he did not make any disclosures and referred to his wife's unpaid directorship of the Y Corporation. The respondent also acknowledged that his wife's daughter was also a director of the entity. As the motion put before the council was simply for the CEO to develop a divestment strategy, in the respondent’s view, there was no conflict, real or perceived.

Allegations 9,10 and 11 all arose from the respondent’s presence at the meeting of 23 January 2019. The matters discussed related to the proposed expenditure for, or a benefit being provided by the council, to the Y Corporation. The discussions or resolutions related to: paying public liability insurance premium for that entity (allegation 9); consideration of the allocation of a block of land in the community for the health service to be run by the Y Corporation (allegation 10); and whether council would facilitate the transition of community services from council to the Y Corporation (allegation 11).

In relation to allegation 9, although the matter was considered in the respondent’s presence, but no resolution specifically dealing with the topic was voted on.

In relation to allegation 10 about the allocation of the block of land for health service purposes, the respondent seconded resolution but the resolution was not carried.

In relation to allegation 11, the respondent seconded the motion but the motion was not passed following another councillor declaring that he had a conflict of interest, as he was a member of the entity.

The Tribunal had first to consider whether there was a personal interest held by the councillor which might conflict with the public interest. The evidence does not suggest that the respondent received a direct tangible personal benefit giving rise to a personal interest but rather he received some “reputational” benefit. The Tribunal accepts that a personal interest does not need to involve any actual or possible pecuniary

The Tribunal accepts the applicant's submissions that the respondent's past role in establishing the entity, his former role as director and his ongoing family connection to the entity are indicative of a personal interest for the purposes of section 175D. The Tribunal accepts that relevant personal interest provisions extend to personal social and ideological interests.

The councillor's register of interests document dated 22 June 2016 was before the Tribunal. The contents of the register are ambiguous as to the timing of amendments recorded in it.

The respondent had a clear interest in the establishment of the Y Corporation and actively participated in the early steps taken towards its establishment; he was for a time an office bearer, and his wife and his wife's daughter were directors at the dates of the relevant meetings. Taking those matters into account, the Tribunal concluded that the respondent had a greater personal interest in matters relating to the entity than other people in the local government area.

The parties take different approaches as to what constitutes the public interest. The applicant asserts that not every decision by council can be said to be necessarily in the public interest. The respondent admitted that matter is being considered by the council related to services and issues to benefit the local government area as a whole.

The Tribunal's view is that the statutory regime dealing with a conflict of interest between the public interest and the private interest should be interpreted as applying to involvement in council matters leading to a decision. The manner of participation in the decision process must not undermine the integrity of the system of local government, which is premised on objective transparency and integrity-based decision making.

The Tribunal viewed the principle set out in the LGA most closely aligned with the alleged conduct is that set out in principle 4(2)(a) relating to "transparent and effective processes and decision making in the public interest". However despite that not being the principle relied on by the IA, the failure to make the disclosure of personal interests in the matter would fall equally within the principle referred to in the particulars being "ethical and legal behaviour of councillors and local government employees".

The Tribunal concluded that the applicant had established on the balance of probabilities that there was a conflict between the respondent's personal interests and the public interest namely the transparency of the council processes. The respondent could have avoided the conflict by acting as he did during an earlier meeting on 30 May 2018 where he had

	<p>declared his personal interest in a request submitted by the Y Corporation when his wife was named in the letter of request.</p> <p>The Tribunal was satisfied that the applicant had established on the balance of probabilities that there was a conflict between the respondent’s personal interests and the public interest. The Tribunal is satisfied that as, a consequence of the respondent’s demonstrated prior awareness of possible conflicts with matters related to the Y Corporation being considered by council, and yet remaining at the meeting on the 23rd January 2019 when his wife was a director of the entity, he has acted knowingly.</p> <p>The Tribunal finds in relation to allegation 8:</p> <ol style="list-style-type: none"> <li>1. there was a conflict of interest between the respondent’s personal interest and the public interest;</li> <li>2. that the respondent’s conduct on 28 November 2018 in participating in discussions about the Y Corporation without disclosing his personal interest (which included that his wife was a director) was inconsistent with local government principle 4(2)(e).</li> </ol> <p>Consequently, the respondent had breached the trust placed in him warranting a finding of misconduct as defined in former section 176(3)(b)(ii) of the Act.</p> <p>In relation to allegations 9, 10 and 11, the Tribunal finds there was; a conflict of interest between the respondent’s personal interest and the public interest and that his conduct on 23 January 2019 in participating in the discussion about matters that would benefit the Y Corporation without disclosing his personal interest (which included that his wife was a director) was inconsistent with local Government principle 4(2)(e).</p> <p>In the circumstances, the respondent has knowingly breached the trust placed in him warranting a finding of misconduct as defined in section 150L(1)(b)(i).</p> <p>The Tribunal finds that each of the allegations 8 to 11 have, on the balance of probabilities, been sustained.</p>
<p><b>G - Allegation 12</b></p>	<p>That on 1 August 2018, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the <i>Local Government Act 2009</i>, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this allegation is sustained.</b></p>

Particulars of the alleged conduct:

- a) At the local government elections on 19 March 2016, Councillor Wilkie was elected as Mayor of the Council.
- b) Yoonthalla was established in 2016 by the Woorabinda community to improve self-determination, economic development and community control. It was established with the intention it would become the in-community entity to apply for and receive State and Federal funding to deliver programs and services which are currently provided by external, third party providers.
- c) Councillor Wilkie was a Director of Yoonthalla from 21 March 2017 to 17 May 2018, inclusive.
- d) Councillor Wilkie's wife is Samantha Wilkie-O'Chin. Wilkie-O'Chin was a Director of Yoonthalla from 31 October 2017 to 21 February 2019, inclusive.
- e) Councillor Wilkie signed and submitted a Form 2 – Register of Interests of a councillor and their related persons. The Form 2 is the approved form for informing the CEO of Council of the particulars of an interest or a change to the interest. The original Form 2 is dated 22 June 2016. In the Form 2, Councillor Wilkie registered his interest in Yoonthalla in item 3 of the Form 2. The particulars provided about the interest were the name of the corporation, namely, 'Woorabinda ATSI for Social + Emotional Wellbeing + Health' and the nature of the office being Chairman.
- f) Information provided by the current CEO of the Council, Michael Hayward, to the OIA is that councillors' register of interests are reviewed every year. The Form 2 was reviewed in 2017 and no changes were made as a result of this review.
- g) The Form 2 was amended by Councillor Wilkie on 1 August 2018. The amended form was received by the CEO's office on 3 August 2018. Of relevance, Councillor Wilkie amended the Form 2 by removing his interest in Yoonthalla in item 3.
- h) Whilst Councillor Wilkie's position as Director of Yoonthalla ceased on 17 May 2018, he had an obligation to record the ongoing interest of his wife, Wilkie-O'Chin, who continued in her role as a Director of Yoonthalla until 21 February 2019.

Councillor Wilkie's conduct was not consistent with local government principle 4(2)(e) being 'ethical and legal behaviour of councillors and local government employees'. By amending the Form 2 on 1 August 2018, to remove his interest in Yoonthalla, and failing to transparently record his wife's ongoing role as a Director of Yoonthalla, Councillor Wilkie failed to comply with his legal obligation under section 171B of the Act.



## Reasons for Decision

This allegation related to the failure by the Councillor to include in his Register of Interests the particulars of an interest held by his wife and required to be declared by the provisions of the Local Government Act 2009 and the *Local Government Regulation 2012* .

The Councillors wife held a position as a Director of a company, Yoonthalla. This interest was required to be recorded in the Councillors register of interests pursuant to section 171B of the Act and section 291 and schedule 5, section 17(1) and (2) of the schedule to *the Local Government regulations*.

Although the Councillor accepted that he did not record the interest in his register of interests he notified the Independent Assessor prior to the hearing that he disputed this allegation as he did not accept that he had a legal obligation to record the interest held by his wife or that the alleged conduct amounts to misconduct or a breach of trust.

The Tribunal was satisfied there was sufficient evidence before it to establish on the balance of probabilities that the Councillor failed to accurately record that his wife was a Director of Yoonthalla. The Councillor had previously been a Director of this company until 17 May 2018, his wife remained a Director until 21 February 2019. The period between 17 May 2018 and 21 February 2019 was required to be included in the Councillors register of interests.

### **Section 171B**

**(1)(a)** – *if a councillor has an obligation to record an interest in a register of interests **under a regulation** in relation to a councillor or **person who is related to a councillor**:*

**(2)** – *The councillor must in the approved form, inform the chief executive officer of the particulars of the interest ...within 30 days after the interest arise..*

### **Section 291(1) Schedule 5 of the Regulations**

*The Register of interests .....must contain the financial and non-financial particulars mentioned in Schedule 5 for (a) a councillor;*

*Schedule 5 Item 17 Other Financial or non-financial interests*

**(2)** .. *In this section –*

*Interest, of the relevant person means a financial or non -financial interest-*

*(a) of which the relevant person is aware; and*

	<p><i>(b) that raises, appears to raise, or could raise, a conflict between the relevant person’s duty under the Act and the holder of the interest.</i></p> <p>The wife of the Councillor remained as a Director a for a period of 10 months between May 2018 and February 2019 and the Councillor was required by the above provisions to record this interest.</p> <p>The Tribunal found on the balance of probabilities that the position of his wife as Director of Yoonthalla <i>‘raises, appears to raise or could raise a conflict between (.the Councillor’s).. duty under the Act and the holder of the interest’.</i></p> <p>The Tribunal formed the view that as his wife was a Director of a locally based company within the Woorabinda community that was established to manage State and Federally funded grants to the community that the interest was caught by Schedule 5 to the regulations and was required to be recorded pursuant to section 171B of the Act.</p> <p>The Tribunal formed the view, having considered the relevant provisions of the Act, the Regulations and the Schedule to the Regulations, the facts, the evidence and the written submissions of the legal representatives on behalf of the Independent Assessor and the Councillor, that the Councillor did engage in the conduct as alleged when he failed to record the details of his wife’s directorship of Yoonthalla in his register of interests .</p> <p>As all Councillors and Mayors are required at all times to observe the principles and the responsibilities pursuant to the provisions of the <i>Local Government Act and Regulations</i> the Tribunal determined on the balance of probabilities that the conduct of the Councillor as set out in the allegation did contravene section 171B of the Act , section 291 and Schedule 5 of the Regulation and thereby breached the local government principle requiring “ethical and legal behaviour”.</p> <p>In this context the Tribunal is satisfied on the balance of probabilities that the conduct constituted a breach of the trust placed in the councillor and that the allegation of misconduct <i>is sustained pursuant to section 176(3)(b)(ii) of the Act .</i></p>
<p><b>H - Allegation 13</b></p>	<p>That on or around 24 September 2018, Cheyne Wilkie, a Councillor and the Mayor of Woorabinda Aboriginal Shire Council, engaged in misconduct as defined in section 176(3)(b)(ii) of the Local Government Act 2009, in that his conduct involved a breach of the trust placed in him as a councillor.</p> <p><b>The Tribunal has determined on the balance of probabilities that this</b></p>

	<p><b>allegation is sustained.</b></p> <p>Particulars of the alleged conduct:</p> <p>a) On or around 24 September 2018, Councillor Wilkie gave a direction to a Council employee, namely Reginald Cressbrook, not being the CEO or a senior executive employee of the Council.</p> <p>b) Mr Cressbrook is the Essential Services Manager at the Council.</p> <p>c) The direction related to Mr Cressbrook undertaking maintenance on the Bore 4 outstation prior to the arrival of a church group.</p> <p>Councillor Wilkie’s conduct in relation to Mr Cressbrook, a Council employee, was not consistent with local government principle 4(2)(e) being ‘ethical and legal behaviour of councillors and local government employees’ in that it was contrary to section 170 of the Act.</p>
<p><b>Reasons for Decision</b></p>	<p>The parties did not agree on all of the facts of this matter and the Councillor notified the Independent Assessor prior to the hearing that he disputed this allegation and did not accept that the conduct amounts to misconduct or a breach of trust.</p> <p>The Councillor was alleged to have provided a direction to a Council employee in contravention of section 170 of the Local Government Act (the Act) that prohibits the Mayor or any councillor from giving ‘<i>a direction to any local government employee</i>’. Pursuant to the Act the Mayor may only provide a direction to the chief executive officer or senior executive employees.</p> <p>The Tribunal was satisfied there was sufficient evidence before it to establish on the balance of probabilities that the conduct the subject of this allegation took place and that such conduct constitutes misconduct.</p> <p>The Tribunal formed the view, having considered the facts, the evidence, including the witnesses evidence, presented at the three day hearing, and the written submissions of the legal representatives on behalf of the Independent Assessor and the Councillor, that the Councillor did engage in the conduct as alleged.</p> <p>The Councillor accepted that he directly asked an employee, Mr Cressbrook, to undertake a work project involving maintenance of a Bore at a disused and run down outstation on Council property. The Mayor wanted a Church group to be accommodated at the outstation and wanted the Bore to be repaired prior to their arrival. Mr Cressbrook contacted his supervisor regarding the Mayor’s communications with him regarding undertaking this work.</p>

The Councillor submitted that the evidence did not establish that he gave a direction to the employee and that all he did was make an *'inquiry'*<sup>5</sup> of the employee and as such this did not breach the trust that would constitute misconduct.

The Councillor and his legal representatives submitted that the word *'direction'* was not defined in the Act and that the conduct of the Mayor was a request to the employee and was not a direction and thus he complied with the provisions of the Act.

The Tribunal formed the view that it is not necessary for the precise expressions such as "I direct you" or "I instruct you" to be used when addressing a council employee for the matter to constitute a "direction".

The Tribunal accepted the submission of the Independent Assessor that there existed a clear imbalance of power between the Respondent as Mayor of the Council and Mr Cressbrook, as a Council employee. Although the word "direction" is not defined in the Local Government Act the Tribunal's view is that the meaning of the word/s is to be derived from the legislative context in which those words appear<sup>6</sup>. The specific wording or words used in relation to the request is irrelevant. The intention of the Respondent is the key to determining whether a direction to an employee has occurred. In this case the intention of the Mayor was to bring about some action or form of activity by a council employee in furtherance of achieving an outcome, that outcome being the repair and maintenance of Bore 4 and to put it into operating order prior to the arrival of a Church group.

The interaction by the Mayor with the Council employee was *'authoritative'*, in that it involved influence being exerted by a person in a position of power (the Mayor) over a subordinate (Mr Cressbrook). The Mayor took specific steps to "follow up" with Mr Cressbrook, which he made clear was because he wanted to understand "how he [Mr Cressbrook] was going with the process" of preparing the accommodation for use<sup>7</sup>.

This type of conduct ignored the purpose of section 170 of the Act, to ensure transparency of actions and to protect employees from coercive conduct arising from the abuse of Council powers by elected officials empowered with its administration.

As elected representatives in responsible positions with significant powers, councillors have broad discretionary powers and are entrusted

<sup>5</sup> Respondent's outline of submissions at [117]

<sup>6</sup> Collector of Customs v Agfa-Gevaert Ltd [1996] HCA57; 186 CLR 389, 396-7.

<sup>7</sup> Transcript of Proceedings at P463, L 23-L25.

to use these powers appropriately and in accordance with the principles and provisions of the Act.

There exists a substantial power imbalance between a Councillor and a Council employee. Had the Mayor acted in accordance with the statutory obligation he would have been permitted by section 170(1) and 196(6) of the Act to give a direction to either or both the Chief Executive Officer or the supervisor of Mr Cressbrook ( a senior executive), to have the works completed.

Having considered the evidence provided by the Respondent and the Applicant and the witnesses the Tribunal determined that the conduct of the Councillor and Mayor in making any request to an employee to undertake a work project was not acceptable and contravened the provision of the Act requiring all such directions and work requests to be directed to the CEO or the senior executive employee to implement.

The Tribunal did not accept the submission and evidence on behalf of the Councillor and Mayor that he did not direct the employee to undertake the work. It is the Tribunal's view is that all Councillors and Mayors are required at all times to observe the principles and the responsibilities pursuant to the provisions of the Local Government Act.

The Tribunal is satisfied on the balance of probabilities that the Respondent by directly approaching the Council employee and requesting that he undertake maintenance and repairs to Bore 4 did contravene the provisions of section 170(2) of the Act and that this conduct was inconsistent with the local government principle section 4(2)(e ) requiring '*ethical and legal behaviour of councillors*'.

The Tribunal determined the conduct of the Councillor constituted a breach of the trust placed in the councillor and that the allegation of misconduct *is sustained pursuant to section 176(3)(b)(ii) of the Act.*